

**FINAL 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. 83**

**COMMONWEALTH OF VIRGINIA  
RICHMOND  
1993**

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Bernard S. Cohen, *Chairman*  
Joseph B. Benedetti, *Vice Chairman*  
C. Richard Cranwell  
Clinton Miller  
Kenneth W. Stolle  
George E. Allen III  
S. James Thompson, Jr.

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**Final 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, 1993**

TO: The Honorable L. Douglas Wilder, Governor,  
and  
The General Assembly of Virginia

**INTRODUCTION**

House Joint Resolution No. 173 (1992) reestablished a joint subcommittee to complete a study of the statutes of limitation governing civil actions and the rules for determining when the applicable limitations period begins to run (i.e., accrues) (Appendix 1).

The Speaker appointed Delegates Bernard S. Cohen, C. Richard Cranwell and Clinton Miller and S. James Thompson, Jr., representing the Virginia Association of Defense Attorneys and George E. Allen III, representing the Virginia Trial Lawyers Association. The Senate Committee on Privileges and Elections appointed Senators Joseph B. Benedetti and Kenneth W. Stolle. Delegate Cohen was elected Chairman and Senator Benedetti was elected Vice-Chairman.

**HISTORY OF COMMITTEE**

A seven-member joint subcommittee to review Virginia law governing the accrual and limitation of civil causes of action was first created in 1988. The committee was then chaired by Delegate Bernard S. Cohen and included lawyer-legislators from the House Courts of Justice Committee (Delegates Cranwell and Miller) and the Senate Courts of Justice Committee (Senators Earley and Michie). In addition, George E. ("Ted") Allen III, representing the Virginia Trial Lawyers Association, and John M. Oakey, Jr., representing the Virginia Association of Defense Attorneys, served on the committee. The committee held five meetings in Richmond during 1988.

The original committee began its deliberations with a review of Virginia Supreme Court decisions on limitations issues during the previous 10 years and the limitations periods then in effect in all 50 states for particular types of actions. After much consideration and debate, the committee concluded that Virginia law in this area is difficult for even seasoned practitioners to understand, often resulting in inconsistent and inequitable application of the law to particular facts. It is often impossible to determine with any degree of certainty which of several possible limitations periods will apply to any given facts.

Several drafts of legislation addressing the problems identified by the committee were prepared, debated and revised. Although considerable progress on these complex issues was made, the committee needed additional input from the bench and bar and sought to continue the study.

Following the issuance of the committee's interim report,<sup>1</sup> a "discussion draft" of proposed legislation was provided to all judges in the Commonwealth. A summary of the legislation also appeared in Virginia Lawyers' Weekly and the Virginia Lawyer. Interested persons were encouraged to obtain a copy of the draft and submit comments to the committee. This discussion draft included the following significant provisions:

1. Elimination of the various limitation periods and adoption of but two statutes of limitation: two years for actions for injury to the person and five years for actions for damage to property.
2. Adoption of a general discovery accrual rule to be applied in all actions where the injury or damage could not reasonably have been discovered on the traditional (i.e., date of the injury or breach) accrual date.
3. Adoption of a statute of repose (10 years from last act or omission) applicable to those actions in which the discovery accrual rule is used, except in limited, statutorily defined instances where a repose provision would be unfair (e.g., latent defects in products with a long product life; toxic substances where manifestation of illness is delayed).
4. Mandatory pre-trial judicial determination of the timeliness of an action upon request of either party where the statute of limitations is raised as an affirmative defense.
5. Exception of all persons who provide building materials and supplies from the protection of the statute of repose provision of § 8.01-250.

Several written comments on the draft were received. While the vast majority of the comments were favorable, the committee was disappointed that the number of responses was not greater.

During the 1989 interim, Delegate Cohen appointed a special task force<sup>2</sup> to draft appropriate definitions for "injury to person" and "damage to property." These definitions were viewed as the cornerstone of the proposed draft since clarification of the types of actions governed by either limitation period was critical to the committee's work. The task force and committee staff corresponded frequently and met twice. The task force concluded that it would be impossible to fashion a precise definition of either term which would eliminate any question of which term covered a particular factual situation. They suggested a general definition of the types of actions to be covered, followed by a list of particular actions (Appendix 2).

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<sup>1</sup> House Document No. 55 (1989).

<sup>2</sup> Attorneys James C. Roberts, Henry H. McVey III, and Stephen W. Bricker; Mary P. Devine provided assistance to the special task force.

The committee then met once in 1989 to review the comments received on the draft and the progress of the task force. The committee unanimously agreed to continue the study. Because of the definitional problems encountered by the task force and a belief by the committee that simplification of the law in this area was essential, the committee agreed to consider whether adoption of a unitary limitations period applicable to all civil actions for money damages would be preferable to the dual limitations period then being considered.<sup>3</sup>

House Joint Resolution 67 continuing the study committee failed during the 1990 session. Nevertheless, upon the Speaker's request, the Chairmen of the House and Senate Courts of Justice Committees agreed to appoint members from their respective committees to continue the study. The expanded committee consisted of Delegates Cohen, Cranwell, Croshaw, Reynolds, Jackson and Miller and Senators Michie, Bird, Cross, Scott, Benedetti, Earley and Calhoun. Although Messrs. Allen and Oakey were not appointed to the committee, they were invited and encouraged to participate.

The committee met twice prior to the 1991 Session. At its first meeting the committee concluded on a 6-1 vote that the discussion draft should be significantly revised to (i) adopt a unitary limitations period of three years for all actions and (ii) toll the limitations period during any period when discovery of the injury or damage was prevented by fraud, intentional concealment or misrepresentation. Following these basic determinations on the thrust of the legislation, the committee agreed to meet again to review a revised draft reflecting these changes and to discuss whether (i) any exceptions to the unitary period should be allowed, (ii) a general discovery accrual rule was needed if the tolling provision were enacted and (iii) the repose provision applicable to design professionals should be increased to ten years and should exclude suppliers. A revised draft and issues paper were prepared, as was a comprehensive list of all limitations periods referenced in the Code of Virginia (Appendix 4).

The final meeting of the committee took place on January 9, 1991, with 12 of the 13 members present. It quickly became apparent that a consensus could not be reached. Many of the committee members present who had not been involved in the earlier years of the study were not convinced that any changes in the statutes of limitation laws were needed. Some questioned the apparently abrupt change from two generally applicable limitations periods to a unitary three-year period. Health care providers and contractors and materialmen were particularly concerned over how the changes in the law would affect them. The committee adjourned and no action was taken with respect to the committee's work until the introduction and passage of House Joint Resolution 173 in 1992.

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<sup>3</sup> For a discussion of the advantages of a unitary limitations period, see: "Limitation of Actions in Virginia: Do Too Many Clocks Spoil the Broth?", Hon. J.R. Zepkin, *Virginia Bar Association Journal*, Winter and Spring, 1988.

## RECENT LEGISLATION

Although the committee disbanded in 1991, the General Assembly continued to enact legislation dealing with statute of limitation issues. In 1991, the existing "discovery" accrual rule (§ 8.01-243) was expanded to cover cases involving injuries alleged to result from sexual abuse occurring during infancy or while the plaintiff was under another disability. House Bill 1287 delayed commencement of the two-year limitation period until the plaintiff is informed by a physician, psychologist or clinical psychologist that he or she was abused and that the abuse caused the particular injury claimed in the suit. This is not an open-ended discovery accrual rule, however; the action cannot be brought more than ten years after the later of (i) the last act of abuse or (ii) removal of the disability of incompetency or infancy. Proponents of the legislation attempted to include a "window of opportunity" for persons who suffered abuse more than ten years prior to July 1, 1991, to sue. Although a second enactment clause of the bill provided such a window, the Virginia Supreme Court ruled on June 5, 1992, that the attempt to revive a claim already barred by the then applicable limitations period was unconstitutional. See Starnes v. Cayouette, 8 VLR 3393.

Article 2A of the UCC governing leases was enacted in 1991. Section 8.2A-506 creates a four-year limitation period applicable to any action for default under a lease contract, including breach of warranty or indemnity. The section allows the parties to agree to reduce the limitation to any period of not less than one year. The section provides that the limitation period accrues upon the later of the default or discovery of the default.

The general accrual rules (§ 8.01-230) were again modified in 1992. Products liability actions for injury to the person resulting from implantation of a prosthetic device for breast augmentation or reconstruction will now accrue when the fact of the injury and its causal connection to the implantation are first communicated to the plaintiff by a physician. Also in 1992 a discovery accrual rule was adopted in actions for breach of a transfer warranty involving negotiable instruments under revised Article 3 of the U.C.C. (§ 8.3A-416). Revisions to Article 3 (§ 8.3A-118) and corresponding amendments to Article 4 (§ 8.4-111) include limitations periods of three years and six years for various actions involving such instruments (e.g., six years - action to enforce the obligation of party to pay a note payable at a date certain or on demand; three years - action to enforce the obligation of a party to an unaccepted draft). The accrual rules for these actions vary.

## SUMMARY OF RECOMMENDATIONS

1. A majority of the committee believes that adoption of a discovery accrual rule applicable to all forms of civil actions would provide a desirable degree of fairness for claimants, but recognizes that potential adverse economic consequences suffered by defendants in the form of increased insurance costs make enactment of such a change undesirable at this time.
2. In order to address the uncertainty resulting from the myriad of current limitation periods, a unitary limitation period of four years should be adopted to apply to all civil actions in which a claim for money damages is made.

3. Because an individual should not benefit from his wrong, no statute of limitations should run during any period where fraud, or intentional misrepresentation or intentional concealment of a material fact prevents an injured person from determining that he was injured or that his injury was sustained as a result of an act or omission of the individual perpetrating the fraud, misrepresentation or concealment.

## COMMITTEE DELIBERATIONS AND FINDINGS

This committee began where the prior committee left off--discussing a unitary three-year limitations period. At the initial meeting in 1992 it was apparent that the committee believed a unitary limitations period would eliminate the confusion and resulting inequities of the current system. However, it was also clear that most felt such a radical change would face an uphill battle during the legislative process. Because of these practical concerns, the committee turned to alternatives. In addition to alternatives to the unitary limitations period, the 1992 discussions focused on a draft which provided for (i) creation of a pre-trial procedure for determining the timeliness of an action, (ii) creation of a new tolling provision to prevent the applicable limitations period from running during any period when fraud or intentional misrepresentation or concealment of a material fact prevented discovery of the injury or damage or discovery of the causal connection between the alleged wrong and the injury or damage, (iii) adoption of a discovery accrual rule to provide that where the injury or damage was not reasonably discoverable on the date sustained, the applicable limitations period does not begin to run until the injury or damage is discovered or reasonably should have been discovered had the plaintiff exercised due diligence. In order to focus the committee, members agreed not to address the issue regarding the statute of repose applicable to actions against design professionals (§ 8.01-250). The draft was made available to all interested persons.

### **Limitations Periods**

First among the alternatives to a unitary rule was the dual system considered by the prior committee. Under this approach, a two-year limitations period would apply to all civil actions for "injury to the person." Actions for "damage to property" would be subject to a five-year limitations period. Again, however, the committee ran into definitional problems.

The Supreme Court has held that where a defendant's actions are directed at a plaintiff's property, the action is one for damage to property. Where the defendant's actions are directed at the plaintiff personally, it is one for injury to the person. See Vines v. Branch, 8 VLR 3375, 3380 (1992). The distinction is not clear cut. For example, into which category would a claim for economic loss be placed if there was no physical damage to either person or property?



There is also the difficulty of handling a case in which a single set of facts gives rise to several causes of action. In Johnson v. Plaisance, 25 Va. Cir. 264 (1991), the defendants terminated the plaintiff's employment and reported plaintiff's unfitness due to alcohol use to the State Board of Nursing based solely upon an unconfirmed suspicion of alcohol use. The defendants knew that the plaintiff had undergone treatment for alcoholism. A claim arising out of the plaintiff's discharge from employment alleging, inter alia, that the defendant-employer tortiously interfered with the plaintiff's contractual relations was held to be a personal action subject to a one-year limitation period because no other limitation period was specified. Thus, the claim was time barred. However, the statute of limitations defense was not raised as to the plaintiff's claim under § 18.2-500 that the defendants conspired to willfully and maliciously injure her reputation, trade, business and profession as a professional nurse. By case interpretation, actions under §§ 18.2-499 and 18.2-500 have been held to be damage to property claims and thus subject to a five-year limitation period<sup>4</sup>, although the essence of the claim is similar to the plaintiff's claim for tortious interference with an employment contract. The plaintiff also sued for intentional infliction of emotional distress. This claim was held to be for personal injuries, subject to a two-year limitation period.

The committee determined it would be best to simply identify and then state the actions which should be subject to the two- and five-year limitation, respectively. Staff prepared a discussion draft under which actions for personal injuries, including medical malpractice, and for defamation, fraud and wrongful death would be subject to the two-year statute of limitation. All other civil actions would be subject to the five-year period, whether in contract or tort or for personal injury or property damage.

The proposed dual limitations periods were again discussed at great length. The committee at one point generally agreed that "personal injuries" would include bodily invasions as well as emotional harms, such as pain and suffering. But what other types of nonphysical harms would be made subject to the two-year limitations period? It was noted that under current law, damages for emotional trauma may be recovered only if the injury was intentionally inflicted. Also, the question was raised whether malicious prosecution and false imprisonment, for example, should be subject to the two- or five-year limitations periods. These actions currently are subject to the one-year limitations period under § 8.01-248. A physical injury or intentional wrong need not be involved; these types of claims involve infringements of legally protected rights and interests. Further refinements were made. The phrase "action for personal injuries" was defined to mean "claims for physical or mental injury to the human body or mind which seek to recover damages for pain, suffering, inconvenience, mental anguish or distress and the expenses or losses associated with such injury or damages." Claims for false arrest, malicious prosecution and civil rights violations were added to the list of actions subject to a two-year limitation period. However, the committee still was not satisfied that the dual period proposal provided the required certainty or would, in practice, be justifiable from a policy perspective. The committee concluded that although adoption of a unitary approach appeared radical, it was simpler and fairer, and the only way to address the problems and uncertainties created by the multi-period limitations system.

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<sup>4</sup> Federated Graphics Co's. v. Napotnik, 424 F. Supp. 291 (E.D. Va. 1976).

The remaining issue for the committee was which time period to choose. In the past committee members settled on three years. Their deliberations on the issue this time were closely tied to their deliberations on the discovery accrual issue. A majority preferred a four-year period since a generally applicable discovery accrual rule was not being recommended. This would give plaintiffs a longer time in which to sue in many cases, but would continue to provide defendants with needed certainty.

Many members of the committee also felt that all civil actions should be subject to the unitary limitations period absent a demonstrated need for an exception. All relevant limitations periods which could be located in the Code of Virginia were reviewed and amended as appropriate and incorporated in House Bill 1401 introduced by Delegate Cranwell. However, because a significant number of members felt otherwise, House Bill 1996, as introduced by Delegate Cohen, included a savings provision for other codified limitations periods. If a statute included its own limitations period and that period was not changed by House Bill 1996, the specific statutory period would control over the general unitary period under the savings provision.<sup>5</sup>

#### **Pre-trial Action on Timeliness**

Proposed as a tool to expedite trials in which the action allegedly accrued under a discovery rule, the pre-trial procedure was initially discussed and tentatively recommended by the 1988 joint subcommittee. Rather than go to the time and expense of a lengthy trial only to have the case dismissed because the statute of limitations had expired, the procedure was intended to allow either party to request a judicial determination of the issue up front. After discussing at great length whether to expand the availability of the procedure to all civil cases, limit its availability to only cases accruing under a discovery rule, or eliminate the provision from the draft, the committee agreed to eliminate the provision. Most members believed that judges currently had the power to make timeliness decisions prior to trial. There was also considerable concern that such a procedure would not have the desired result. In many cases the evidence and witnesses bearing on the limitations issues would be identical to those required on the issue of liability. If the limitations issue were not dispositive of the case, two trials would be held instead of one. Finally, many committee members were concerned about the increased cost to the parties and the increased demands on the judge's time. The committee determined that creation of such a procedure was not required and, in light of these concerns, probably not desirable.

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<sup>5</sup> See § 8.01-228 of House Bill 1996 (1993).

## **Toll For Fraud**

Also held over from the prior committee was the issue of whether fraud by the defendant should toll the limitations period. There was disagreement among the lawyers participating in the study, as committee members or as lobbyists, over the question whether Virginia law currently requires that the statute of limitations not run during any period when the defendant's fraud interfered with the plaintiff's recognition of his rights or ability to enforce those rights. Most agreed that a defendant's fraud would give rise to an estoppel<sup>6</sup>, but the nature and extent of the estoppel were questioned. Should a defendant's failure to disclose known information constitute fraudulent concealment?<sup>7</sup> Must the defendant's fraud be such as to prevent the discovery of his wrongful act, or the fact that the act is civilly actionable? Must the concealment occur after the cause of action accrued? There was no agreement on answers to these questions. Relevant reported cases are virtually nonexistent.

The committee decided that a tolling provision for fraudulent concealment of material facts should be codified and chose a broad tolling provision.<sup>8</sup> Fraud or intentional concealment or misrepresentation of a material fact which directly and adversely affects the plaintiff's ability to enforce his rights in a civil action will toll the statute of limitations. The "intentional misrepresentation or concealment" language of the proposed amendment ensures that wrongful acts of commission and omission will trigger the tolling provision. Although written broadly, the provision's application to a specific cause of action is limited by the requirement that the defendant's act relate to "material facts." The committee believes that codification of a toll for fraud will reduce confusion and increase fairness for civil litigants.

## **Discovery Accrual**

The discovery issue significantly divided the participants. Public testimony received during the year pointed to the inherent unfairness of the current rule and the many case-by-case exceptions adopted by the legislature and the courts. Proponents of a discovery rule argued that the several recently enacted discovery rules for particular actions evidenced the support of the public and the legislature for such a change. Opponents of the change continued to argue the state's interest in protecting a defendant's ability to defend a claim and the probable adverse affects on the availability and affordability of liability insurance coverage.

Many of the committee felt strongly about adoption of a discovery rule. A majority felt, however, that the discovery issue was too divisive and that inclusion of such a rule would jeopardize the success of much needed reforms in the limitations periods. Finally, it was agreed that in lieu of a discovery rule, the committee would recommend a four-year unitary limitations period. Many on the committee hope that the discovery issue will be raised in separate legislation in the near future.

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<sup>6</sup> See Boykins v. Weldon, 221 Va. 85 (1981).

<sup>7</sup> This issue was raised in the context of the Dalkon Shield cases.

<sup>8</sup> See new subsection J of § 8.01-229 of HB 1996 (Appendix 4) beginning at page 3.

## CONCLUSION

House Bills 1401 and 1996 were introduced for consideration by the 1993 Session of the General Assembly. House Bill 1401, the conforming measure changing all statutory limitation periods to four years, was referred to the House Courts of Justice Committee where it was stricken from the docket.<sup>9</sup>

House Bill 1996, including the primary recommendations of the committee, was also considered by the Courts of Justice Committee. The House Committee deleted the toll-for-fraud provision from HB 1996 and reduced the unitary limitation period from four to three years. The bill was then reported from committee on a 13-7 vote. Mr. Cohen offered floor amendments to the bill. Some of the amendments were merely technical<sup>10</sup>, but some would have retained the two-year limitations period for medical malpractice actions in a last minute effort to save the bill. Following approval of both sets of floor amendments, the House, nonetheless, failed to engross the bill.<sup>11</sup>

This committee recognizes that many interests would not be happy about any change in the statutes of limitation. A majority believe that a change is fair and, although painful and awkward initially, necessary to retain the integrity of the civil justice system. Citizens should not lose their rights on a technicality such as the statute of limitations absent a strong policy rationale.

As the patchwork of limitation periods has developed, the underlying policy has become more difficult to justify. Some arbitrary limitation on the enforcement of civil actions must be provided to prevent stale claims. However, persons entitled to enforce "fresh" claims should be able to determine with a reasonable degree of certainty which time limitation applies. A majority of the committee strongly believe that a unitary limitation period strikes a proper balance between the competing interests of plaintiffs and defendants.

Respectfully submitted,

Delegate Bernard S. Cohen, *Chairman*  
Senator Joseph B. Benedetti, *Vice Chairman*  
Delegate C. Richard Cranwell  
Delegate Clinton Miller  
Senator Kenneth W. Stolle  
George E. Allen III  
S. James Thompson, Jr.

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<sup>9</sup> February 7, 1993, on a 20-0 vote.

<sup>10</sup> The committee amendments did not address § 8.01-228, which would have left the catch-all limitations period at four years. Mr. Cohen's first set of floor amendments as approved by the House would have amended § 8.01-228 to change the four-year period to three years to conform to the committee action.

<sup>11</sup> The initial vote following the approved technical amendments was 39-56. A motion to reconsider the failure to engross was adopted as were the further amendments by Mr. Cohen. Nonetheless, the House again refused to engross the bill on a vote of 37-58.

## APPENDICES

- APPENDIX 1. House Joint Resolution 173.
- APPENDIX 2. Correspondence on "Injury to Person" and "Damage to Property."
- APPENDIX 3. 1989 Unitary Draft and Issues Paper.
- APPENDIX 4. House Bills 1401 and 1996.
- APPENDIX 5. Statutory Limitations Periods.

LD4142156

## HOUSE JOINT RESOLUTION NO. 173

Offered January 21, 1992

*Establishing a joint subcommittee to study statutes of limitation and accrual of causes of action.*

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Patrons—Cohen, Cranwell and Jones; Senator: Saslaw

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Referred to the Committee on Rules

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WHEREAS, it has been over 10 years since Title 8.01 of the Code of Virginia was enacted in 1977; and

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

WHEREAS, through House Joint Resolution No. 66, the 1988 General Assembly created a seven-member joint subcommittee to review Virginia's statutes of limitation and the statutes and cases governing when the appropriate limitation period begins to run in particular cases; and

WHEREAS, the joint subcommittee was continued in 1989 and 1990; and

WHEREAS, the joint subcommittee determined that current law is confusing to attorneys and laymen alike and a thorough revision of the law is needed to preserve the credibility of the civil justice system; and

WHEREAS, considerable progress was made, including the drafting of legislation which nonetheless needs further review and fine tuning because the effect of any change in this area of the law will be far-reaching; now, therefore, be it

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

The joint subcommittee shall consist of seven members as follows: three members of the House of Delegates to be appointed by the Speaker of the House; two members of the Senate 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 Speaker and the Senate Committee on Privileges and Elections are requested to appoint the same membership as on the original study insofar as practical.

The joint subcommittee shall submit its report and recommendations, if any, to the Governor and the 1993 Session of the General Assembly as provided in the procedures of the Division of Legislative Automated Systems for processing legislative documents.

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

Implementation of this resolution is subject to subsequent approval and certification by the Joint Rules Committee. The Committee may withhold expenditures or delay the period for the conduct of the study.



# COMMONWEALTH of VIRGINIA

DIVISION OF LEGISLATIVE SERVICES

General Assembly Building  
910 Capitol Street

POST OFFICE BOX 3-AG  
RICHMOND, VIRGINIA 23208

IN RESPONSE TO  
THIS LETTER TELEPHONE  
(804) 786-3591

~~JOHN A. BARRIS JR.~~  
DIRECTOR

May 12, 1989

Stephen W. Bricker, Esquire  
Bremner, Baber & Janus  
P. O. Box 826  
Richmond, Virginia 23207

Re: HJR 305 - Statutes of Limitation; Accrual

Dear Steve:

Attached is a "first cut" at the lists we are to develop. If I understand what happened yesterday (and there is no guarantee of that), the determination of whether the two or five-year limitations period will apply depends strictly on the nature of the interest which was harmed (i.e., whether "personal" or "property") and not on the form of the action. Thus, several types of actions appear on both lists (e.g., products liability, professional malpractice, fraud, etc.). The lists are in no particular order.

Once you have had an opportunity to review the lists, please let me know what you think. In the meantime, I will continue to play with the computer to see what I can find.

Sincerely yours,

A handwritten signature in cursive script, appearing to read "Mary P. Devine".

Mary P. Devine  
Staff Attorney

MPD/sms

Attachment

cc: Delegate Bernard S. Cohen (w/encl.)  
James C. Roberts, Esquire  
Henry H. McVey, III, Esquire

DAMAGE TO PROPERTY - includes physical damage, destruction or lessening in value of any interest in a thing of value, the title to or ownership of which is lawfully transferable from one person to another.

Professional malpractice, resulting in damage to property

Nuisance

Trespass

Bailments

Products liability, whatever the theory of recovery

Defamation

Fraud

Enforcement of lien

Settlement of accounts

Copyright infringement

Antitrust

Unfair trade practices

Parents action for cure/loss of services of infant. § 8.01-243

Contribution/Indemnification/Subrogation

Trespass for committing waste, carrying off goods or damaging an estate.  
§ 64.1-145

Detinue

Conspiracy to injure in trade or business

Breach of fiduciary bond. § 8.01-245

Rescission of contract

Avoidance of voluntary conveyance. § 8.01-253

Enforcement of bequests and legacies

Tort claims against the Commonwealth regarding property damage.  
§ 8.01-195.7



Breach of condition subsequent or termination of determinable fee. § 8.01-255.1

Computer crime violation resulting in damage to property (e.g., loss of data). §§ 8.01-140.1 and 18.2-152.12

Unlawful entry and detainer. § 8.01-236

Ejectment (change rules of adverse possession?). § 8.01-266

Repeal of land grant from state. § 8.01-238

Recovery of ground vents. § 8.01-239

Enforcement of liens. See § 43-17.

Enforcement of deed of trust/mortgage

Enforcement of judgments (domestic or foreign). §§ 8.01-250 and 8.01-251

Enforcement of a condition of devise. § 8.01-254

Recovery of gambling losses. § 11-15 -

Void or enforce a franchise. § 13.1-572

Enforce premarital agreement. § 20-152

Breach of implied warranty on new home if property damage. § 55-70.1

Breach of warranty against structural defects in condo if property damage. § 55-79.79

Breach of warranties regarding co-ops if property damage. § 55-491

Breach of motor vehicle warranty. § 59.1-207.16

Misappropriation of trade secrets. § 59.1-340

Settlement of partnership accounts

Action on open account

Breach of restrictive covenant in deed

Wrongful failure to pay an insurance claim

Interference with right to contract

Sources: Michie's Jurisprudence - Index  
Virginia Model Jury Instructions: Civil  
Virginia Civil Procedure - Byrd, Graves & Middleditch  
Virginia Forms - Gallo

INJURY TO PERSON - includes bodily injury, injury, affront or detriment to health or reputation, invasion of legally protected rights and interests and all resulting pain, suffering, trouble, annoyance, inconvenience or embarrassment.

Assault and battery

Professional malpractice (resulting in injury to person)

Negligent/Intentional infliction of emotional distress

Products liability, whatever the theory of recovery (whether breach of warranty, express or implied, or negligence)

Defamation

(NOTE: jury instructions include as element of damages loss or injury to business)

False imprisonment

Fraud

Malicious Prosecution/Abuse of process

Wrongful death. § 8.01-32

Unauthorized use of name or picture. § 8.01-40

Civil rights violations

Tort claims against the Commonwealth regarding injury to person.  
§ 8.01-195.7

Computer crime violation resulting in injury to person (e.g., libel)

Breach of warranties (condos, co-ops, motor vehicles) resulting in injury to person

Sources: Michie's Jurisprudence - Index  
Virginia Model Jury Instructions: Civil  
Virginia Civil Procedure - Byrd, Graves & Middleditch  
Virginia Forms - Gallo

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May 22, 1989

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Richmond, VA 23207

Re: HJR 66 - Statute of Limitations

Dear Jim and Steve:

I have taken a stab at trying to define injury to the person and damage to property. It is not as easy as it seems. With no pride of authorship, I suggest the following:

An injury to the person is an invasion of a legally protected interest of an individual in which the individual suffers a physical injury, or an emotional or psychic injury intentionally inflicted; or there is damage to, or infringement of, the reputation, good name, personal freedom or other legally recognized personal right of the individual.

Injury to the person shall include, but shall not be limited to, the following:

Damage to property shall mean a financial loss incurred by reason of the destruction of, physical damage to, or the diminution in value of, property real or personal, tangible or intangible. Damage to property shall include, but shall not be limited to, the following:

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May 22, 1989

From Mary Devine's letter, I understand that Steve has the laundry list of those things which might well be included under each definition.

It is my understanding that we are going to try to get together toward the end of the month or in early June. I have very little time until June but could be available May 30. In the week of June 5, I have Monday, Thursday and Friday. In the following week, I have Monday, Thursday and Friday, again. In the week of June 19, I have every day but Monday.

Sincerely,



Henry H. McVey, III

pak

cc: Mary P. Devine, Esq.  
Delegate Bernard S. Cohen

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May 30, 1989

Mary P. Devine, Esquire  
Commonwealth of Virginia  
Division of Legislative Services  
P. O. Box 3-AG  
Richmond, Virginia 23208

RE: HJR 305 - Statute of Limitation: Accrual

Dear Mary:

I have had a chance to through the lists you provided. I think you obviously did a lot of hard work and got that out promptly.

I am enclosing the index from the Code for the Actions section. I went through there and highlighted various causes of action which we might want to specifically list in either the property or personal injury sections. Several of the statutes cited have their own particular statute of limitation. In addition, I would suggest that the following should be listed: claims against a municipal corporation; action for breach of automobile franchise, Code § 46.1-547; breach of contract (it is unclear as to whether your "interference with right to contract" is to include all contract claims); equal pay irrespective of sex, Code § 40.1-28.6; and, rights of persons with disabilities, Code § 51.5-46.

I also have some particular suggestions in terms of particular items you have included in your lists as follows:

1) Professional Malpractice - I think we should specify the particular kinds of actions we want in either category. In other words, in the damaged

Mary P. Devine, Esquire  
May 30, 1989  
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property section, the item perhaps should read as follows:

Professional malpractice, resulting in damaged property, including attorney malpractice, architects malpractice, and similar torts.

The item in the damage to persons section might read as follows:

Professional malpractice, resulting in injury to person, including medical malpractice.

2) You properly list "breach of fiduciary bond" as a claim under damaged property. There is a wide array of various bonds established under the Code and a variety of claims that can be made under them. Perhaps we ought to just have a general actions upon any bond as a property claim, not just those under Code § 8.01-253.

3) You list civil rights violations under injuries to person. There is no generic civil rights cause of action arising under state law. There are, of course, a variety of federal civil rights claims, but the statute of limitation to be applied there is a matter of federal law. It is true that the federal courts have chosen to apply Virginia's present two-year personal injury statute of limitations to those civil rights claims arising under 42 U.S.C. § 1983, but that is a matter of federal law which properly should not be a subject of state legislation. I assume then this would be directed to those civil rights claims arising under state law. Insofar as I am aware, there are a wide variety of different types of civil rights claims that might arguably be included within this ambient:

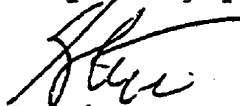
Equal credit opportunity act, § 59.1-21.23  
Equal pay irrespective of sex, § 40.1-28.6  
Racial, religious, or ethnic harrassment, violence or vandalism, § 8.01-42.1  
Rights of persons with disabilities, § 51.1-46  
Fair housing law, § 36-94  
Civil liability for lynching, §§ 18.2-44 and 18.2-45

Mary P. Devine, Esquire  
May 30, 1989  
Page 3

It would seem to me that several of these specific causes of actions clearly deal with property rights, that is housing, wages, and credit. Some clearly deal with solely personal injuries, that is lynching; and some clearly deal with both, that is racial, harassment against the person or property, and rights of the disabled. If we are going to be logically consistent, these particular causes of action should probably be divided amongst the two categories. Those specific causes of action that have elements of both property and personal wrongs should perhaps be included in both, depending on the type of damage alleged, as in auto accident cases. This would be somewhat cumbersome obviously, and perhaps points out the limitation of the approach we have chosen. I should also point that most of these specific causes of action have their own specific statute of limitation and some are quite short. An example would be the Rights of Disabled Act which has a 180 day notice of claim requirement and a one year statute of limitation.

4) Wage and Employment Claims - The discussion of the civil rights causes of action brings to mind that you have not included in your lists wage and employment claims. These are obviously a frequent source of litigation. These would seem to be logically within the property area. Many wage and employment claims are now handled under the contract statute of limitations, but there are many specific statutory provisions regarding wages and employment that may have particular statutes of limitation at the present time.

Very truly yours,



Stephen W. Bricker

SWB/vw

cc: Bernard S. Cohen  
James C. Roberts  
Henry H. McVey, III

## Highlights of Discussion Draft

### Statutes of Limitation

1. § 8.01-228: All limitations periods are three years

- Should there be any exceptions?
- If so, for what actions?

Personal Actions, to which three-year limitations apply, seek money for injury (new) or damage to person or property.

- Are injury and damage synonymous? Does "injury to person" mean the same as "personal injury?"

2. § 8.01-228.1: Recodifies the one-year extension and ten-year repose provision for medical malpractice cases, now found in § 8.01-243C.

Fraudulent concealment extension is not included here because of the new tolling provision added in § 8.01-229J.

- Is there any need to retain the one-year extension for fraud if the tolling provision is added?

NOTE: § 8.01-243C states that the tolling provisions for infants and incompetents are to be applied as exceptions to the ten-year repose. This draft states that all tolling provisions are excepted.

3. § 8.01-229: Adds a new tolling provision for fraud and intentional misrepresentation or concealment of a material fact which prevents discovery of (i) the fact that injury or damage was sustained or (ii) the causal connection between the defendants act and the injury or damage.

- Should the toll apply only where fraud by the defendant prevented the discovery?

4. § 8.01-230: Pulls all accrual provisions into one section and changes the general accrual rule applicable to claims for property damage. Exceptions found in paragraphs 1 and 2 are now found in the section (no substantive change). Paragraphs 3, 4, 5 and 9 are taken directly from § 8.01-249.

NOTE: Paragraph 3 was not in the prior discussion draft but is added here because of the deletion of the general discovery accrual rule from the draft (§ 8.01-230.1) in the prior draft.

Paragraph 6 is based on language now found at the end of § 8.01-246 and is intended to clarify that no change is intended to the rule applicable to U.C.C. sales contracts.



Paragraph 11 is taken from § 8.01-246 3.

Paragraphs 7, 8 and 10 are new.

#7 creates a discovery accrual provision for products liability claims (whether in contract or tort); no repose.

- Since the general accrual date has been changed to the date of injury or damage (rather than date of the breach of contract or duty), is this paragraph needed? To what actions will it apply?

#8 expands current provisions of § 8.01-249 4 which cover claims for asbestos exposure.

The terminology "injury or damage" is used here and consistently throughout the draft.

- Should this paragraph be limited in its application to cover only actions for injury to person as it was in the prior draft?

The definition of toxic substances is taken from § 32.1-239 (Toxic Substance Information). The date of communication accrual rule applicable in asbestos cases is modified in this draft in accordance with suggestions received following circulation of the discussion draft (see attached letter).

#10 was added to the prior discussion draft by the original joint subcommittee without dissent and has not generated any comments (pro or con).

5. § 8.01-231: Does not appear in the draft and, therefore, remains unchanged.

- Should the statute of limitations run against the state?

6. §§ 8.01-232 (Effect of Promise Not to Plead Statute), 8.01-233 (Limitation on Counter Claim or Cross Claim) and 8.01-235 (Bar of Limitation is Affirmative Defense) - Unchanged.

7. § 8.01-235.1: Added to require the court to determine whether an action is timely if requested by either party made 14 or more days before trial.

8. Article 2 (Limitations on Recovery of Realty and Enforcement of Certain Liens).

§§ 8.01-236 - 8.01-242: No changes made to these limitations periods (generally 10 or 15 years).

9. § 8.01-244: Increases the statute of limitations in wrongful death actions from two to three years to conform to the general limitations period.
  
10. § 8.01-250: Increases the statute of repose on claims for defective improvements to realty from 5 to 10 years; exempts providers of ordinary building materials from the repose.
  - Should the phrase "injury to property" be changed to "damage to property?" Is this a substantive change?
  - Should actions for contribution or indemnity be exempted from the repose provision?

1 D 12/17/90 Devine C 12/20/90 jds

2 SENATE BILL NO. .... HOUSE BILL NO. ....

3 A BILL to amend and reenact §§ 8.01-228, 8.01-229, 8.01-230, 8.01-244  
4 and 8.01-250 of the Code of Virginia, to amend the Code of  
5 Virginia by adding sections numbered 8.01-228.1 and 8.01-235.1,  
6 and to repeal §§ 8.01-243, 8.01-246 and 8.01-248 of the Code of  
7 Virginia, relating to statutes of limitation; tolling; accrual.

and 8.01-248

8  
9 Be it enacted by the General Assembly of Virginia:

10 1. That §§ 8.01-228, 8.01-229, 8.01-230, 8.01-244 and 8.01-250 of the  
11 Code of Virginia are amended and reenacted and that the Code of  
12 Virginia is amended by adding sections numbered 8.01-228.1 and  
13 8.01-235.1 as follows:

14 § 8.01-228. Statute of limitations; "personal action"  
15 defined.--Every personal action for which a limitation period is  
16 prescribed by law must shall be commenced within the period  
17 prescribed in this chapter three years after the cause of action  
18 accrues unless otherwise specifically provided in this Code.

19 As used in this chapter, the term "personal action" ~~shall include~~  
20 means an action wherein a judgment for money is sought, whether for  
21 injury or damages to person or property.

22 § 8.01-228.1. Extended limitations period in certain medical  
23 malpractice cases; statute of repose.--In actions for malpractice  
24 against a health care provider arising out of a foreign object having  
25 no therapeutic or diagnostic effect being left in a patient's body,  
26 the limitations period is extended for a period of one year from the  
27 date the object is discovered or reasonably should have been

1 discovered.

2 However, the provisions of this section shall not apply to extend  
3 the limitations period beyond ten years from the date the cause of  
4 action accrues, except that the provisions of § 8.01-229 shall apply  
5 to toll the statute of limitations.

6 § 8.01-229. Suspension or tolling of statute of limitations;  
7 effect of disabilities; death; injunction; prevention of service by  
8 defendant; dismissal, nonsuit or abatement; devise for payment of  
9 debts; new promises; debts proved in creditors' suits.--A.  
10 Disabilities which toll the statute of limitations. - Except as  
11 otherwise specifically provided in §§ 8.01-237, 8.01-241, 8.01-242,  
12 8.01-243, 8.01-243.1 and other provisions of this Code,

13 1. If a person entitled to bring any action is at the time the  
14 cause of action accrues an infant, except if such infant has been  
15 emancipated pursuant to Article 15 (§ 16.1-331 et seq.) of Chapter 11  
16 of Title 16.1, or of unsound mind, such person may bring it within the  
17 prescribed limitation period after such disability is removed; or

18 2. After a cause of action accrues,

19 a. If an infant becomes entitled to bring such action, the time  
20 during which he is within the age of minority shall not be counted as  
21 any part of the period within which the action must be brought except  
22 as to any such period during which the infant has been judicially  
23 declared emancipated; or

24 b. If a person entitled to bring such action becomes of unsound  
25 mind, the time during which he is of unsound mind shall not be  
26 computed as any part of the period within which the action must be  
27 brought, except where a guardian or committee is appointed for such  
28 person in which case an action may be commenced by such committee or

1 guardian before the expiration of the applicable period of limitation  
2 or within one year after his qualification as such, whichever occurs  
3 later.

4 For the purposes of subdivisions 1 and 2 of this subsection, a  
5 person shall be deemed of unsound mind if he is adjudged insane by a  
6 court of competent jurisdiction to be mentally incapable of rationally  
7 conducting his own affairs, or if it shall otherwise appear to the  
8 court or jury determining the issue that such person is or was so  
9 mentally incapable of rationally conducting his own affairs within the  
10 prescribed limitation period.

11 3. If a convict is or becomes entitled to bring an action against  
12 his committee, the time during which he is incarcerated shall not be  
13 counted as any part of the period within which the action must be  
14 brought.

15 B. Effect of death of a party. - The death of a person entitled  
16 to bring an action or of a person against whom an action may be  
17 brought shall toll the statute of limitations as follows:

18 1. Death of person entitled to bring a personal action. - If a  
19 person entitled to bring a personal action dies with no such action  
20 pending before the expiration of the limitation period for  
21 commencement thereof, then an action may be commenced by the  
22 decedent's personal representative before the expiration of the  
23 limitation period including the limitation period as provided by  
24 subdivision E 3 or within one year after his qualification as personal  
25 representative, whichever occurs later.

26 2. Death of person against whom personal action may be brought. -  
27 If a person against whom a personal action may be brought dies before  
28 the commencement of such action and before the expiration of the

1 limitation period for commencement thereof then a claim may be filed  
2 against the decedent's estate or an action may be commenced against  
3 the decedent's personal representative before the expiration of the  
4 applicable limitation period or within one year after the  
5 qualification of such personal representative, whichever occurs later.

6       3. Effect of death on actions for recovery of realty, or a  
7 proceeding for enforcement of certain liens relating to realty. -  
8 Upon the death of any person in whose favor or against whom an action  
9 for recovery of realty, or a proceeding for enforcement of certain  
10 liens relating to realty, may be brought, such right of action shall  
11 accrue to or against his successors in interest as provided in Article  
12 2 (§ 8.01-236 et seq.) of this chapter.

13       4. Accrual of a personal cause of action against the estate of  
14 any person subsequent to such person's death. - If a personal cause of  
15 action has not accrued against a decedent before his death, an action  
16 may be brought against the decedent's personal representative or a  
17 claim thereon may be filed against the estate of such decedent before  
18 the expiration of the applicable limitation period or within two years  
19 after the qualification of the decedent's personal representative,  
20 whichever occurs later.

21       5. Accrual of a personal cause of action in favor of decedent. -  
22 If a person dies before a personal cause of action which survives  
23 would have accrued to him, if he had continued to live, then an action  
24 may be commenced by such decedent's personal representative before the  
25 expiration of the applicable limitation period or within one year  
26 after the qualification of such personal representative, whichever  
27 occurs later.

28       6. Delayed qualification of personal representative. - If there

1 is an interval of more than one year between the death of any person  
2 in whose favor or against whom a cause of action has accrued or shall  
3 subsequently accrue and the qualification of such person's personal  
4 representative, such personal representative shall, for the purposes  
5 of this chapter, be deemed to have qualified on the last day of such  
6 period of one year.

7 C. Suspension during injunctions. - When the commencement of any  
8 action is stayed by injunction, the time of the continuance of the  
9 injunction shall not be computed as any part of the period within  
10 which the action must be brought.

11 D. Obstruction of filing by defendant. - When the filing of an  
12 action is obstructed by a defendant's (i) filing a petition in  
13 bankruptcy or filing a petition for an extension or arrangement under  
14 the United States Bankruptcy Act or (ii) using any other direct or  
15 indirect means to obstruct the filing of an action, then the time that  
16 such obstruction has continued shall not be counted as any part of the  
17 period within which the action must be brought.

18 E. Dismissal, abatement, or nonsuit.

19 1. Except as provided in subdivision 3 of this subsection, if any  
20 action is commenced within the prescribed limitation period and for  
21 any cause abates or is dismissed without determining the merits, the  
22 time such action is pending shall not be computed as part of the  
23 period within which such action may be brought, and another action may  
24 be brought within the remaining period.

25 2. If a judgment or decree is rendered for the plaintiff in any  
26 action commenced within the prescribed limitation period and such  
27 judgment or decree is arrested or reversed upon a ground which does  
28 not preclude a new action for the same cause, or if there is occasion

1 to bring a new action by reason of the loss or destruction of any of  
2 the papers or records in a former action which was commenced within  
3 the prescribed limitation period, then a new action may be brought  
4 within one year after such arrest or reversal or such loss or  
5 destruction, but not after.

6 3. If a plaintiff suffers a voluntary nonsuit as prescribed in §  
7 8.01-380, the statute of limitations with respect to such action shall  
8 be tolled by the commencement of the nonsuited action, and the  
9 plaintiff may recommence his action within six months from the date of  
10 the order entered by the court, or within the original period of  
11 limitation, or within the limitation period as provided by subdivision  
12 B 1, whichever period is longer. This tolling provision shall apply  
13 irrespective of whether the action is originally filed in a federal or  
14 a state court and recommenced in any other court.

15 F. Effect of devise for payment of debts. - No provision in the  
16 will of any testator devising his real estate, or any part thereof,  
17 subject to the payment of his debts or charging the same therewith, or  
18 containing any other provision for the payment of debts, shall prevent  
19 this chapter from operating against such debts, unless it plainly  
20 appears to be the testator's intent that it shall not so operate.

21 G. Effect of new promise in writing.

22 1. If any person against whom a right of action has accrued on  
23 any contract, other than a judgment or recognizance, promises, by  
24 writing signed by him or his agent, payment of money on such contract,  
25 the person to whom the right has accrued may maintain an action for  
26 the money so promised, within such number of years after such promise  
27 as it might be maintained if such promise were the original cause of  
28 action. An acknowledgment in writing, from which a promise of payment



1 may be implied, shall be deemed to be such promise within the meaning  
2 of this subsection.

3 2. The plaintiff may sue on the new promise described in  
4 subdivision 1 of this subsection or on the original cause of action,  
5 except that when the new promise is of such a nature as to merge the  
6 original cause of action then the action shall be only on the new  
7 promise.

8 H. Suspension of limitations in creditors' suits. - When an  
9 action is commenced as a general creditors' action, or as a general  
10 lien creditors' action, or as an action to enforce a mechanics' lien,  
11 the running of the statute of limitations shall be suspended as to  
12 debts provable in such action from the commencement of the action,  
13 provided they are brought in before the commissioner in chancery under  
14 the first reference for an account of debts; but as to claims not so  
15 brought in the statute shall continue to run, without interruption by  
16 reason either of the commencement of the action or of the order for an  
17 account, until a later order for an account, under which they do come  
18 in, or they are asserted by petition or independent action.

19 In actions not instituted originally either as general creditors'  
20 actions, or as general lien creditors' actions, but which become such  
21 by subsequent proceedings, the statute of limitations shall be  
22 suspended by an order of reference for an account of debts or of liens  
23 only as to those creditors who come in and prove their claims under  
24 the order. As to creditors who come in afterwards by petition or under  
25 an order of recommittal, or a later order of reference for an account,  
26 the statute shall continue to run without interruption by reason of  
27 previous orders until filing of the petition, or until the date of the  
28 reference under which they prove their claims, as the case may be.

1 I. Third-party claims. - When an action is commenced within a  
 2 period of thirty days prior to the expiration of the limitation period  
 3 for commencement thereof and the defending party or parties desire to  
 4 institute an action as third-party plaintiff against one or more  
 5 persons not party to the original action, the running of the period of  
 6 limitation against such action shall be suspended as to such new party  
 7 for a period of sixty days from the expiration of the applicable  
 8 limitation period.

9 J. Effect of fraud, misrepresentation or concealment - Where  
 10 fraud, or intentional misrepresentation or concealment of a material  
 11 fact prevents discovery of (i) the fact that injury or damage was  
 12 sustained or (ii) the causal connection between the injury or damage  
 13 and the act or omission complained of within the applicable  
 14 limitations period, the time during which such prevention continued  
 15 shall not be counted as any part of the period within which the action  
 16 must be brought.

17 § 8.01-230. Accrual of cause of action.-- ~~In every action for~~  
 18 ~~which a limitation period is prescribed, the~~ A cause of action shall  
 19 ~~be deemed to accrue~~ and the prescribed limitation period shall begin  
 20 to run from the date the injury or damage for which recovery is sought  
 21 ~~is sustained in the case of injury to the person, when the breach of~~  
 22 ~~contract or duty occurs in the case of damage to property and not when~~  
 23 ~~the resulting damage is discovered, except where as follows:~~

24 1. Where the relief sought is solely equitable ~~or where;~~

25 2. Where otherwise specifically provided ~~under § 8.01-233,~~  
 26 ~~subsection C of § 8.01-245, §§ 8.01-249, 8.01-250 or ether by~~ statute  
 27 ~~---~~

28 3. In actions for fraud or mistake, and in actions for rescission

1 of contract for undue influence, when the fraud, mistake or undue  
2 influence is discovered or, by the exercise of due diligence,  
3 reasonably should have been discovered. In actions or other  
4 proceedings for money on deposit with a bank or any person or  
5 corporation doing a banking business, the period shall begin to run  
6 when a request in writing is made therefor by check, order or  
7 otherwise;

8 4. In actions for malicious prosecution or abuse of process, the  
9 period shall begin to run when the relevant criminal or civil action  
10 is terminated;

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

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

19 7. In actions for injury or damage resulting from exposure to or  
20 use of substances harmful to the human body, such as asbestos, fiber  
21 glass and pesticides, or toxic substances, except actions for  
22 malpractice against a health care provider, the period shall begin to  
23 run when (i) a diagnosis of injury or disease related to the exposure  
24 or use is made by a physician and (ii) communication of the injury or  
25 disease consistent with the diagnosis is made by any person to the  
26 person affected by the injury or disease or, in the event of death by  
27 wrongful act, to his statutory beneficiaries.

28 As used in this subsection the term "toxic substance" means any

1 substance, including any raw materials, intermediate products,  
2 catalysts, final products, or by-products of any manufacturing  
3 operation conducted in a commercial establishment, that has the  
4 capacity, through its physical, chemical or biological properties, to  
5 pose a substantial risk of death or impairment either immediately or  
6 over time, to the normal functions of humans, aquatic organisms, or  
7 any other animal.

8 8. In actions for contribution or for indemnification, the  
9 period shall begin to run when the contributee or the indemnitee has  
10 paid or discharged the obligation, provided that a third-party claim  
11 permitted by subsection A of § 8.01-281 and the Rules of the Supreme  
12 Court may be asserted before the cause of action is deemed to accrue  
13 hereunder;

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

18 10. In actions by a partner against another for settlement of  
19 the partnership account or in actions upon accounts concerning the  
20 trade of merchandise between merchants, their factors or servants, the  
21 period shall begin to run from the date of cessation of the dealings  
22 in which they are interested together.

23 § 8.01-235.1. Court to determine whether limitation is bar.--In  
24 any action in which the bar of the statute of limitations is raised as  
25 a defense, upon motion of either party made at least fourteen days  
26 prior to trial on the merits, the court shall determine whether the  
27 action is timely. If a dispute of facts is involved which cannot be  
28 stipulated by the parties, any party may request that the disputed

1 facts be determined by a jury.

2 § 8.01-244. Actions for wrongful death; limitation.--A.  
 3 Notwithstanding the provisions of § 8.01-229 B, if a person entitled  
 4 to bring an action for personal injury dies as a result of such injury  
 5 with no such action pending before the expiration of ~~two~~three years  
 6 ~~next~~-after the cause of action shall ~~have~~-accrued, then an action  
 7 under § 8.01-50 may be commenced within the time limits specified in  
 8 subsection B of this section.

9 B. Every action under § 8.01-50 shall be brought by the personal  
 10 representative of the decedent within ~~two~~three years after the death  
 11 of the injured person. If ~~any-such~~the action is brought within such  
 12 period ~~of two years after such person's death and~~ for any cause abates  
 13 or is dismissed without determining the merits of ~~sueh~~the action,  
 14 the time ~~sueh~~the action is pending shall not be counted as any part  
 15 of ~~sueh~~the period of ~~two~~three years and another action may be  
 16 brought within the remaining period of ~~sueh~~<sup>three</sup>~~the~~ two years as if ~~sueh~~  
 17 the former action had not been instituted.

18 § 8.01-250. Limitation on certain actions for damages arising  
 19 out of defective or unsafe condition of improvements to real  
 20 property.--No action to recover for any ~~injury~~damage to property,  
 21 real or personal, or for bodily injury or wrongful death, arising out  
 22 of the defective and unsafe condition of an improvement to real  
 23 property, ~~nor any action for contribution or indemnity for damages~~  
 24 ~~sustained as a result of such injury,~~ shall be brought against any  
 25 person performing or furnishing the design, planning, surveying,  
 26 supervision of construction, or construction of such improvement to  
 27 real property more than ~~five~~ten years after the performance of  
 28 furnishing of such services and construction.

1 The limitation prescribed in this section shall not apply to the  
2 manufacturer or supplier of any product, equipment ex-, machinery or  
3 other articles installed-in-a-structure-upon-, including ordinary  
4 building or construction materials incorporated into real property,  
5 nor to any person in actual possession and in control of the  
6 improvement as owner, tenant or otherwise at the time the defective or  
7 unsafe condition of such improvement constitutes the proximate cause  
8 of the injury or damage for which the action is brought ~~;-rather-each-~~  
9 ~~such-action-shall-be-brought-within-the-time-next-after-such-injury-~~  
10 ~~occurs-as-provided-in-§§-8.01-243-and-8.01-246-.~~

11 2. That §§ 8.01-243, 8.01-246 ~~and~~, 8.01-248 of the Code of Virginia  
12 are repealed. *and 8.01-249*

13 3. That the provisions of this act apply prospectively and shall not  
14 be construed to affect actions which accrued under the law in effect  
15 prior to July 1, 1991.

16 #

LD5771176

## HOUSE BILL NO. 1401

Offered January 14, 1993

A BILL to amend and reenact §§ 6.1-330.52, 6.1-330.57, 8.01-40.1, 8.01-40.2, 8.01-195.6, 8.01-195.7, 8.01-236, 8.01-239 through 8.01-242, 8.01-244, 8.01-245, 8.01-251 through 8.01-255.2, 8.3A-118, 8.4-111, 8.6-111, 11-15, 11-59, 11-60, 14.1-4, 14.1-176, 14.1-193, 16.1-94.1, 33.1-192.1, 38.2-3540, 38.2-5013, 40.1-28.6, 43-17, 46.2-112, 51.5-46, 55-70.1, 55-79.79, 55-79.84, 55-230, 55-248, 55-383, 55-491, 57-26, 58.1-104, 58.1-634, 58.1-1802.1, 58.1-1825, 58.1-3980, 58.1-3984, 59.1-21.12, 59.1-21.23, 59.1-207.8, 59.1-207.16, 59.1-340, 60.2-514 and 64.1-179 of the Code of Virginia, relating to statutes of limitation.

Patron—Cranwell

Referred to the Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 6.1-330.52, 6.1-330.57, 8.01-40.1, 8.01-40.2, 8.01-195.6, 8.01-195.7, 8.01-236, 8.01-239 through 8.01-242, 8.01-244, 8.01-245, 8.01-251 through 8.01-255.2, 8.3A-118, 8.4-111, 8.6-111, 11-15, 11-59, 11-60, 14.1-4, 14.1-176, 14.1-193, 16.1-94.1, 33.1-192.1, 38.2-3540, 38.2-5013, 40.1-28.6, 43-17, 46.2-112, 51.5-46, 55-70.1, 55-79.79, 55-79.84, 55-230, 55-248, 55-383, 55-491, 57-26, 58.1-104, 58.1-634, 58.1-1802.1, 58.1-1825, 58.1-3980, 58.1-3984, 59.1-21.12, 59.1-21.23, 59.1-207.8, 59.1-207.16, 59.1-340, 60.2-514 and 64.1-179 of the Code of Virginia are amended and reenacted as follows:

§ 6.1-330.52. Issuance of currency; contracts and securities obtained by illegal currency; capital stock of certain companies, etc., vested in Commonwealth; proceedings to recover such stock; liability.—A. 1. No individual or entity unless authorized by law shall:

a. Issue, with intent that the same be circulated as currency, any note, bill, scrip, or other paper or thing, or

b. Otherwise deal, trade or carry on business as a bank of circulation.

2. All contracts made for forming any such entity as described in subdivision 1 of this subsection shall be void.

B. All contracts and securities that may originate from, or be made or obtained in whole or in part by means of any illegal currency dealing, trade or business, shall be void. If any person shall pay pays any money or other valuable thing on account of any such contract or security, such person or his or its representative, or assignee, may, by suit brought within ~~one year~~ four years after such payment, recover back the amount or value of such payment from the person or such representative to whom, or to whose use, it may have been made.

C. The capital stock of every such entity, whether paid up or merely subscribed, shall belong to the Commonwealth. The Attorney General, whenever informed of the existence of any such entity, shall institute a suit in the Circuit Court of the City of Richmond, for the purpose of recovering such capital stock. In such suit, all or any of the members of such entity, and any of its officers, agents, or managers, may be made defendants, and compelled to exhibit all their books and papers, and an account of everything necessary to enable the court to enter a proper order. But no disclosure made by a defendant in such suit, and no book or paper exhibited by him in answer to the bill, or under the order of the court, shall be used as evidence against him in any case at law.

D. Every member of any such entity, made defendant in any such suit, shall be held liable to the Commonwealth for his proportion of the capital stock in such entity held by him, or for his use or benefit, at the institution of such suit, or at the time of the order. Such order against any defendant shall be a bar to a proceeding against him for any act done in violation of subsection A of this section.

§ 6.1-330.57. Recovery of twice total usurious interest paid; limitation of action; injunction to prevent sale of property pending action; effect of errors in computation.—A. If interest in excess of that permitted by the applicable statute is paid upon any loan, the

1 person paying may, in a suit or action brought within ~~two~~ *four* years from (i) the date of  
2 the last scheduled payment ; or (ii) the date of payment in full, whichever is earlier,  
3 recover from the person taking or receiving such payments:

4 1. The total amount of the interest paid to such person in excess of that permitted by  
5 applicable statute;

6 2. Twice the total amount of interest paid to such person during the two years  
7 immediately preceding the date of the filing of the suit or action; and

8 3. Court costs and reasonable attorneys' fees.

9 B. If property has been conveyed to secure the payment of the debt and a sale thereof  
10 is about to be made, or is apprehended, an injunction may be awarded to prevent such  
11 sale pending the suit or action.

12 C. Any creditor who proves that interest or other charges in excess of those permitted  
13 by law was imposed or collected as a result of a bona fide error in computation or similar  
14 mistake shall not be liable for the penalties prescribed in this section, but shall only be  
15 liable to return to the borrower the amount of interest or other charges collected in excess  
16 of that permitted.

17 § 8.01-40.1. Action for injury resulting from violation of Computer Crimes Act;  
18 limitations.—Any person whose property or person is injured by reason of a violation of the  
19 provisions of the Virginia Computer Crimes Act (§ 18.2-152.1 et seq.) may sue and recover  
20 damages as provided in § 18.2-152.12. An action shall be commenced ~~before~~ *within four*  
21 *years from* the earlier of (i) ~~five years after~~ the last act in the course of conduct  
22 constituting a violation of the Computer Crimes Act or (ii) ~~two years after the date the~~  
23 plaintiff discovers or reasonably should have discovered ~~the last act in the course of~~  
24 ~~conduct constituting a~~ *the* violation of the Computer Crimes Act.

25 § 8.01-40.2. Unsolicited transmission of advertising materials by facsimile machine.—Any  
26 person aggrieved by the intentional electronic or telephonic transmission to a facsimile  
27 device of unsolicited advertising material offering goods, real estate, or services for sale or  
28 lease may bring an action against the person responsible for the transmission to enjoin  
29 further violations and to recover the greater of (i) actual damages sustained, together with  
30 costs and reasonable attorneys' fees, or (ii) \$200. Carriers or other companies which  
31 provide facsimile transmission services shall not be responsible for transmissions of  
32 unsolicited advertising materials by their customers. An action brought pursuant to this  
33 section shall be commenced within ~~two~~ *four* years of the transmission.

34 § 8.01-195.6. Notice of claim.—Every claim cognizable against the Commonwealth or a  
35 transportation district shall be forever barred unless the claimant or his agent, attorney or  
36 representative has filed a written statement of the nature of the claim, which includes the  
37 time and place at which the injury is alleged to have occurred and the agency or agencies  
38 alleged to be liable. The statement shall be filed with the Director of the Division of Risk  
39 Management or the Attorney General within ~~one year~~ *two years* after such cause of action  
40 accrued if the claim is against the Commonwealth. If the claim is against a transportation  
41 district the statement shall be filed with the chairman of the commission of the  
42 transportation district within ~~one year~~ *two years* after the cause of action accrued.  
43 However, if the claimant was under a disability at the time the cause of action accrued,  
44 the tolling provisions of § 8.01-229 shall apply. The claimant or his agent, attorney or  
45 representative shall, in a claim cognizable against the Commonwealth, mail the notice of  
46 claim via the United States Postal Service by certified mail, return receipt requested,  
47 addressed to the Director of the Division of Risk Management or the Attorney General in  
48 Richmond. The notice, in a claim cognizable against a transportation district, shall be  
49 mailed via the United States Postal Service by certified mail, return receipt requested,  
50 addressed to the chairman of the commission of the transportation district.

51 In any action contesting the filing of the notice of claim, the burden of proof shall be  
52 on the claimant to establish mailing and receipt of the notice in conformity with this  
53 section. The signed return receipt indicating delivery to the Director of the Division of Risk  
54 Management, the Attorney General, or the chairman of the commission of the



1 transportation district, when admitted into evidence, shall be prima facie evidence of filing  
2 of the notice under this section. The date on which the return receipt is signed by the  
3 Director, the Attorney General, or the chairman shall be prima facie evidence of the date  
4 of filing for purposes of compliance with this section.

5 Claims against the Commonwealth involving medical malpractice shall be subject to the  
6 provisions of this article and to the provisions of Chapter 21.1 (§ 8.01-581.1 et seq.) of this  
7 title. However, the recovery in such a claim involving medical malpractice shall not exceed  
8 the limits imposed by § 8.01-195.3.

9 § 8.01-195.7. Statute of limitations.—Every claim cognizable against the Commonwealth  
10 or a transportation district under this article shall be forever barred, unless within ~~one~~  
11 ~~year~~ *two years* after the cause of action accrues to the claimant the notice of claim  
12 required by § 8.01-195.6 is properly filed. An action may be commenced pursuant to §  
13 8.01-195.4 (i) upon denial of the claim by the Attorney General or the Director of the  
14 Division of Risk Management or, in the case of a transportation district, by the chairman  
15 of the commission of that district or (ii) after the expiration of six months from the date  
16 of filing the notice of claim unless, within that period, the claim has been compromised  
17 and discharged pursuant to § 8.01-195.5. All claims against the Commonwealth or a  
18 transportation district under this article shall be forever barred unless such action is  
19 commenced within ~~eighteen months~~ *two years* of the filing of the notice of claim.

20 The limitations periods prescribed by this section and § 8.01-195.6 shall be subject to  
21 the tolling provision of § 8.01-229 and the pleading provision of § 8.01-235. Additionally,  
22 claims involving medical malpractice in which the notice required by this section and §  
23 8.01-195.6 has been given shall be subject to the provisions of § 8.01-581.9. Notwithstanding  
24 the provisions of this section, if notice of claim against the Commonwealth was filed prior  
25 to July 1, 1984, any claimant so filing shall have two years from the date such notice was  
26 filed within which to commence an action pursuant to § 8.01-195.4.

27 § 8.01-236. Limitation of entry on or action for land.—No person shall make an entry  
28 on, or bring an action to recover, any land unless within fifteen years next after the time  
29 at which the right to make such entry or bring such action shall have first accrued to such  
30 person or to some other person through whom he claims; provided that an action for  
31 unlawful entry or detainer under § 8.01-124 shall be brought within ~~three~~ *four* years after  
32 such entry or detainer.

33 § 8.01-239. Ground rents.—No action shall be brought for the recovery of any ground  
34 rent reserved upon real estate after the expiration of ~~ten~~ *four* years from the time such  
35 ground rent becomes due and payable.

36 § 8.01-240. Liens for water, sewer, or sidewalk assessments.—No suit shall be brought to  
37 enforce the lien of any water, sewer, or sidewalk assessment, heretofore or hereafter  
38 made, against lands which have been conveyed by the person owning them at the time of  
39 such assessment to a grantee for value unless the ~~same~~ *suit is* brought within ~~ten~~ *four*  
40 years from the due recordation of the deed from such person to grantee and within twenty  
41 years from the due docketing of such assessment.

42 § 8.01-241. Limitation of enforcement of deeds of trust, mortgages and liens for unpaid  
43 purchase money.—No deed of trust or mortgage heretofore or hereafter given to secure the  
44 payment of money, and no lien heretofore or hereafter reserved to secure the payment of  
45 unpaid purchase money, shall be enforced after ~~twenty~~ *four* years from the time when the  
46 original obligation last maturing thereby secured shall have become due and payable  
47 according to its terms and without regard to any provision for the acceleration of such  
48 date ; ~~provided that~~ . *However*, the period of one year from the death of any party in  
49 interest shall be excluded from the computation of time. The limitations prescribed by this  
50 section may be extended by an endorsement to that effect, entered prior to the expiration  
51 of the limitation period prescribed herein upon the margin of the page of the deed book of  
52 which the same is recorded, and when such endorsement is duly executed by the party in  
53 whom the beneficial title to the property so encumbered is at the time of such  
54 endorsement by the beneficial titleholder or his duly authorized attorney-in-fact, or agent,

1 and attested by the clerk of the court in which such lien is recorded, the endorsement  
2 shall be held to extend the limitations of the right to enforce the lien for ~~twenty four~~  
3 years from the date of such endorsement. The clerk of the court shall index such  
4 extension in both names in the index of the deed book and on the general index in his  
5 office, and give reference to the book and page in which the original writing is recorded.  
6 Unless the deed or deeds executed pursuant to the foreclosure of any mortgage or to the  
7 execution of or sale under any deed of trust be recorded in the county or city where the  
8 land is situated within one year after the time the right to enforce the mortgage or deed  
9 of trust shall have expired as hereinabove provided, such deed or deeds shall be void as to  
10 all purchasers for valuable consideration without notice and lien creditors who make any  
11 purchase of or acquire any lien on the land conveyed by any such deed prior to the time  
12 such deed is so recorded.

13 § 8.01-242. Same; when no maturity date is given.—No deed of trust or mortgage given  
14 to secure the payment of money, and no lien reserved to secure the payment of unpaid  
15 purchase money, in which no date is fixed for the maturity of the debt secured by such  
16 deed of trust, mortgage, or lien, shall be enforced after ~~twenty four~~ years from the date of  
17 the deed of trust, mortgage, or other lien ; provided that . However, the period of one  
18 year from the death of any party in interest shall be excluded from the computation of  
19 time, and provided further that the limitation may be extended by an endorsement within  
20 the ~~twenty four~~ -year period upon the margin of the page of the deed book on which the  
21 instrument is recorded in the manner set forth in § 8.01-241.

22 § 8.01-244. Actions for wrongful death; limitation.—A. Notwithstanding the provisions of §  
23 8.01-229 B, if a person entitled to bring an action for personal injury dies as a result of  
24 such injury with no such action pending before the expiration of ~~two four~~ years next after  
25 the cause of action shall have accrued, then an action under § 8.01-50 may be commenced  
26 within the time limits specified in subsection B of this section.

27 B. Every action under § 8.01-50 shall be brought by the personal representative of the  
28 decedent within ~~two four~~ years after the death of the injured person. If any such action is  
29 brought within such period of ~~two four~~ years after such person's death and for any cause  
30 abates or is dismissed without determining the merits of such action, the time such action  
31 is pending shall not be counted as any part of such period of ~~two four~~ years and another  
32 action may be brought within the remaining period of such ~~two four~~ years as if such  
33 former action had not been instituted. However, if a plaintiff suffers a voluntary nonsuit  
34 pursuant to § 8.01-380, the nonsuit shall not be deemed an abatement nor a dismissal  
35 pursuant to this subsection, and the provisions of subdivision E 3 of § 8.01-229 shall apply  
36 to such a nonsuited action.

37 § 8.01-245. Limitation on actions upon the bond of any fiduciaries or as to suits against  
38 fiduciaries themselves; accrual of cause of action where execution sustained.—A. No action  
39 shall be brought upon the bond of any fiduciary except within ~~ten four~~ years next after the  
40 right to bring such action shall have first accrued.

41 B. When any fiduciary has settled an account under the provisions of Title 26, and  
42 whether or not he has given bond, a suit to surcharge or falsify such account, or to hold  
43 such fiduciary or his sureties liable for any balance stated in such account, to be in his  
44 hands, shall be brought within ~~ten four~~ years after the account has been confirmed.

45 C. In actions upon the bond of any personal representative of a decedent or fiduciary  
46 of a person under a disability against whom an execution has been obtained or where a  
47 court acting upon the account of such representative or committee shall order payment or  
48 delivery of estate in the hands of such committee and representative, the cause of action  
49 shall be deemed to accrue from the return day of such execution or from the time of the  
50 right to require payment or delivery upon such order, whichever shall happen first.

51 § 8.01-251. Limitations on enforcement of judgments.—A. No execution shall be issued  
52 and no action brought on a judgment including a judgment in favor of the Commonwealth,  
53 after twenty years from the date of such judgment, unless the period is extended as  
54 provided in this section.

1 B. The limitation prescribed in subsection A may be extended on motion of the  
2 judgment creditor or his assignee with notice to the judgment debtor, and an order of the  
3 circuit court of the jurisdiction in which the judgment was entered to show cause why the  
4 period for issuance of execution or bringing of an action should not be extended. Any such  
5 motion must be filed within the twenty-year period from the date of the original judgment  
6 or from the date of the latest extension thereof. If upon the hearing of the motion the  
7 court decides that there is no good cause shown for not extending the period of limitation,  
8 the order shall so state and the period of limitation mentioned in subsection A shall be  
9 extended for an additional twenty years from the date of filing of the motion to extend.  
10 Additional extensions may be granted upon the same procedure, subject in each case to the  
11 recording provisions prescribed in § 8.01-458. This extension procedure is subject to the  
12 exception that if the action is against a personal representative of a decedent, the motion  
13 must be within two years from the date of his qualification, the extension may be for only  
14 two years from the time of the filing of the motion, and there may be only one such  
15 extension.

16 C. No suit shall be brought to enforce the lien of any judgment, including judgments in  
17 favor of the Commonwealth, upon which the right to issue an execution or bring an action  
18 is barred by other subsections of this section, nor shall any suit be brought to enforce the  
19 lien of any judgment against the lands which have been conveyed by the judgment debtor  
20 to a grantee for value, unless the same be brought within ~~ten~~ *four* years from the due  
21 recordation of the deed from such judgment debtor to such grantee and unless a notice of  
22 lis pendens shall have been recorded in the manner provided by § 8.01-268 before the  
23 expiration of such ~~ten~~ *four* -year period.

24 D. In computing the time, any time during which the right to sue out execution on the  
25 judgment is suspended by the terms thereof, or by legal process, shall be omitted. Sections  
26 8.01-230 et seq., 8.01-247 and 8.01-256 shall apply to the right to bring such action in like  
27 manner as to any right.

28 E. The provisions of this section apply to judgments obtained after June 29, 1948, and  
29 to judgments obtained prior to such date which are not then barred by the statute of  
30 limitations, but nothing herein shall have the effect of reducing the time for enforcement  
31 of any judgment the limitation upon which has been extended prior to such date by  
32 compliance with the provisions of law theretofore in effect.

33 F. This section shall not be construed to impair the right of subrogation to which any  
34 person may become entitled while the lien is in force, provided he institutes ~~proceedings~~  
35 enforce such right within ~~five~~ *four* years after the same accrued, nor shall the lien of a  
36 judgment be impaired by the recovery of another judgment thereon; or by a forthcoming  
37 bond taken on an execution thereon, such bond having the force of a judgment.

38 G. Limitations on enforcement of judgments entered in the general district courts shall  
39 be governed by § 16.1-94.1.

40 § 8.01-252. Actions on judgments of another state.—Every action upon a judgment  
41 rendered in another state or country shall be barred, if such action would there be barred  
42 by the laws of such state or country, and in no event shall an action be brought upon any  
43 such judgment rendered more than ~~ten~~ *twenty* years before the commencement of the  
44 action.

45 § 8.01-253. Limitation of suits to avoid voluntary conveyances, etc.—No gift, conveyance,  
46 assignment, transfer, or charge, which is not on consideration deemed valuable in law, or  
47 which is upon consideration of marriage, shall be avoided in whole or in part for that  
48 cause only, unless within ~~five~~ *four* years from its recordation, and if not so recorded within  
49 ~~five~~ *four* years from the time the same was or should have been discovered, suit be *is*  
50 brought for that purpose, or the subject thereof, or some part of it, be *is* distrained or  
51 levied on by or at the suit of a creditor, as to whom such gift, conveyance, assignment,  
52 transfer, or charge, is declared to be void by § 55-81.

53 § 8.01-254. Limitation on enforcement of bequests and legacies.—Wherever by any will,  
54 the testator devises any real estate to some person and requires such person to pay some

1 other person a specified sum of money, or provides a legacy for some person which  
2 constitutes a charge against the real estate of the testator, or any part thereof, no suit or  
3 action shall be brought to subject such real estate to the payment of such specified sum of  
4 money or such legacy, as the case may be, after ~~twenty~~ *four* years from the time when  
5 the same shall have been payable, and if the will specifies no time for the payment  
6 thereof, it shall be deemed to have been payable immediately upon death of the testator.

7 § 8.01-255. Time for presenting claim against Commonwealth.—Any pecuniary claim  
8 authorized to be presented under §§ 2.1-223.1 and 2.1-223.3 shall be barred unless presented  
9 in writing to the comptroller or other authorized person no later than ~~five~~ *four* years after  
10 the right to such claim shall arise. If such claim ~~be is~~ not thus barred, any action thereon  
11 against the Commonwealth must be brought no later than ~~three~~ *four* years after  
12 disallowance of such claim in whole or in part.

13 § 8.01-255.1. Limitation of action for breach of condition subsequent or termination of  
14 determinable fee simple estate.—No person shall commence an action for the recovery of  
15 lands, nor make an entry thereon, by reason of a breach of a condition subsequent, or by  
16 reason of the termination of an estate of fee simple determinable, unless the action is  
17 commenced or entry is made within ~~ten~~ *four* years after breach of the condition or within  
18 ~~ten~~ *four* years from the time when the estate of fee simple determinable has been  
19 terminated. ~~Where there has been a breach of a condition subsequent or termination of an~~  
20 ~~estate fee simple determinable which occurred prior to July 1, 1965, recovery of the lands,~~  
21 ~~or an entry may be made thereon by the owner of a right of entry or possibility of~~  
22 ~~reverter, by July 1, 1977.~~ Possession of land after breach of a condition subsequent or after  
23 termination of an estate of fee simple determinable shall be deemed adverse and hostile  
24 from the first breach of a condition subsequent or from the occurrence of the event  
25 terminating an estate of fee simple determinable.

26 § 8.01-255.2. Limitation on motion for new execution after loss of property sold under  
27 indemnity bond.—A motion made pursuant to § 8.01-476 shall be made within ~~five~~ *four*  
28 years after the right to make the same shall have accrued.

29 § 8.3A-118. Statute of limitations.—(a) Except as provided in subsection (e), an action to  
30 enforce the obligation of a party to pay a note payable at a definite time must be  
31 commenced within ~~six~~ *four* years after the due date or dates stated in the note or, if a  
32 due date is accelerated, within ~~six~~ *four* years after the accelerated due date.

33 (b) Except as provided in subsection (d) or (e), if demand for payment is made to the  
34 maker of a note payable on demand, an action to enforce the obligation of a party to pay  
35 the note must be commenced within ~~six~~ *four* years after the demand. If no demand for  
36 payment is made to the maker, an action to enforce the note is barred if neither principal  
37 nor interest on the note has been paid for a continuous period of ten years.

38 (c) Except as provided in subsection (d), an action to enforce the obligation of a party  
39 to an unaccepted draft to pay the draft must be commenced within ~~three~~ *four* years after  
40 dishonor of the draft or ~~ten~~ *four* years after the date of the draft, whichever period  
41 expires first.

42 (d) An action to enforce the obligation of the acceptor of a certified check or the  
43 issuer of a teller's check, cashier's check, or traveler's check must be commenced within  
44 ~~three~~ *four* years after demand for payment is made to the acceptor or issuer, as the case  
45 may be.

46 (e) An action to enforce the obligation of a party to a certificate of deposit to pay the  
47 instrument must be commenced within ~~six~~ *four* years after demand for payment is made to  
48 the maker, but if the instrument states a due date and the maker is not required to pay  
49 before that date, the ~~six~~ *four* -year period begins when a demand for payment is in effect  
50 and the due date has passed.

51 (f) An action to enforce the obligation of a party to pay an accepted draft, other than  
52 a certified check, must be commenced (i) within ~~six~~ *four* years after the due date or dates  
53 stated in the draft or acceptance if the obligation of the acceptor is payable at a definite  
54 time ; or (ii) within ~~six~~ *four* years after the date of the acceptance if the obligation of the

1 acceptor is payable on demand.

2 (g) Unless governed by other law regarding claims for indemnity or contribution, an  
3 action (i) for conversion of an instrument, for money had and received, or like action  
4 based on conversion, (ii) for breach of warranty, or (iii) to enforce an obligation, duty, or  
5 right arising under this title and not governed by this section must be commenced within  
6 ~~three~~ *four* years after the cause of action accrues.

7 (h) Notwithstanding the provisions of § 8.01-246, this section shall apply to negotiable  
8 and non-negotiable notes.

9 § 8.4-111. (Effective January 1, 1993) Statute of limitations.—An action to enforce an  
10 obligation, duty, or right arising under this title must be commenced within ~~three~~ *four*  
11 years after the cause of action accrues.

12 § 8.6-111. Limitation of actions and levies.—No action under this title shall be brought  
13 nor levy made more than ~~six months~~ *four years* after the date on which the transferee  
14 took possession of the goods unless the transfer has been concealed. If the transfer has  
15 been concealed, actions may be brought or levies made within six months after its  
16 discovery.

17 § 11-15. Recovery of money or property lost in gaming.—Any person who shall, by  
18 playing at any game or betting on the sides or hands of such as play at any game, lose  
19 within twenty-four hours, the sum or value of five dollars, or more, and pay or deliver the  
20 same, or any part thereof, may, within ~~three months~~ *four years* next following, recover  
21 from the winner, the money or the value of the goods so lost and paid or delivered, with  
22 costs of suit in civil action, either by suit or warrant, according to the amount or value  
23 thereof.

24 § 11-59. Action on performance bond.—No action against the surety on a performance  
25 bond shall be brought unless within ~~five~~ *four* years after completion of the work on the  
26 project to the satisfaction of the chief engineer, Department of Transportation, in cases  
27 where the public body is the Department of Transportation, or within ~~one year~~ *four years*  
28 after *the later of* (i) completion of the contract, including the expiration of all warranties  
29 and guarantees, or (ii) discovery of the defect or breach of warranty, if the action ~~be~~ *is*  
30 for such, in all other cases.

31 § 11-60. Actions on payment bonds.—A. Subject to the provisions of subsection B hereof,  
32 any claimant who has performed labor or furnished material in accordance with the  
33 contract documents in the prosecution of the work provided in any contract for which a  
34 payment bond has been given, and who has not been paid in full therefor ~~before~~  
35 expiration of ninety days after the day on which such claimant performed the ~~last~~  
36 labor or furnished the last of such materials for which he claims payment, may bring an  
37 action on such payment bond to recover any amount due him for such labor or material,  
38 and may prosecute such action to final judgment and have execution on the judgment. The  
39 obligee named in the bond need not be named a party to such action.

40 B. Any claimant who has a direct contractual relationship with any subcontractor from  
41 whom the contractor has not required a subcontractor payment bond under § 11-58 F but  
42 who has no contractual relationship, express or implied, with such contractor, may bring an  
43 action on the contractor's payment bond only if he has given written notice to such  
44 contractor within 180 days from the day on which the claimant performed the last of the  
45 labor or furnished the last of the materials for which he claims payment, stating with  
46 substantial accuracy the amount claimed and the name of the person for whom the work  
47 was performed or to whom the material was furnished. Any claimant who has a direct  
48 contractual relationship with a subcontractor from whom the contractor has required a  
49 subcontractor payment bond under § 11-58 F but who has no contractual relationship,  
50 express or implied, with such contractor, may bring an action on the subcontractor's  
51 payment bond. Notice to the contractor shall be served by registered or certified mail,  
52 postage prepaid, in an envelope addressed to such contractor at any place where his office  
53 is regularly maintained for the transaction of business. Claims for sums withheld as  
54 retainages, with respect to labor performed or materials furnished, shall not be subject to

1 the time limitations stated in this subsection.

2 C. Any action on a payment bond must be brought within ~~one year~~ *four years* after the  
3 day on which the person bringing such action last performed labor or last furnished or  
4 supplied materials.

5 § 14.1-4. When officer's right to file petition under § 14.1-3 barred.—If such officer fails  
6 to file a petition under § 14.1-3 within ~~twelve months~~ *four years* after payment of any  
7 installment of his salary is withheld as aforesaid, his right to file the same shall be barred  
8 ; ~~and in such case~~ *and* the Comptroller shall credit the Commonwealth on the officer's  
9 salary with the amount of his indebtedness, and make that fact appear on the books of his  
10 office.

11 § 14.1-176. Within what time fee bills may be collected.—No fee bill shall be collected  
12 by distress, warrant or suit after ~~five~~ *four* years from the end of the year in which the  
13 service was performed that is charged therein, unless , within five years before the  
14 institution of such proceedings , it was returned by an officer, with such endorsement  
15 thereon, properly dated, as is mentioned in § 14.1-175; ~~and~~, after ~~five~~ *four* years from the  
16 date of such endorsement first made, no fee bill shall be collected by distress, warrant or  
17 suit.

18 § 14.1-193. Time within which witnesses may be paid out of state treasury.—No payment  
19 out of the state treasury shall be made to witnesses unless their claims are presented  
20 within ~~two~~ *four* years from the time of rendering the service.

21 § 16.1-94.1. Limitations on enforcement of district court judgments.—For judgments  
22 entered in a general district court on or after January 1, 1985, no execution shall be issued  
23 or action brought on such judgment, including a judgment in favor of the Commonwealth,  
24 after ~~ten~~ *twenty* years from the date of such judgment except as provided in § 16.1-69.55 B  
25 4.

26 § 33.1-192.1. Limitation of suits on contracts executed after June 30, 1976.—No suit or  
27 action shall be brought against the Department of Transportation by a contractor or any  
28 persons claiming under him or on behalf of a subcontractor of the contractor or a person  
29 furnishing materials for the contract to the contractor, on any contract executed pursuant  
30 to this chapter, after June 30, 1976, or by others on any claim arising from the  
31 performance of the contract by the contractor, subcontractor or person furnishing materials  
32 to the contractor, unless the claimant shall have exhausted the review process provided by  
33 § 33.1-386. Further, no such action shall be brought unless the same shall be brought within  
34 ~~twelve months~~ *four years* from receipt of the decision of the Commissioner of the  
35 Department of Transportation. In no event shall any delay therein on the part of the  
36 contractor, subcontractor or person furnishing materials be construed as a reason for  
37 extending the time within which such suit or action must be brought. In any case brought  
38 against the Department of Transportation on behalf of a subcontractor or person furnishing  
39 materials to the contractor, lack of privity between the parties shall be no defense;  
40 however, any such case brought on behalf of a subcontractor or person furnishing materials  
41 to the contractor shall only be brought for costs and expenses caused by the acts or  
42 omissions of the Department of Transportation and shall not be brought for costs and  
43 expenses caused by the contractor.

44 Section 33.1-192 shall continue in force as to contracts entered into prior to July 1,  
45 1976, or claims arising therefrom.

46 § 38.2-3540. Legal actions.—Each group accident and sickness insurance policy shall  
47 contain a provision that no action at law or in equity shall be brought to recover on the  
48 policy within sixty days after proof of loss has been filed in accordance with the policy  
49 requirements and that no such action shall be brought after the expiration of ~~three~~ *four*  
50 years from the time that proof of loss was required to be filed.

51 § 38.2-5013. Limitation on claims.—Any claim under this chapter that is filed more than  
52 ~~ten~~ *four* years after the birth of an infant alleged to have a birth-related neurological  
53 injury is barred.

54 § 40.1-28.6. Equal pay irrespective of sex.—No employer having employees shall

1 discriminate, within any establishment in which such employees are employed, between  
 2 employees on the basis of sex by paying wages to employees in such establishment at a  
 3 rate less than the rate at which he pays wages to employees of the opposite sex in such  
 4 establishment for equal work on jobs the performance of which requires equal skill, effort,  
 5 and responsibility, and which are performed under similar working conditions, except  
 6 where such payment is made pursuant to (i) a seniority system; (ii) a merit system; (iii) a  
 7 system which measures earnings by quantity or quality of production; or (iv) a differential  
 8 based on any other factor other than sex.

9 For purposes of administration and enforcement, any amounts owing to any employee  
 10 which have been withheld in violation of this section shall be deemed to be unpaid wages  
 11 or unpaid overtime compensation, and the employee whose wages have been wrongfully  
 12 withheld in violation of this section shall have a right of action therefor to recover  
 13 damages to the extent of two times the amount of wages so withheld.

14 This section shall not apply to employers covered by the Fair Labor Standards Act of  
 15 1938 as amended. Every action under this section shall be brought within ~~two~~ *four* years  
 16 next after the right to bring the same shall have accrued; ~~provided, however, that~~ nothing  
 17 herein shall be construed to give rise to a cause of action for work performed prior to  
 18 July 1, 1974.

19 § 43-17. Limitation on suit to enforce lien.—No suit to enforce any lien perfected under  
 20 §§ 43-4, 43-5 and 43-7 ~~to through~~ 43-10 shall be brought after six months from the time  
 21 when the memorandum of lien was recorded or after ~~sixty days~~ *four years* from the time  
 22 the building, structure or railroad was completed or the work thereon otherwise terminated,  
 23 whichever time shall last occur; ~~provided, however, that~~ . *However*, the filing of a petition  
 24 to enforce any such lien in any suit wherein such petition may be properly filed shall be  
 25 regarded as the institution of a suit under this section; , and ; ~~provided further, that~~  
 26 nothing herein shall extend the time within which such lien may be perfected.

27 § 46.2-112. Tampering with odometer; penalty; civil liability.—A. It shall be unlawful to  
 28 knowingly cause, either personally or through an agent, the changing, tampering with,  
 29 disconnection, or nonconnection of any odometer or similar device designed to show by  
 30 numbers or words the distance which a motor vehicle has traveled or the use it has  
 31 sustained.

32 B. It shall be unlawful for any person to sell a motor vehicle if he knows or should  
 33 reasonably know that the odometer or similar device of the motor vehicle has been  
 34 changed, tampered with, or disconnected to reflect a lesser mileage or use, unless he gives  
 35 clear and unequivocal notice of such tampering, etc., or of his reasonable belief thereof, to  
 36 the purchaser in writing prior to the sale. In a prosecution under this subsection, evidence  
 37 that a person or his agent has changed, tampered with, disconnected, or failed to connect  
 38 an odometer or similar device of a motor vehicle shall constitute prima facie evidence of  
 39 knowledge thereof.

40 C. It shall be unlawful for any person to advertise for sale, sell, or use any device  
 41 designed primarily for the purpose of resetting the odometer or similar device of a motor  
 42 vehicle in any manner.

43 D. The provisions of this section shall not apply to the following:

44 1. The changing of odometer or similar device readings registered in the course of  
 45 predelivery testing of any motor vehicle by its manufacturer prior to its delivery to a  
 46 dealer.

47 2. Any necessary repair or replacement of an odometer or similar device, provided that  
 48 the repaired or replaced odometer or similar device is forthwith set at a reading  
 49 determined by the reading on the device immediately prior to repair or replacement plus  
 50 a bona fide estimate of the use of the vehicle sustained between the period when the  
 51 device ceased to accurately record that use and the time of repair or replacement.

52 3. Passenger vehicles having a capacity in excess of fifteen persons.

53 4. Trucks having a net weight in excess of 10,000 pounds.

54 E. Any person convicted of a violation of the provisions of subsections A through D of

1 this section shall, for a first offense, be fined not more than \$10,000 and sentenced to a  
2 term of confinement in jail for not more than twelve months, either or both. Any person  
3 convicted of a subsequent offense under this section shall be fined not more than \$50,000  
4 and sentenced to a term of confinement in a state correctional facility for not less than  
5 one year nor more than five years, either or both, for each offense if the offense is  
6 committed with the intent thereby to defraud another. Each violation of this section shall  
7 constitute a separate offense.

8 F. Any person who with intent to defraud violates subsection A or B of this section  
9 shall be liable in a civil action in an amount equal to three times the amount of actual  
10 damages sustained or \$1,500, whichever is greater. In the case of a successful action to  
11 enforce the foregoing liability, the costs of the action, together with reasonable attorney  
12 fees as determined by the court, shall be assessed against the person committing the  
13 violation. An action under this subsection shall be brought within ~~two~~ *four* years from the  
14 date on which liability arises. For the purpose of this subsection, liability arises when the  
15 injured party discovers, or with due diligence should have discovered, the violation.

16 § 51.5-46. Remedies.—A. Any circuit court having chancery jurisdiction and venue  
17 pursuant to Title 8.01, on the petition of any person with a disability, shall have the right  
18 to enjoin the abridgement of rights set forth in this chapter and to order such affirmative  
19 equitable relief as is appropriate and to award compensatory damages and to award to a  
20 prevailing party reasonable attorneys' fees, except that a defendant shall not be entitled to  
21 an award of attorneys' fees unless the court finds that the claim was frivolous,  
22 unreasonable or groundless, or brought in bad faith. Compensatory damages shall not  
23 include damages for pain and suffering. Punitive or exemplary damages shall not be  
24 awarded.

25 B. An action may be commenced pursuant to this section any time within ~~one year~~ *four*  
26 *years* of the occurrence of any violation of rights under this chapter. However, such action  
27 shall be forever barred unless such claimant or his agent, attorney or representative has  
28 commenced such action or has filed by registered mail a written statement of the nature  
29 of the claim with the potential defendant or defendants within ~~180 days~~ *two years* of the  
30 occurrence of the alleged violation. Any liability for back pay shall not accrue from a date  
31 more than 180 days prior to the filing of the notice or bill of complaint and shall be  
32 limited to a total of 180 days, reduced by the amount of other earnings over the same  
33 period. The petitioner shall have a duty to mitigate damages.

34 C. The relief available for violations of this chapter shall be limited to the relief set  
35 forth in this section.

36 D. In any action in which the petitioner is represented by the Department for Rights of  
37 Virginians With Disabilities, no attorneys' fees shall be awarded, nor shall the Department  
38 for Rights of Virginians With Disabilities have the authority to institute any class action  
39 under this chapter.

40 § 55-70.1. Implied warranties on new homes.—A. In every contract for the sale of a  
41 new dwelling, the vendor shall be held to warrant to the vendee that, at the time of the  
42 transfer of record title or the vendee's taking possession, whichever occurs first, the  
43 dwelling with all its fixtures is, to the best of the actual knowledge of the vendor or his  
44 agents, sufficiently (i) free from structural defects, so as to pass without objection in the  
45 trade, and (ii) constructed in a workmanlike manner, so as to pass without objection in the  
46 trade.

47 B. In addition, in every contract for the sale of a new dwelling, the vendor, if he *is*  
48 in the business of building or selling such dwellings, shall be held to warrant to the ven<sup>ee</sup>  
49 that, at the time of transfer of record title or the vendee's taking possession, whichever  
50 occurs first, the dwelling together with all its fixtures is sufficiently (i) free from structural  
51 defects, so as to pass without objection in the trade, (ii) constructed in a workmanlike  
52 manner, so as to pass without objection in the trade, and (iii) fit for habitation.

53 C. The above warranties implied in the contract for sale shall be held to survive the  
54 transfer of title. Such warranties are in addition to, and not in lieu of, any other express



1 or implied warranties pertaining to the dwelling, its materials or fixtures. A contract which  
2 waives, modifies or excludes some or all of the warranties contained in this section shall  
3 be valid, but the words used to waive, modify or exclude such warranties shall be  
4 conspicuously (as defined in § 8.1-201 (10)) set forth on the face of such contract ; and  
5 shall specify the particular warranty or warranties to be waived, modified or excluded.

6 D. If there is a breach of warranty under this section, the vendee, or his heirs or  
7 personal representatives in case of his death, shall have a cause of action against his  
8 vendor for damages.

9 E. The warranty shall extend for a period of one year from the date of transfer of  
10 record title or the vendee's taking possession, whichever occurs first, except that the  
11 warranty pursuant to subdivision (i) of subsection B for the foundation of new dwellings  
12 shall extend for a period of five years from the date of transfer of record title or the  
13 vendee's taking possession, whichever occurs first. Any action for its breach shall be  
14 brought within ~~two~~ *four* years after the breach thereof. As used in this section, the term  
15 "new dwelling" ~~shall mean~~ *means* a dwelling or house which has not previously been  
16 occupied for a period of more than sixty days by anyone other than the vendor or the  
17 vendee or which has not been occupied by the original vendor or subsequent vendor for a  
18 cumulative period of more than twelve months excluding dwellings constructed solely for  
19 lease. The term "new dwelling" ~~shall~~ *does* not include a condominium or condominium  
20 units created pursuant to Chapter 4.2 (§ 55-79.39 et seq.) of this title.

21 F. The term "structural defects," as used in this section, ~~shall mean~~ *means* a defect or  
22 defects which reduce the stability or safety of the structure below accepted standards or  
23 which restrict the normal use thereof.

24 § 55-79.79. Upkeep of condominiums; warranty against structural defects; statute of  
25 limitations for warranty.—(a) Except to the extent otherwise provided by the condominium  
26 instruments, all powers and responsibilities, including financial responsibility, with regard to  
27 maintenance, repair, renovation, restoration, and replacement of the condominium shall  
28 belong (1) to the unit owners' association in the case of the common elements ; and (2) to  
29 the individual unit owner in the case of any unit or any part thereof, except to the extent  
30 that the need for repairs, renovation, restoration or replacement arises from a condition  
31 originating in or through the common elements or any apparatus located within the  
32 common elements, in which case the unit owners' association shall have such powers and  
33 responsibilities. Each unit owner shall afford to the other unit owners and to the unit  
34 owners' association and to any agents or employees of either such access through his unit  
35 as may be reasonably necessary to enable them to exercise and discharge their respective  
36 powers and responsibilities. But to the extent that damage is inflicted on the common  
37 elements or any unit through which access is taken, the unit owner causing the same, or  
38 the unit owners' association if it caused the same, shall be liable for the prompt repair  
39 thereof.

40 (b) Notwithstanding anything in this section to the contrary, the declarant shall warrant  
41 or guarantee, against structural defects, each of the units for two years from the date each  
42 is conveyed ; and all of the common elements for two years. In the case of each unit , the  
43 declarant shall also warrant that the unit is fit for habitation and constructed in a  
44 workmanlike manner so as to pass without objection in the trade. The two years referred  
45 to in this subsection shall begin as to each of the common elements whenever the same  
46 has been completed or, if later, ~~(1) at the time the first unit therein is conveyed,~~ as to  
47 any common element within any (1) additional land or portion thereof, ~~at the time the first~~  
48 ~~unit therein is conveyed ;~~ (2) as to any common element within any convertible land or  
49 portion thereof ; ~~at the time the first unit therein is conveyed ,~~ and (3) as to any common  
50 ~~element within any other portion of the condominium ; at the time the first unit therein is~~  
51 ~~conveyed .~~ For the purposes of this subsection, no unit shall be deemed conveyed unless  
52 conveyed to a bona fide purchaser. Any conveyance of a condominium unit transfers to the  
53 purchaser all of the declarant's warranties against structural defects imposed by this  
54 subsection. For the purposes of this subsection, structural defects shall be those defects in

1 components constituting any unit or common element which reduce the stability or safety  
2 of the structure below accepted standards or restrict the normal intended use of all or part  
3 of the structure and which require repair, renovation, restoration, or replacement. Nothing  
4 in this subsection shall be construed to make the declarant responsible for any items of  
5 maintenance relating to the units or common elements.

6 (c) An action for breach of any warranty prescribed by this section ~~must~~ shall be  
7 commenced within ~~five~~ four years after the date such warranty period began.

8 § 55-79.84. Lien for assessments.—A. The unit owners' association shall have a lien on  
9 every condominium unit for unpaid assessments levied against that condominium unit in  
10 accordance with the provisions of this chapter and all lawful provisions of the  
11 condominium instruments. The said lien, once perfected, shall be prior to all other liens  
12 and encumbrances except (i) real estate tax liens on that condominium unit, (ii) liens and  
13 encumbrances recorded prior to the recordation of the declaration, and (iii) sums unpaid  
14 on any first mortgages or first deeds of trust recorded prior to the perfection of said lien  
15 for assessments and securing institutional lenders. The provisions of this subsection shall not  
16 affect the priority of mechanics' and materialmen's liens.

17 B. Notwithstanding any other provision of this section, or any other provision of law  
18 requiring documents to be recorded in the miscellaneous lien books or the deed books in  
19 the clerk's office of any court, on or after July 1, 1974, all memoranda of liens arising  
20 under this section shall, in the discretion of the clerk, be recorded in the miscellaneous  
21 lien books or the deed books in such clerk's office. Any such memorandum shall be  
22 indexed in the general index to deeds, and such general index shall identify the lien as a  
23 lien for condominium assessments.

24 C. The unit owners' association, in order to perfect the lien given by this section, shall  
25 file before the expiration of ~~ninety~~ 180 days from the time such assessment became due  
26 and payable in the clerk's office in the county or city in which such condominium is  
27 situated, a memorandum, verified by the oath of the principal officer of the unit owners'  
28 association, or such other officer or officers as the condominium instruments may specify,  
29 which contains the following:

30 1. A description of the condominium unit in accordance with the provisions of §  
31 55-79.47.

32 2. The name or names of the persons constituting the unit owners of that condominium  
33 unit.

34 3. The amount of unpaid assessments currently due or past due together with the date  
35 when each fell due.

36 4. The date of issuance of the memorandum.

37 It shall be the duty of the clerk in whose office such memorandum shall be filed as  
38 hereinabove provided to record and index the same as provided in subsection B, in the  
39 names of the persons identified therein as well as in the name of the unit owners'  
40 association. The cost of recording such memorandum shall be taxed against the person  
41 found liable in any judgment or decree enforcing such lien.

42 D. No suit to enforce any lien perfected under subsection C shall be brought after  
43 ~~twenty-four months~~ four years from the time when the memorandum of lien was recorded;  
44 provided, however, that the filing of a petition to enforce any such lien in any suit wherein  
45 such petition may be properly filed shall be regarded as the institution of a suit under this  
46 section ; , and provided further that nothing herein shall extend the time within which any  
47 such lien may be perfected.

48 E. The judgment or decree in an action brought pursuant to this section shall include,  
49 without limitation, reimbursement for costs and attorneys' fees, together with interest at the  
50 maximum lawful rate for the sums secured by the lien from the time each such sum  
51 became due and payable.

52 F. When payment or satisfaction is made of a debt secured by the lien perfected by  
53 subsection C, said lien shall be released in accordance with the provisions of § 55-66.3. For  
54 the purposes of that section , the principal officer of the unit owners' association, or such

1 other officer or officers as the condominium instruments may specify, shall be deemed the  
2 duly authorized agent of the lien creditor.

3 G. Nothing in this section shall be construed to prohibit actions at law to recover sums  
4 for which subsection A creates a lien, maintainable pursuant to § 55-79.53.

5 H. Any unit owner or purchaser of a condominium unit, having executed a contract for  
6 the disposition of the same, shall be entitled upon request to a recordable statement setting  
7 forth the amount of unpaid assessments currently levied against that unit. Such request  
8 shall be in writing, directed to the principal officer of the unit owners' association or to  
9 such other officer as the condominium instruments may specify. Failure to furnish or make  
10 available such a statement within ten days of the receipt of such request shall extinguish  
11 the lien created by subsection A as to the condominium unit involved. Such statement shall  
12 be binding on the unit owners' association, the executive organ, and every unit owner.  
13 Payment of a fee not exceeding ten dollars may be required as a prerequisite to the  
14 issuance of such a statement if the condominium instruments so provide.

15 § 55-230. When and by whom distress made.—Rent may be distrained for within five  
16 *four* years from the time it becomes due, and not afterwards, whether the lease is ended  
17 or not. The distress shall be made by a sheriff or high constable or sergeant of the county  
18 or city wherein the premises yielding the rent, or some part thereof, may be, or the goods  
19 liable to distress may be found, under warrant from a judge of the general district court  
20 or a magistrate for such county or city regardless of the amount involved. Such warrant  
21 shall be founded upon a sworn petition of the person claiming the rent, or his agent, that  
22 (i) the petitioner believes the amount of money or other thing to be distrained for (to be  
23 specified in the petition in accordance with § 55-231) is justly due to the claimant for rent  
24 reserved upon contract from the person of whom it is claimed, (ii) one or more of the  
25 grounds for attachment in § 8.01-534 exist and are specified in the petition together with a  
26 statement of facts to support the claimed grounds and (iii) the rent claimed is for rent due  
27 within ~~five~~ *four* years from the time that it becomes due. The petition shall also specify  
28 the amount of the rent claimed. The plaintiff shall, at the time of suing out a distress, give  
29 bond in conformity with the provisions of § 8.01-537.1.

30 A judge or magistrate shall make an ex parte review of the petition. The warrant may  
31 be issued in accordance with the prayer of the petition by a judge or magistrate only upon  
32 a determination that there appears from the petition that there is reasonable cause to  
33 believe that one of the grounds for attachment in § 8.01-534 exists, the allegations required  
34 to be in the petition are true and that bond which complies with § 8.01-537.1 has been  
35 posted.

36 Each copy of the distress warrant or order of seizure in distress shall be issued and  
37 served on each defendant together with (i) a form for requesting a hearing of exemption  
38 from levy or seizure, as provided in § 8.01-546.1, and (ii) a copy of the bond. Service shall  
39 be made in accordance with the methods described in § 8.01-487.1.

40 The officer into whose hands the warrant is delivered for pretrial levy shall distrain  
41 except as may be otherwise provided by statute, the property found on the premises of the  
42 tenant as provided by § 55-231. The officer shall return the warrant of distress to the  
43 general district court to which the warrant of distress is returnable by the return date  
44 unless otherwise notified by the court to make return by an earlier date.

45 § 55-248. Limitation of suit, etc., against person in possession by reentry.—No person  
46 who, or who with his predecessor in title under whom he claims, shall have been possessed  
47 of lands by virtue of a reentry for the term of ~~two~~ *four* years shall be disturbed therein  
48 by suit or otherwise for any defect of proceedings in such entry.

49 § 55-383. Statute of limitations.—A judicial proceeding where the accuracy of the public  
50 offering statement or validity of any contract of purchase is in issue and a rescission of  
51 the contract or damages is sought must be commenced within ~~two~~ *four* years after the date  
52 of the contract of purchase, notwithstanding that the purchaser's terms of payments may  
53 extend beyond this period of limitation; however, with respect to the enforcement of  
54 provisions in the contract of purchase which require the continued furnishing of services

1 and the reciprocal payments to be made by the purchaser, the period of bringing a judicial  
2 proceeding will continue for a period of ~~two~~ *four* years for each breach.

3 § 55-491. Statute of limitations for warranties.—A. A judicial proceeding for breach of  
4 any obligation arising under § 55-488 or § 55-489 must be commenced within ~~six~~ *four* years  
5 after the cause of action accrues, but the parties may agree to reduce the period of  
6 limitation to not less than two years. With respect to a unit that may be occupied for  
7 residential use, an agreement to reduce the period of limitation must be evidenced by a  
8 separate instrument executed by the purchaser of the cooperative interest for that unit.

9 B. Subject to subsection C, a cause of action for breach of warranty of quality,  
10 regardless of the purchaser's lack of knowledge of the breach, accrues:

11 1. As to a unit, at the time the purchaser to whom the warranty is first made enters  
12 into possession if a possessory interest was conveyed, or at the time of acceptance of the  
13 instrument of conveyance if a nonpossessory interest was conveyed; and

14 2. As to each common element, at the time the common element is completed or, if  
15 later: (i) as to a common element that may be added to the cooperative or portion thereof,  
16 at the time the first cooperative interest for a unit therein is conveyed to a bona fide  
17 purchaser ; or (ii) as to a common element within any other portion of the cooperative, at  
18 the first time a cooperative interest in the cooperative is conveyed to a bona fide  
19 purchaser.

20 C. If a warranty of quality explicitly extends to future performance or duration of any  
21 improvement or component of the cooperative, the cause of action accrues at the time the  
22 breach is discovered or at the end of the period for which the warranty explicitly extends,  
23 whichever is earlier.

24 § 57-26. Restrictions as to location of cemeteries and as to quantity of land.—(1)  
25 Restrictions as to location. - No cemetery shall be hereafter established (i) within a county  
26 or the corporate limits of any city or town , unless authorized by appropriate ordinance  
27 subject to any zoning ordinance duly adopted by the governing body of such county, city or  
28 town; ~~provided that~~ *however*, authorization by county ordinance shall not be required for  
29 interment of the dead in any churchyard or for interment of members of a family on  
30 private property; ~~nor shall any cemetery be established (ii) within 250 yards of any~~  
31 residence without the consent of the owner of the legal and equitable title of the residence;  
32 ~~provided that subject to the foregoing~~ *however*, if the location for the proposed cemetery is  
33 separated from any residence by a state highway, it may be established upon such location  
34 without the consent of the owner of such residence if it ~~be~~ *is* not less than 250 <sup>2</sup> *feet* from  
35 the residence at its nearest point thereto; ~~provided~~ such prohibition and restriction shall not  
36 apply where the tract of land intended for use as a cemetery is separated from any  
37 residence by a state highway ~~and~~ , now contains a public or private burial ground , and is  
38 not within the corporate limits of any city or town; and ~~no cemetery shall be hereafter~~  
39 ~~established, and no (iii) nor any burial be made in any part of any cemetery, other than a~~  
40 municipal or city cemetery, located within 300 yards of any property owned by any city,  
41 town or water company, upon which or *upon* a portion of which are now located driven  
42 wells from which water is pumped or drawn from the ground in connection with the public  
43 water supply.

44 (2) Quantity of land. - Nothing contained in §§ 57-22 ~~to~~ *through* 57-25 shall be so  
45 construed as to authorize a conveyance of more than 300 acres or the condemnation of  
46 more than ~~2~~ *two* acres of land for the use of a cemetery.

47 (3) Action for damages. - When damage is done to adjacent land by the establishment  
48 of such cemetery, whether established by purchase or condemnation, the owners whose  
49 lands have been damaged shall have a right to action for such damage against any person,  
50 firm, corporation, or municipality, establishing the cemetery ; , provided such action be  
51 instituted within ~~one year~~ *four years* from such establishment.

52 (4) Exceptions. - The prohibitions and restrictions as to the location or establishment of  
53 cemeteries shall not apply to the town of Stuart , in Patrick County, to the town of Gretna  
54 ; in Pittsylvania County, to the town of Shenandoah in Page County, or to the Woodbine

1 Cemetery in the city of Harrisonburg , Rockingham County. And if . If the location for the  
 2 proposed cemetery be *is* in Norfolk County , it may be established on such location (i) if  
 3 consent thereto be *is* given by the owners of every residence within 250 <sup>2</sup> feet thereof at  
 4 its nearest point to any such residence , or if the location for the proposed cemetery is  
 5 separated from any such residence by a state highway it may be established upon such  
 6 location (ii) without the consent of the owner of *any* such residence if it be not less than *is*  
 7 at least 150 <sup>2</sup> feet from the residence at its nearest point thereto *and is separated from the*  
 8 *residence by a state highway .*

9 § 58.1-104. Period of limitations.—Except as provided in Chapters 3 (§ 58.1-300 et seq.)  
 10 and 6 (§ 58.1-600 et seq.) of this title, any tax imposed by this subtitle shall be assessed  
 11 within ~~three~~ *four* years from the last day prescribed by law for the timely filing of the  
 12 return. In the case of a false or fraudulent return with the intent to evade payment of any  
 13 tax imposed by this subtitle, or a failure to file a required return, the taxes may be  
 14 assessed, or a proceeding in court for the collection of such taxes may be begun without  
 15 assessment, at any time within ~~six~~ *four* years from the last day prescribed by law for the  
 16 timely filing of the return.

17 § 58.1-634. Period of limitations.—The taxes imposed by this chapter shall be assessed  
 18 within ~~three~~ *four* years from the date on which such taxes became due and payable. In  
 19 the case of a false or fraudulent return with intent to evade payment of the taxes imposed  
 20 by this chapter, or a failure to file a return, the taxes may be assessed, or a proceeding in  
 21 court for the collection of such taxes may be begun without assessment, at any time within  
 22 ~~six~~ *four* years from such date. The Tax Commissioner shall not examine any person's  
 23 records beyond the ~~three~~ *four* -year period of limitations unless he has reasonable evidence  
 24 of fraud, or reasonable cause to believe that such person was required by law to file a  
 25 return and failed to do so.

26 § 58.1-1802.1. Period of limitations on collection; accrual of interest and penalty.—A.  
 27 Where the assessment of any tax imposed by this subtitle has been made within the period  
 28 of limitation properly applicable thereto, such tax may be collected by levy, by a  
 29 proceeding in court, or by any other means available to the Tax Commissioner under the  
 30 laws of the Commonwealth, but only if such collection effort is made or instituted within  
 31 ~~twenty~~ *four* years from the date of the assessment of such tax. Prior to the expiration of  
 32 any period for collection, the period may be extended by a written agreement between the  
 33 Tax Commissioner and the taxpayer, and subsequent written agreements may likewise  
 34 extend the period previously agreed upon. The period of limitations provided in this  
 35 subsection during which a tax may be collected shall not apply to executions, levy or other  
 36 actions to enforce a lien created before the expiration of the period of limitations by the  
 37 docketing of a judgment or the filing of a memorandum of lien pursuant to § 58.1-1805 ;  
 38 nor shall the period of limitations apply to the provisions of §§ 8.01-251 and 8.01-458.

39 B. The running of the period of limitations on collection shall be suspended for the  
 40 period the assets of the taxpayer are in the control or custody of any state or federal  
 41 court, including the United States Bankruptcy Court, or for the period during which a  
 42 taxpayer is outside the Commonwealth if such period of absence is for a continuous period  
 43 of at least six months.

44 C. If the Department of Taxation has no contact with the delinquent taxpayer for a  
 45 period of ~~seven~~ *two* years and no memorandum of lien has been appropriately filed in a  
 46 jurisdiction in which such taxpayer owns real estate, interest and penalty shall no longer be  
 47 added to the delinquent tax liability. The mailing of notices by the Department to the  
 48 taxpayer's last known address shall constitute contact with the taxpayer.

49 D. For purposes of this section, the "last known address" of the taxpayer means the  
 50 address shown on the most recent return filed by or on behalf of the taxpayer or the  
 51 address provided in correspondence by or on behalf of the taxpayer indicating that it is a  
 52 change of the taxpayer's address.

53 § 58.1-1825. Application to court for correction of erroneous or improper assessments of  
 54 state taxes generally.—Any person assessed with any tax administered by the Department

1 of Taxation and aggrieved by any such assessment may, unless otherwise specifically  
2 provided by law, within ~~three~~ *four* years from the date such assessment is made, apply to  
3 a circuit court for relief. The venue for such proceeding shall be as specified in  
4 subdivision 13 b of § 8.01-261. The application shall be before the court when it is filed in  
5 the clerk's office. Such application shall not be deemed filed unless (i) the assessment has  
6 been paid or (ii) in lieu of payment, the taxpayer has posted bond pursuant to the  
7 provisions of § 16.1-107, with corporate surety licensed to do business in Virginia, within ~~90~~  
8 *ninety* days from the date such assessment is made.

9 Any person whose assessment has been improperly collected from property exempt  
10 from process may within ~~three~~ *four* years from the date such assessment is made, or if  
11 later, within one year of the Tax Commissioner's decision on a process exemption claim  
12 under § 58.1-1821 apply to a circuit court for relief. The venue for such proceeding shall  
13 be as specified in subdivision 13 b of § 8.01-261.

14 The Department shall be named as defendant and the proceedings shall be conducted  
15 as an action at law before the court sitting without a jury. It shall be the burden of the  
16 applicant in any such proceeding to show that the assessment or collection complained of  
17 is erroneous or otherwise improper. The court's order shall be entered pursuant to §  
18 58.1-1826.

19 § 58.1-3980. Application to commissioner of the revenue or other official for  
20 correction.—Any person, firm or corporation assessed by a commissioner of the revenue or  
21 other official performing the duties imposed on commissioners of the revenue under this  
22 title with local taxes on tangible personal property, machinery and tools, or merchants'  
23 capital, or a local license tax, aggrieved by any such assessment, may, within ~~three~~ *four*  
24 years from the last day of the tax year for which such assessment is made, or within one  
25 year from the date of the assessment, whichever is later, apply to the commissioner of the  
26 revenue or such other official who made the assessment for a correction thereof.

27 Sections 58.1-3980 through 58.1-3983 shall also apply to erroneous assessments of real  
28 estate if the error sought to be corrected in any case was made by the commissioner of  
29 the revenue or such other official to whom the application is made.

30 § 58.1-3984. Application to court to correct erroneous assessments of local levies  
31 generally.—A. Any person assessed with local taxes, aggrieved by any such assessment,  
32 may, unless otherwise specially provided by law, within ~~three~~ *four* years from the last day  
33 of the tax year for which any such assessment is made, or within one year from the date  
34 of the assessment, whichever is later, apply for relief to the circuit court of the county or  
35 city wherein such assessment was made. The application shall be before the court ~~when~~  
36 is filed in the clerk's office. In such proceeding the burden of proof shall be upon the  
37 taxpayer to show that the property in question is valued at more than its fair market value  
38 or that the assessment is not uniform in its application, or that the assessment is otherwise  
39 invalid or illegal, but it shall not be necessary for the taxpayer to show that intentional,  
40 systematic and ~~willful~~ *willful* discrimination has been made. The proceedings shall be  
41 conducted as an action at law before the court, sitting without a jury. The county or city  
42 attorney, or if none, the attorney for the Commonwealth, shall defend the application.

43 B. In the event it comes or is brought to the attention of the commissioner of revenue  
44 of the locality that the assessment of any tax is improper or is based on obvious error and  
45 should be corrected in order that the ends of justice may be served, and he is not able to  
46 correct it under § 58.1-3981, the commissioner of the revenue shall apply to the appropriate  
47 court, in the manner herein provided for relief of the taxpayer. Such application may  
48 include a petition for relief for any of several taxpayers.

49 § 59.1-21.12. Civil action for violation of chapter.—A. Any person who violates any  
50 provision of this chapter shall be civilly liable for liquidated damages of \$2,500 and  
51 reasonable attorney's fees, plus provable damages caused as a result of such violation, and  
52 be subject to such other remedies, legal or equitable, including injunctive relief, as may be  
53 available to the party damaged by such violation. Such action shall be brought in the  
54 circuit court of the jurisdiction wherein the franchised premises are located. For the

1 purposes of subdivisions 5 and 9 of § 59.1-21.11, a proposed transferee, assignee, or  
2 designated family member who is not approved as a dealer by a refiner shall have legal  
3 standing to challenge a refiner's compliance with the provisions of this section relating to  
4 assignment.

5 B. No action may be brought under the provisions of this chapter for a cause of action  
6 which arises more than ~~two~~ *four* years prior to the date on which such action is brought.

7 § 59.1-21.23. Remedies for violation.—(a) Any creditor who fails to comply with any  
8 requirement imposed under this chapter shall be liable to the aggrieved applicant in an  
9 amount equal to the sum of any actual damages sustained by such applicant.

10 (b) Any creditor, other than the federal or state government or any political subdivision  
11 or agency of such government, who fails to comply with any requirement imposed under  
12 this chapter shall be liable to the aggrieved applicant for punitive damages in an amount  
13 not greater than \$10,000, as determined by the court, in addition to any actual damages  
14 provided in subsection (a) of this section.

15 (c) Upon application by an aggrieved applicant, a court of competent jurisdiction may  
16 grant such equitable and declaratory relief as is necessary to enforce the requirements  
17 imposed under this chapter.

18 (d) In the case of any successful action to enforce the foregoing liability, the costs of  
19 the action, together with the reasonable attorney's fee as determined by the court shall be  
20 added to any damages awarded by the court under the provisions of subsections (a), (b)  
21 and (c) of this section.

22 (e) Any action under this chapter may be brought in any court of competent  
23 jurisdiction within ~~two~~ *four* years from the date of the occurrence of the violation.

24 § 59.1-207.8. Protection against defective agricultural equipment; applicability of  
25 chapter.—A. If agricultural equipment does not conform to all applicable express written  
26 warranties, and the consumer reports the nonconformity to the manufacturer, its agent or  
27 its authorized dealer during the term of such express written warranties or during the  
28 period of one year following the date of original delivery of the equipment to the first  
29 consumer, whichever is the earlier date, the manufacturer, its agent or its authorized  
30 dealers shall make such repairs as are necessary to conform the equipment to such  
31 express written warranties, notwithstanding the fact that such repairs are made after the  
32 expiration of such term or such one-year period.

33 B. If the manufacturer or its authorized dealers do not conform the equipment to any  
34 applicable express written warranty by repairing or correcting any defect or condition  
35 which substantially impairs the use and market value of the equipment to the consumer  
36 after a reasonable number of attempts, the manufacturer or its authorized dealer shall  
37 replace the equipment with comparable equipment acceptable to the consumer, charging  
38 the consumer only a reasonable allowance for the consumer's prior use of the equipment,  
39 or accept the return of the equipment from the consumer and refund to the consumer the  
40 cash purchase price, including sales tax, license fees, registration fees and any similar  
41 governmental charges, less such a reasonable allowance for prior use. Refunds shall be  
42 made to the consumer and lien holder or holder of a security interest, if any, as their  
43 interests may appear.

44 The reasonable allowance for prior use, which shall be no less than the fair rental  
45 value of the equipment, shall be the sum of (i) that amount attributable to use by the (i)  
46 consumer or others prior to the consumer's first report of the nonconformity to the  
47 manufacturer or its authorized dealers, (ii) that amount attributable to use by the  
48 consumer or others during any period subsequent to such report when the vehicle is not  
49 out of service by reason of repair of the reported nonconformity, and (iii) that amount  
50 attributable to use by the consumer of equipment provided by the manufacturer or its  
51 authorized dealers while the equipment is out of service by reason of repair of the  
52 reported nonconformity.

53 C. For purposes of this chapter, it shall be presumed that a reasonable number of  
54 attempts have been undertaken to conform equipment to the applicable express written

1 warranties if, within the express written warranty term or during the ~~period of one year~~  
2 following the date of the original delivery of the equipment to the first consumer,  
3 whichever is the earlier date, (i) the same nonconformity has been subject to repair four  
4 or more times by the manufacturer or its authorized dealers, but such nonconformity  
5 continues to exist or (ii) the equipment is out of service by reason of repair for a  
6 cumulative total of thirty or more calendar days. However, those days shall not be counted  
7 when the consumer has been provided by the manufacturer or its authorized dealers with  
8 the use of other equipment which performs the same function or has ~~been offered~~ the use  
9 of such equipment.

10 The term of an express written warranty, such one-year period, and such thirty-day  
11 period shall be extended by any period of time during which repair services are not  
12 available to the consumer because of war, invasion, strike ; or fire, flood, or other natural  
13 disasters.

14 D. In no event shall the presumption provided in this section apply against a  
15 manufacturer unless the manufacturer has received prior direct written notification from or  
16 on behalf of the consumer and been offered an opportunity to cure the alleged defect. If  
17 the address of the manufacturer is not readily available to the consumer, such written  
18 notification shall be mailed to an authorized dealer. The authorized dealer shall upon  
19 receipt forward such notification to the manufacturer.

20 E. It shall be an affirmative defense to any claim under this chapter that (i) an alleged  
21 nonconformity does not substantially impair such use and market value or (ii) a  
22 nonconformity is the result of abuse or neglect, or of modifications or alterations of the  
23 equipment not authorized by the manufacturer.

24 F. Any action brought under this chapter shall be commenced within ~~six months~~ *four*  
25 *years* following (i) expiration of the express written warranty term ; or (ii) eighteen  
26 months following the date of the original delivery of the equipment to the consumer,  
27 whichever is the later date.

28 G. This chapter shall apply to agricultural equipment sold after January 1, 1985.

29 H. Nothing in this chapter shall in any way limit or impair the rights or remedies  
30 which are otherwise available to a consumer under any other law.

31 I. Any consumer who suffers a loss by reason of a violation of any provision of this  
32 chapter may bring a civil action to enforce such provision.

33 § 59.1-207.16. Action to be brought within certain time.—Any action brought under this  
34 chapter shall be commenced within the lemon law rights period following the date of  
35 original delivery of the motor vehicle to the consumer; however, any consumer whose good  
36 faith attempts to settle the dispute have not resulted in the satisfactory correction or repair  
37 of the nonconformity, replacement of the motor vehicle or refund to the consumer of the  
38 amount described in subdivision 2 of subsection A of § 59.1-207.13 ; shall have ~~twelve~~  
39 ~~months~~ *four years* from the date of the final action taken by the manufacturer in its  
40 dispute settlement procedure or within the lemon law rights period, whichever is longer, to  
41 file an action in the proper court, provided the consumer has rejected the manufacturer's  
42 final action.

43 § 59.1-340. Statute of limitations.—An action for misappropriation shall be brought within  
44 ~~three~~ *four* years after the misappropriation is discovered or by the exercise of reasonable  
45 diligence should have been discovered. For the purposes of this section, a continuing  
46 misappropriation constitutes a single claim.

47 § 60.2-514. Limitation on proceeding to establish liability for taxes.—No suit or  
48 proceeding for the purpose of establishing liability for taxes under this chapter shall be  
49 begun for any period occurring more than ~~three~~ *four* years prior to January 1 of the year  
50 within which such suit or proceeding is instituted. However, this section shall not apply in  
51 any case of willful attempt in any manner to defeat or evade the payment of any  
52 contributions due under this chapter. A proceeding shall be deemed to have been instituted  
53 or begun upon the date of issuance of an order by the Commission directing a hearing to  
54 be held to determine liability or nonliability, under this chapter, of an employing unit, or



1 upon the date notice of the establishment of liability is mailed to the last known address of  
2 the employing unit. The order or notice mentioned herein shall be deemed to have been  
3 issued on the date such order or notice is mailed to the last known address of the  
4 employing unit.

5 § 64.1-179. Order to creditors to show cause against distribution of estate to legatees or  
6 distributees; their liability to refund.—When a report of the accounts of any personal  
7 representative and of the debts and demands against his decedent's estate has been filed in  
8 the office of a clerk of a court, whether under §§ 64.1-171 and 64.1-172 or in a suit in  
9 chancery, the court, after six months from the qualification of the personal representative,  
10 may, on motion of the personal representative, or a successor or substitute personal  
11 representative, or on motion of a legatee or distributee of his decedent, make an order for  
12 the creditors and all other persons interested in the estate of the decedent to show cause  
13 on some day to be named in the order against the payment and delivery of the estate of  
14 the decedent to his legatees or distributees. A copy of the order shall be published once a  
15 week for two successive weeks, in one or more newspapers, as the court directs. On or  
16 after the day named in the order, the court may order the payment and delivery to the  
17 legatees or distributees of the whole or a part of the money and other estate not before  
18 distributed, with or without a refunding bond, as it prescribes. However, every legatee or  
19 distributee to whom any such payment or delivery is made, and his representatives, may,  
20 in a suit brought against him within ~~five~~ *four* years afterward, be adjudged to refund a due  
21 proportion of any claims enforceable against the decedent or his estate which have been  
22 finally allowed by the commissioner of accounts or the court, or which were not presented  
23 to the commissioner of accounts, and the costs attending their recovery. In the event any  
24 claim shall become known to the fiduciary after the notice for debts and demands but  
25 prior to the entry of an order of distribution, the claimant, if the claim is disputed, shall  
26 be given notice in the form provided in § 64.1-171 and the order of distribution shall not  
27 be entered until after expiration of ten days from the giving of such notice. If the claimant  
28 shall, within such ten-day period, indicate his desire to pursue the claim, the commissioner  
29 shall schedule a date for hearing the claim and for reporting thereon if action thereon is  
30 contemplated under § 64.1-171.

31 Any such personal representative who has in good faith complied with the provisions of  
32 this section and has, in compliance with or, as subsequently approved by, the order of the  
33 court, paid and delivered the money or other estate in his hands to whomsoever the court  
34 has adjudged entitled thereto shall be fully protected against the demands of creditors and  
35 all other persons.

36 Any such personal representative who has in good faith complied with the provisions of  
37 this section and has, in compliance with, or as subsequently approved by, the order of the  
38 court, paid and delivered the money or other estate in his hands to whomsoever the court  
39 has adjudged entitled thereto, even if such distribution shall be prior to the expiration of  
40 the period of one year provided in §§ 64.1-13, 64.1-89, 64.1-96 or § 64.1-151.5, shall be fully  
41 protected against the demands of spouses, persons seeking to impeach the will or establish  
42 another will, or purchasers of real estate from the personal representative, provided that  
43 the personal representative shall have contacted any surviving spouse known to it having  
44 rights of renunciation and ascertained that he had no plan to renounce the will, such intent  
45 to be stated in writing in the case of renunciation under § 64.1-13, and that the personal  
46 representative shall not have been notified in writing of any person's intent to impeach the  
47 will or establish a later will in the case of persons claiming under § 64.1-89 or § 64.1-96 or  
48 under a later will.

49 In the case of such distribution prior to the expiration of such one-year period, the  
50 personal representative shall take refunding bonds, without surety, to the next of kin or  
51 legatees to whom distribution is made, to protect against the contingencies specified in this  
52 and the preceding paragraphs.

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Official Use By Clerks	
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<b>The House of Delegates</b>	<b>Passed By The Senate</b>
without amendment <input type="checkbox"/>	without amendment <input type="checkbox"/>
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Date: _____	Date: _____
_____ Clerk of the House of Delegates	_____ Clerk of the Senate

## HOUSE BILL NO. 1996

Offered January 26, 1993

A BILL to amend and reenact §§ 8.01-228, 8.01-229, 8.01-230, 8.01-243, 8.01-243.1, 8.01-244, and 8.01-246 of the Code of Virginia and to repeal §§ 8.01-248 and 8.01-249 of the Code of Virginia, relating to statutes of limitations; tolling; accrual.

Patrons—Cohen and Cranwell

Referred to the Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 8.01-228, 8.01-229, 8.01-230, 8.01-243, 8.01-243.1, 8.01-244, and 8.01-246 of the Code of Virginia are amended and reenacted as follows:

§ 8.01-228. Statute of limitations generally.—Every action for which a limitation period is prescribed by law ~~must shall~~ be commenced within the period prescribed in this chapter ~~four years after the cause of action accrues~~ unless otherwise specifically provided in this Code.

As used in this chapter, the term "personal action" shall include an action wherein a judgment for money is sought, whether for injury or damages to person or property.

§ 8.01-229. Suspension or tolling of statute of limitations; effect of disabilities; death; injunction; prevention of service by defendant; dismissal, nonsuit or abatement; devise for payment of debts; new promises; debts proved in creditors' suits; third-party claims; fraud.—A. Disabilities which toll the statute of limitations. - Except as otherwise specifically provided in §§ 8.01-237, 8.01-241, 8.01-242, 8.01-243, 8.01-243.1 and other provisions of this Code :

1. If a person entitled to bring any action is at the time the cause of action accrues an infant, except if such infant has been emancipated pursuant to Article 15 (§ 16.1-331 et seq.) of Chapter 11 of Title 16.1, or of unsound mind, such person may bring it within the prescribed limitation period after such disability is removed; or

2. After a cause of action accrues,

a. If an infant becomes entitled to bring such action, the time during which he is within the age of minority shall not be counted as any part of the period within which the action must be brought except as to any such period during which the infant has been judicially declared emancipated; or

b. If a person entitled to bring such action becomes of unsound mind, the time during which he is of unsound mind shall not be computed as any part of the period within which the action must be brought, except where a guardian or committee is appointed for such person in which case an action may be commenced by such committee or guardian before the expiration of the applicable period of limitation or within one year after his qualification as such, whichever occurs later.

For the purposes of subdivisions 1 and 2 of this subsection, a person shall be deemed of unsound mind if he is adjudged insane by a court of competent jurisdiction or to be mentally incapable of rationally conducting his own affairs, or if it shall otherwise appear appears to the court or jury determining the issue that such person is or was so mentally incapable of rationally conducting his own affairs within the prescribed limitation period.

3. If a convict is or becomes entitled to bring an action against his committee, the time during which he is incarcerated shall not be counted as any part of the period within which the action must be brought.

B. Effect of death of a party. - The death of a person entitled to bring an action or of a person against whom an action may be brought shall toll the statute of limitations as follows:

1. Death of person entitled to bring a personal action. - If a person entitled to bring a personal action dies with no such action pending before the expiration of the limitation period for commencement thereof, then an action may be commenced by the decedent's

1 personal representative before the expiration of the limitation period including the  
2 limitation period as provided by subdivision E 3 or within one year after his qualification  
3 as personal representative, whichever occurs later.

4 2. Death of person against whom personal action may be brought. - a. If a person  
5 against whom a personal action may be brought dies before the commencement of such  
6 action and before the expiration of the limitation period for commencement thereof, then  
7 a claim may be filed against the decedent's estate or an action may be commenced against  
8 the decedent's personal representative before the expiration of the applicable limitation  
9 period or within one year after the qualification of such personal representative, whichever  
10 occurs later.

11 b. If a person against whom a personal action may be brought dies before suit papers  
12 naming such person as defendant have been filed with the court, then such suit papers  
13 may be amended to substitute the decedent's personal representative as party defendant  
14 before the expiration of the applicable limitation period or within one year after the date  
15 such suit papers were filed with the court, whichever occurs later, and such suit papers  
16 shall be taken as properly filed.

17 3. Effect of death on actions for recovery of realty, or a proceeding for enforcement of  
18 certain liens relating to realty. - Upon the death of any person in whose favor or against  
19 whom an action for recovery of realty, or a proceeding for enforcement of certain liens  
20 relating to realty, may be brought, such right of action shall accrue to or against his  
21 successors in interest as provided in Article 2 (§ 8.01-236 et seq.) of this chapter.

22 4. Accrual of a personal cause of action against the estate of any person subsequent to  
23 such person's death. - If a personal cause of action against a decedent accrues subsequent  
24 to his death, an action may be brought against the decedent's personal representative or a  
25 claim thereon may be filed against the estate of such decedent before the expiration of the  
26 applicable limitation period or within two years after the qualification of the decedent's  
27 personal representative, whichever occurs later.

28 5. Accrual of a personal cause of action in favor of decedent. - If a person dies before  
29 a personal cause of action which survives would have accrued to him, if he had continued  
30 to live, then an action may be commenced by such decedent's personal representative  
31 before the expiration of the applicable limitation period or within one year after the  
32 qualification of such personal representative, whichever occurs later.

33 6. Delayed qualification of personal representative. - If there is an interval of more  
34 than one year between the death of any person in whose favor or against whom a cause of  
35 action has accrued or shall subsequently accrue and the qualification of such person's  
36 personal representative, such personal representative shall, for the purposes of this chapter,  
37 be deemed to have qualified on the last day of such period of one year.

38 C. Suspension during injunctions. - When the commencement of any action is stayed by  
39 injunction, the time of the continuance of the injunction shall not be computed as any part  
40 of the period within which the action must be brought.

41 D. Obstruction of filing by defendant. - When the filing of an action is obstructed by a  
42 defendant's (i) filing a petition in bankruptcy or filing a petition for an extension or  
43 arrangement under the United States Bankruptcy Act or (ii) using any other direct or  
44 indirect means to obstruct the filing of an action, then the time that such obstruction has  
45 continued shall not be counted as any part of the period within which the action must be  
46 brought.

47 E. Dismissal, abatement, or nonsuit.

48 1. Except as provided in subdivision 3 of this subsection, if any action is commenced  
49 within the prescribed limitation period and for any cause abates or is dismissed without  
50 determining the merits, the time such action is pending shall not be computed as part of  
51 the period within which such action may be brought, and another action may be brought  
52 within the remaining period.

53 2. If a judgment or decree is rendered for the plaintiff in any action commenced within  
54 the prescribed limitation period and such judgment or decree is arrested or reversed upon

1 a ground which does not preclude a new action for the same cause, or if there is occasion  
2 to bring a new action by reason of the loss or destruction of any of the papers or records  
3 in a former action which was commenced within the prescribed limitation period, then a  
4 new action may be brought within one year after such arrest or reversal or such loss or  
5 destruction, but not after.

6 3. If a plaintiff suffers a voluntary nonsuit as prescribed in § 8.01-380, the statute of  
7 limitations with respect to such action shall be tolled by the commencement of the  
8 nonsuited action, and the plaintiff may recommence his action within six months from the  
9 date of the order entered by the court, or within the original period of limitation, or within  
10 the limitation period as provided by subdivision B 1, whichever period is longer. This  
11 tolling provision shall apply irrespective of whether the action is originally filed in a  
12 federal or a state court and recommenced in any other court, and shall apply to all  
13 actions irrespective of whether they arise under common law or statute.

14 F. Effect of devise for payment of debts. - No provision in the will of any testator  
15 devising his real estate, or any part thereof, subject to the payment of his debts or  
16 charging the same therewith, or containing any other provision for the payment of debts,  
17 shall prevent this chapter from operating against such debts, unless it plainly appears to be  
18 the testator's intent that it shall not so operate.

19 G. Effect of new promise in writing.

20 1. If any person against whom a right of action has accrued on any contract, other  
21 than a judgment or recognizance, promises, by writing signed by him or his agent, payment  
22 of money on such contract, the person to whom the right has accrued may maintain an  
23 action for the money so promised, within such number of years after such promise as it  
24 might be maintained if such promise were the original cause of action. An acknowledgment  
25 in writing, from which a promise of payment may be implied, shall be deemed to be such  
26 promise within the meaning of this subsection.

27 2. The plaintiff may sue on the new promise described in subdivision 1 of this  
28 subsection or on the original cause of action, except that when the new promise is of such  
29 a nature as to merge the original cause of action then the action shall be only on the new  
30 promise.

31 H. Suspension of limitations in creditors' suits. - When an action is commenced as a  
32 general creditors' action, or as a general lien creditors' action, or as an action to enforce a  
33 mechanics' lien, the running of the statute of limitations shall be suspended as to debts  
34 provable in such action from the commencement of the action, provided they are brought  
35 in before the commissioner in chancery under the first reference for an account of debts;  
36 but as to claims not so brought in the statute shall continue to run, without interruption by  
37 reason either of the commencement of the action or of the order for an account, until a  
38 later order for an account, under which they do come in, or they are asserted by petition  
39 or independent action.

40 In actions not instituted originally either as general creditors' actions, or as general lien  
41 creditors' actions, but which become such by subsequent proceedings, the statute of  
42 limitations shall be suspended by an order of reference for an account of debts or of liens  
43 only as to those creditors who come in and prove their claims under the order. As to  
44 creditors who come in afterwards by petition or under an order of recommittal, or a later  
45 order of reference for an account, the statute shall continue to run without interruption by  
46 reason of previous orders until filing of the petition, or until the date of the reference  
47 under which they prove their claims, as the case may be.

48 I. *Third-party claims.* - When an action is commenced within a period of thirty days  
49 prior to the expiration of the limitation period for commencement thereof and the  
50 defending party or parties desire to institute an action as third-party plaintiff against one or  
51 more persons not party to the original action, the running of the period of limitation  
52 against such action shall be suspended as to such new party for a period of sixty days  
53 from the expiration of the applicable limitation period.

54 J. *Effect of fraud, misrepresentation or concealment.* - Where fraud, intentional

1 *misrepresentation or concealment of a material fact prevents discovery of (i) the fact that*  
*injury or damage was sustained, (ii) the causal connection between the injury or damage*  
*and the act or omission complained of, (iii) the fact that the act or omission complained*  
 4 *of was wrongful or in breach of legal duty or (iv) the identity of the party alleged to have*  
 5 *caused the injury or damage within the applicable limitations period, the time during*  
 6 *which such prevention continued shall not be counted as any part of the period within*  
 7 *which the action must be brought.*

8 § 8.01-230. Accrual of cause of action.— *In every action for which a limitation period is*  
 9 *prescribed, the A cause of action shall be deemed to accrue and the prescribed limitation*  
 10 *period shall begin to run from the date the injury or damage for which recovery is sought*  
 11 *is sustained in the case of injury to the person, when the breach of contract or duty occurs*  
 12 *in the case of damage to property and not when the resulting damage is discovered, except*  
 13 *where as follows:*

14 1. *Where the relief sought is solely equitable or where ;*

15 2. *Where otherwise specifically provided under § 8.01-233, subsection C of § 8.01-245, §§*  
 16 *8.01-249, 8.01-250 or other statute. ;*

17 3. *In actions for fraud or mistake, and in actions for rescission of contract for undue*  
 18 *influence, when the fraud, mistake or undue influence is discovered or, by the exercise of*  
 19 *due diligence, reasonably should have been discovered;*

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

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

25 6. *In actions on contracts for the sale of goods, the period shall begin to run when the*  
*breach occurs as provided in § 8.2-725;*

26 7. *In actions for injury to the person resulting from exposure to asbestos or products*  
 27 *containing asbestos, when a diagnosis of asbestosis, interstitial fibrosis, mesothelioma, or*  
 28 *other disabling asbestos-related injury or disease is first communicated to the person or his*  
 29 *agent by a physician. However, no such action may be brought more than four years*  
 30 *after the death of such person;*

31 8. *In actions for injury to the person, whatever the theory of recovery, resulting from*  
 32 *sexual abuse occurring during the infancy or incompetency of the person, the period shall*  
 33 *begin to run when the fact of the injury and its causal connection to the sexual abuse is*  
 34 *first communicated to the person by a licensed physician, psychologist, or clinical*  
 35 *psychologist. However, no such action may be brought more than ten years after the later*  
 36 *of (i) the last act by the same perpetrator which was part of a common scheme or plan*  
 37 *of abuse or (ii) removal of the disability of infancy or incompetency. As used in this*  
 38 *subdivision, "sexual abuse" means sexual abuse as defined in subdivision 6 of § 18.2-67.10*  
 39 *and acts constituting rape, sodomy, inanimate object sexual penetration or sexual battery*  
 40 *as defined in Article 7 (§ 18.2-61 et seq.) of Chapter 4 of Title 18.2;*

41 9. *In products liability actions against parties other than health care providers as*  
 42 *defined in § 8.01-581.1 for injury to the person resulting from or arising as a result of the*  
 43 *implantation of any prosthetic device for breast augmentation or reconstruction, the period*  
 44 *shall begin to run when the fact of the injury and its causal connection to the*  
 45 *implantation is first communicated to the person by a physician;*

46 10. *In actions for contribution or for indemnification, the period shall begin to run*  
 47 *when the contributtee or the indemnitee has paid or discharged the obligation, provided*  
 48 *that a third-party claim permitted by subsection A of § 8.01-281 and the Rules of the*  
 49 *Supreme Court may be asserted before the cause of action is deemed to accrue hereunder;*

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

53 12. *In actions by a partner against another for settlement of the partnership account*  
 54

1 *or in actions upon accounts concerning the trade of merchandise between merchants, their*  
 2 *factors or servants, the period shall begin to run from the date of cessation of the*  
 3 *dealings in which they are interested together.*

4 § 8.01-243. Personal action for injury to person or property generally.—A. Unless  
 5 otherwise provided in this section or by other statute, every action for personal injuries,  
 6 whatever the theory of recovery, and every action for damages resulting from fraud, shall  
 7 be brought within ~~two~~ *four* years after the cause of action accrues.

8 B. Every action for injury to property, including actions by a parent or guardian of an  
 9 infant against a tort-feasor for expenses of curing or attempting to cure such infant from  
 10 the result of a personal injury or loss of services of such infant, shall be brought within  
 11 ~~five~~ *four* years after the cause of action accrues.

12 C. The ~~two~~ *four* -year limitations period specified in subsection A shall be extended in  
 13 actions for malpractice against a health care provider as follows:

14 1. In cases arising out of a foreign object having no therapeutic or diagnostic effect  
 15 being left in a patient's body, for a period of one year from the date the object is  
 16 discovered or reasonably should have been discovered; and

17 2. In cases in which fraud, concealment or intentional misrepresentation prevented  
 18 discovery of the injury within the ~~two~~ *four* -year period, for one year from the date the  
 19 injury is discovered or, by the exercise of due diligence, reasonably should have been  
 20 discovered.

21 However, the provisions of this subsection shall not apply to extend the limitations  
 22 period beyond ten years from the date the cause of action accrues, except that the  
 23 provisions of § 8.01-229 A 2 shall apply to toll the statute of limitations in actions brought  
 24 by or on behalf of a person under a disability.

25 § 8.01-243.1. Actions for medical malpractice; minors.—Notwithstanding the provisions of  
 26 § 8.01-229 A and except as provided in subsection C of § 8.01-243, any cause of action  
 27 accruing on or after July 1, 1987, on behalf of a person who was a minor at the time the  
 28 cause of action accrued for personal injury or death against a health care provider  
 29 pursuant to Chapter 21.1 (§ 8.01-581.1 et seq.) shall be commenced within ~~two~~ *four* years of  
 30 the date of the last act or omission giving rise to the cause of action except that if the  
 31 minor was less than eight years of age at the time of the occurrence of the malpractice,  
 32 he shall have until his tenth birthday to commence an action. ~~Any minor who is ten years~~  
 33 ~~of age or older on or before July 1, 1987, shall have no less than two years from that date~~  
 34 ~~within which to commence such an action.~~

35 § 8.01-244. Actions for wrongful death; limitation.—A. Notwithstanding the provisions of §  
 36 8.01-229 B, if a person entitled to bring an action for personal injury dies as a result of  
 37 such injury with no such action pending before the expiration of ~~two~~ *four* years next after  
 38 the cause of action shall have accrued, then an action under § 8.01-50 may be commenced  
 39 within the time limits specified in subsection B of this section.

40 B. Every action under § 8.01-50 shall be brought by the personal representative of the  
 41 decedent within ~~two~~ *four* years after the death of the injured person. If any such action is  
 42 brought within such period of ~~two~~ *four* years after such person's death and for any cause  
 43 abates or is dismissed without determining the merits of such action, the time such action  
 44 is pending shall not be counted as any part of such period of ~~two~~ *four* years and another  
 45 action may be brought within the remaining period of such ~~two~~ *four* years as if such  
 46 former action had not been instituted. However, if a plaintiff suffers a voluntary nonsuit  
 47 pursuant to § 8.01-380, the nonsuit shall not be deemed an abatement nor a dismissal  
 48 pursuant to this subsection, and the provisions of subdivision E 3 of § 8.01-229 shall apply  
 49 to such a nonsuited action.

50 § 8.01-246. Actions based on contracts.— ~~Subject to the provisions of § 8.01-243~~  
 51 ~~regarding injuries to person and property and of § 8.01-245 regarding the application of~~  
 52 ~~limitations to fiduciaries, and their bonds, actions~~ *Actions* founded upon a contract, other  
 53 than actions on a judgment or decree, shall be brought within the following number of  
 54 years next after the cause of action shall have accrued:

1 1. In actions or upon a recognizance, except recognizance of bail in a civil suit, within  
2 ten years; and in actions or motions upon a recognizance of bail in a civil suit, within  
3 three years, omitting from the computation of such three years such time as the right to  
4 sue out such execution shall have been suspended by injunction, supersedeas or other  
5 process;

6 2. In actions on any contract which is not otherwise specified and which is in writing  
7 and signed by the party to be charged thereby, or by his agent, within five years four  
8 years after the cause of action accrues whether such writing be the contract is written or  
9 oral, express or implied, or under seal or not ;

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

14 4. In actions upon any unwritten contract, express or implied, within three years ,  
15 omitting from the computation of the four years such time as the right to sue out an  
16 execution on a recognizance is suspended by injunction, supercedeas or other process .

17 Provided that as As to any action to which § 8.2-725 of the Uniform Commercial Code  
18 is applicable, that section shall be controlling except that in products liability actions for  
19 injury to person and for injury to property, other than the property subject to contract, the  
20 limitation prescribed in § 8.01-243 shall apply .

21 2. That §§ 8.01-248 and 8.01-249 of the Code of Virginia are repealed.

22 3. That no action, suit, scire facias or other proceeding which is pending before July 1,  
23 1993, shall be barred by this act, and any action, suit, scire facias or other proceeding so  
24 pending shall be subject to the same limitation, if any, which would have been applied if  
25 this act had not been enacted. If a cause of action, as to which no action, suit, scire facias,  
26 or other proceeding is pending, exists before July 1, 1993, then this act shall not apply and  
27 the limitation as to such cause of action shall be the same, if any, as would apply had this  
28 act not been enacted. Any new limitation period imposed by this act, where no limitation  
29 previously existed or which is different from the limitation existing before this act was  
30 enacted, shall apply only to causes or rights of action accruing on or after July 1, 1993.

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<b>Official Use By Clerks</b>	
<b>Passed By</b>	<b>Passed By The Senate</b>
The House of Delegates	
without amendment <input type="checkbox"/>	without amendment <input type="checkbox"/>
with amendment <input type="checkbox"/>	with amendment <input type="checkbox"/>
substitute <input type="checkbox"/>	substitute <input type="checkbox"/>
substitute w/amdt <input type="checkbox"/>	substitute w/amdt <input type="checkbox"/>
Date: _____	Date: _____
Clerk of the House of Delegates	Clerk of the Senate



**Statutes of Limitation**

- Assume: Unitary SOL applies to any civil action seeking recovery of money damages.
- § 6.1-109: Creditors' claims against insolvent bank barred after **6 months** of publication of last notice, upon entry of court order.
- § 6.1-330.52: Suit to recover money or other value given in consideration of a contract or security made by means of illegal currency must be brought within **1 year** of payment.
- § 6.1-330.57: Suit to recover double usurious interest paid must be brought within **2 years**.
- § 8.01-40: Suit to recover damages for unauthorized commercial use of name or picture cannot be brought more than **20 years** after death of the person whose name or picture was used (i.e., 20 year repose).
- Should repose be changed to 10 years?
- § 8.01-40.1: Suit for damages resulting from a violation of the computer crimes act must be brought before earlier of **5 years** from last act or **2 years** from discovery.
- Is this a 2 year SOL with a 5 year repose? Should repose be changed to 10 years?
- § 8.01-40.2: Action for damages resulting from a unauthorized FAX transmission must be brought within **2 years**.
- §§ 8.01-124 and 8.01-236: Action for unlawful entry and detainer must be brought within **3 years** of entry or detainer.

NOTE: Includes an accrual rule.

§§ 8.01-195.6  
and 8.01-195.7:

Claim against state under the Tort Claims Act is barred unless (i) notice of claim is filed within **1 year** of accrual and (ii) an action is filed more than **6 months** but less than **18 months** after the notice is filed.

- Should the notice of claim requirement be extended?
- Should all notice of claim provisions be deleted?

§ 8.01-236: Action to recover land must be brought within **15 years** of accrual of right to enter or bring action.

NOTE: Not an action for money judgment.  
SEE: § 8.01-255.1

§ 8.01-239: Action to recover ground rents reserved upon real estate must be commenced within **10 years** of the time they become due.

§ 8.01-240: Suit to enforce a lien for water, sewer or sidewalk assessments must be brought within **10 years** of recordation of deed and **20 years** of docketing assessment.

NOTE: This section includes an accrual rule.

§§ 8.01-241  
and 8.01-242:

Action to enforce a deed of trust or mortgage or a lien to secure unpaid purchase money must be brought within **20 years** of the time when the last maturing obligation became due, without regard to any provisions for acceleration; parties may contract for an extension, which must be recorded. If no date is given for maturation, **20 years** runs from the date of the deed, mortgage or lien.

§ 8.01-244: Action for wrongful death must be brought within **2 years** of death.

§ 8.01-245: Action on bond of a fiduciary must be brought within **10 years** of accrual; suit to "surcharge or falsify" a fiduciaries account shall be brought within **10 years** of confirmation of the account; suit upon fiduciary's bond where the court has ordered payment or delivery accrues on the return day of the execution.

§ 8.01-251: Action on a judgment must be brought within **20 years** unless extended.

§ 8.01-252: Action on judgment of another state or country must be brought within **10 years** or sooner if required by the laws of the other jurisdiction.

NOTE: Since we have adopted the Uniform Enforcement of Foreign Judgments Act (§ 8.01-465.1) and the Foreign Country Money Judgments Act (§ 8.01-465.6), should all judgments be subject to the same SOL?

§ 8.01-253: Suit to avoid a voluntary conveyance (gift, assignment, etc.) because (i) no valuable consideration was given or (ii) given in consideration of marriage, must be brought within **5 years** of its recordation or, if not recorded, discovery.

NOTE: Accrual rule.

§ 8.01-254: Suit to enforce a legacy or bequest which requires payment for or a charge against real estate must be brought within **20 years** of death or time specified in the will for payment.

§ 8.01-255: Pecuniary claims against the Commonwealth (not subject to the Tort Claims Act) must be presented to the comptroller (generally) within **5 years** and an action must be brought within **3 years** of denial of claim.

§ 8.01-255.1: Action to recover land due to breach of a condition subsequent or termination of a fee simple determinable must be brought within **10 years** of the breach of termination.

§§ 8.01-255.2 and 8.01-476: Motion to obtain new execution must be made within **5 years**. (?)

§ 8.2-725: Action for breach of a sales contract under the U.C.C. must be brought within **4 years** of accrual, although parties may contractually reduce the period to no less than **1 year**.

§ 8.6-111: Action under the U.C.C. Bulk Transfers must be brought within **6 months** of the date the transferee takes possession.

§ 11-15: Person who has lost more than \$5 within a 24-hour period by betting on a game (gambling) may sue within **3 months** to recover the money or value lost.

§ 11-59: Action against surety on a performance bond must be brought within (i) **5 years** after satisfactory completion (if for VDOT) or (ii) **1 year** from completion of contract (expiration of warranties or guarantees) or discovery of defects or breach.

- § 11-60: Action on a payment bond must be brought within **1 year** of last performance.
- § 13.1-571: Suit by franchisee against franchisor for damages for unlawful cancellation (or to declare contract void) under the Retail Franchise Act must be brought within **4 years**.
- § 14.1-4: Petition by state officer (other than a constitutional officer) for wages alleged to have been wrongfully withheld by the Comptroller in repayment of indebtedness due the state must be filed within **12 months** of withholding.
- § 14.1-176: Distress, warrant or suit on a bill for fees of a state officer must be filed within **5 years**.
- § 14.1-193: Claim by witness for payment out of the state treasury must be made within **2 years**.
- § 15.1-552: Appeal to circuit court from denial of a claim against a county must be filed within **30 days** of board's decision.
- § 16.1-94.1: Action on judgment rendered in district court must be brought within **10 years** of judgment.
- § 19.2-341: Action to recover monetary penalty (other than a fine) payable to the Commonwealth or political subdivision must be brought within **20 years**, if assessed in circuit court or **10 years** if assessed in district court.
- § 33.1-192.1: Action on contract with VDOT must be brought within **12 months** of Commissioner's decision.
- § 38.2-3540: Action on group accident and insurance policy cannot be brought within **60 days** of filing proof of loss nor more than **3 years** after the filing.
- § 38.2-5013: Claim under "Bad Baby" Fund must be filed within **10 years** of birth.
- § 40.1-28.6: Action for discrimination in payment of wages due to gender must be brought within **2 years** of accrual.
- § 43-17: Suit to enforce a mechanics' lien must be filed before later of **6 months** from recordation of lien or **60 days** from termination of work.

- § 46.2-112: Civil action for tampering with odometer must be brought within **2 years**.
- § 51.5-46: Action to enforce rights under Virginians with Disabilities Act must be brought within **1 year** of violation.
- NOTE: Includes a 180-day notice of claim provision.
- § 55-70.1: Action for breach of implied warranties on new home must be brought within **2 years** of breach.
- § 55-79.79: Action for breach of warranty against structural defects under the condominium act must be filed within **5 years** after warranty period began.
- § 55-79.84: Suit to enforce lien on condo must be brought within **6 months** of filing of lien.
- § 55-230: Rent may be distrained under the Landlord Tenant Act within **5 years** after it becomes due.
- § 55-248: Right of reentry by landlord must be claimed within **2 years**.
- § 55-335.11: Action to enforce liability under the Credit Service Business Act must be brought within **2 years**.
- NOTE: Includes a discovery accrual where defendants misrepresentation prevents discovery.
- § 55-383: Proceeding to challenge accuracy of public offering or contract under the Time Share Sales Act must be commenced within **2 years** of date of contract with extension of 2 years if enforcement of services-for-payment provision is sought.
- § 55-491: Action for breach of warranty under Cooperative Act must be within **6 years** (or shorter period, not less than 2 years, agreed to by the parties).
- § 57-26: Action for damage to adjacent land upon establishment of cemetery must be brought within **1 year** of establishment.
- § 58.1-104: Except for income tax and retail sales and use tax, taxes must be assessed within **3 years** of due date or, if fraud was involved, **6 years**.

- § 58.1-634: Action to collect retail sales and use tax must be commenced within **3 years** of due date or, if fraud was involved, **6 years**.
- § 58.1-1802.1: Action by State Tax Commissioner to enforce payment of tax due the Department, **20 years** from assessment.
- §58.1-3980: Action by taxpayer aggrieved by local tax assessment must be commenced by the later of **1 year** from the date of the assessment or **3 years** from the last day of the tax year for which the assessment is made.
- § 59.1-9.14: Action for injury to business or property resulting from an antitrust violation must be brought within later of **4 years** of accrual or **1 year** of conclusion of a governmental action for injunctive relief or civil penalties.
- § 59.1-21.12: Action for liquidated damages under Virginia Home Solicitation Sales Act must be brought within **2 years** of accrual.
- § 59.1-21.23: Action for damages sustained by violation of the Equal Credit Opportunity Act must be brought within **2 years** of violation.
- § 59.1-207.8: Action for breach of written warranty on agricultural equipment (self-propelled vehicle) must be brought within **6 months** of later of (i) expiration of the written warranty or (ii) **18 months** of delivery.
- § 59.1-207.16: Action to enforce rights under the "Lemon Law" must be brought within longer or (i) lemon law rights period (**18 months** after date of original delivery) or (ii) **12 months** of final action taken in dispute settlement proceedings.
- § 59.1-340: Action for misappropriation of trade secrets must be brought within **3 years**.
- NOTE: Includes a discovery accrual provision and a continuing tort rule.
- § 60.2-514: Suit to establish liability for unemployment compensation taxes must be brought within **3 years** (i.e., judgment can only relate to the 3 year period immediately preceding January 1 of the year in which suit is filed).
- § 58.1-1825 (state) and  
§ 58.1-3984 (local):  
3 years to file with court to challenge tax assessment.

- § 64.1-13: Surviving spouse must claim elective share within 6 months.
- § 64.1-89: Bill to impeach or establish a will must be filed within 1 year.
- § 64.1-179: Suit against legatee or distributee must be commenced within **5 years** of payment or delivery.
- § 65.1-52: Workers' Comp. Claim for injurious exposure must be commenced within earlier of **3 years** from communication or **5 years** from last exposure for coal-miner pneumoconiosis; **2 years** from communication or **7 years** from last exposure for byssinosis; **2 years** from diagnosis for asbestosis; **2 years** from positive HIV test for AIDS; **2 years** from communication or **5 years** from last exposure for other occupational diseases.

### Miscellaneous Provisions

- § 6.1-110.11: Extends SOL for 6 months on all claims accruing to and filed by the FDIC as receiver.
- § 8.01-231: SOL does not run against the state.
- Should it?
- [See § 23-28.62:2 - State Education Assistance Authority deemed an agent of the state]
- § 8.01-237: Establishes an absolute repose of 25 years in an action to recover land; disabilities do not toll limitations period beyond 25 years.
- Should they?
  - What is the SOL on enforcement of civil penalties? (e.g., §§ 3.1-22.25, 10.1-1455, 62.1-44.32)
- § 55-468: Tolls the SOL in action by a cooperative association during period of declarant's control.
- § 59.1-204.1: SOL is tolled during period that governmental agency action under the Consumer Protection Act is pending.
- § 65.1-79: Tolling for incompetency or minority applies in workers' comp cases only if there is no guardian, committee or trustee for the person.
- § 65.1-87.1: SOL tolled on comp claim during period when employer makes voluntary payments as compensation for injury.
- § 38.1-314: Insurance policy may not reduce time within which action may be brought to less than 1 year.
- § 38.2-5005: SOL tolled by filing a claim with the "bad baby" fund.