

**FINAL REPORT OF THE
JOINT SUBCOMMITTEE STUDYING**

**THE NEED FOR LIMITATION
PERIODS FOR COMPLAINTS
AGAINST REGULANTS**

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



HOUSE DOCUMENT NO. 91

**COMMONWEALTH OF VIRGINIA
RICHMOND
1994**

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**REPORT OF THE JOINT SUBCOMMITTEE ESTABLISHED
TO
STUDY THE NEED FOR LIMITATION PERIODS FOR
COMPLAINTS AGAINST REGULANTS**

**To
The Governor and the General Assembly of Virginia**

**Richmond, Virginia
April 1994**

TO: The Honorable George Allen, Governor of Virginia
and
The General Assembly of Virginia

I. STUDY AUTHORITY AND SCOPE

House Joint Resolution No. 703 (attached as Appendix A), agreed to during the 1993 Session of the General Assembly, established a joint subcommittee to examine and determine the necessity for the establishment of time limitations for bringing complaints against Department of Commerce¹ regulants which balance the goals of protecting the public and being fair to regulants. The subcommittee was comprised of five members: three members of the House of Delegates appointed by the Speaker of the house, and two members of the Senate appointed by the Senate Committee on Privileges and Elections.

¹The Department of Commerce was renamed the Department of Professional and Occupational Regulation pursuant to Chapter 499 of the 1993 Acts of Assembly.

II. BACKGROUND

A. THE DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL REGULATION

The Department of Professional and Occupational Regulation (the Department) is in the executive branch of state government, serving in the Secretariat of Commerce and Trade. Statutorily mandates in Subtitles I and II of Title 54.1 -- Professions and Occupations, the Department functions primarily through a structure of regulatory boards made up of persons appointed by the Governor. The essential duties of these boards are to: (i) establish minimum standards to obtain a license, (ii) maintain standards of conduct for license holders, and (iii) discipline license holders who violate laws or regulations pertaining to their business or occupation. The Department, through its profession-specific regulatory boards, oversees the registration, certification and licensure of 21 professions and occupations, ranging from accountants and real estate agents to barbers and branch pilots. A complete list of the regulatory boards within the Department is attached as Appendix B. The Department provides professional licensing and regulation to more than 220,000 Virginians, impacts on the ability of more than 40 percent of the Virginia workforce to earn a living, and resolves consumer complaints for more than 4,200 people annually.² The Department, as a special fund agency, performs its duties at no cost to the taxpayers of Virginia. Instead, the cost of regulation is borne by the regulants via licensing fees and renewals.

The Department's mission is best expressed in the following statutory provision:

"The right of every person to engage in any lawful profession, trade or occupation of his choice is clearly protected by both the Constitution of the United States and the Constitution of the Commonwealth of Virginia. The Commonwealth cannot abridge such rights except as a reasonable exercise of its police powers when it is clearly found that such abridgment is necessary for the preservation of the health, safety and welfare of the public.

No regulation shall be imposed upon any profession or occupation except for the exclusive purpose of protecting the public interest when:

1. The unregulated practice of the profession or occupation can harm or endanger the health, safety or welfare of the public, and the potential for harm is recognizable and not remote or dependent upon tenuous argument;
2. The practice of the profession or occupation has inherent qualities peculiar to it that distinguish it from ordinary work and labor;

² Virginia Department of Commerce 1990-92 Biennial Report.

3. The practice of the profession or occupation requires specialized skill or training and the public needs, and will benefit by, assurance of initial and continuing professional and occupational ability; and
4. The public is not effectively protected by other means.”³

Regulants of the Department are subject to disciplinary actions, including fines and suspension or revocation of licenses for violations of Title 54.1 and regulations promulgated thereunder. Regulants are required to retain transactional records and documentation for a term of years ranging from one to five years, although such transactions may give rise to disciplinary actions by the Department past the record retention date. Title 54.1 is silent on the issue of a limitation period for filing complaints against Department regulants. This is the issue addressed by the joint subcommittee.

B. OTHER REGULATORY AGENCIES' EXPERIENCE

As a basis for comparison, other regulatory agencies of the Commonwealth whose missions are comparable to the Department's were examined. These agencies are the Department of Agriculture and Consumer Services, the Virginia State Bar, and the Department of Health Professions.

The Department of Agriculture and Consumer Services has authority under the Consumer Protection Act (§ 59.1-200 et seq.) and in addition, is responsible for the regulation of charitable solicitations, health spas, membership campgrounds, travel clubs, extended service contract providers, credit service businesses, and cemeteries. Generally, record retention requirements for these programs are for the term of the contract between the consumer and the regulant, although disciplinary action by DACS may be brought years after the occurrence which gave rise to the complaint. DACS reported that it observes no limitation period, statutory or otherwise, for complaints against its regulants, although the statute of limitations for tort actions or other exigencies may have occurred which preclude the agency from opening an investigative file based on a complaint. The agency reported further that an independent evaluation is conducted after a complaint is filed to determine whether a statutory or regulatory violation has occurred.

The Virginia State Bar (VSB) is responsible for the licensure and discipline of attorneys. Like other agencies outlined in this report, VSB has no statute of limitations for complaints against its regulants. VSB reported that there is an advisory legal ethics opinion on the issue of record retention by licensed attorneys which indicates that except for trust accounts (five-year retention

³ § 54.1-100 of the *Code of Virginia, Regulation of professions and occupations.*

required) attorneys are urged to keep records for as long as required by their malpractice carriers. Additionally, VSB affirmatively advises its regulants that there is no statute of limitations for complaints against them.

The Department of Health Professions (DHP), as its name suggests, is responsible for the licensure of health professionals, from physicians and dentists to psychologists and social workers. As with DACS and VSB, DHP has no limitation period for complaints and may initiate disciplinary action against one of its regulants years after the conduct complained of occurred. DHP does not consider the age of a case as a per se reason not to go forward. The agency reported that like DACS, an independent evaluation is conducted after a complaint is filed to determine whether a statutory or regulatory violation has occurred.

C. CRIMINAL AND CIVIL STATUTES OF LIMITATION

Criminal and civil statutes of limitation are completely artificial time periods to establish an absolute cut-off of claims and to prevent stale claims as a practical matter. From a policy perspective, a balance has been struck between the right of a claimant to bring an action against the protection of a defendant against a stale claim. In a criminal context, there is no statute of limitation for felony crimes and, with misdemeanors, the statute of limitations ranges from one to five years according to the conduct. In a civil context, actions are brought to enforce private rights of action and have several statutes of limitation based on the conduct complained of. It is important to note that § 8.01-231 of the Code of Virginia specifies that on the civil side, statutes of limitation **do not** run against the Commonwealth. A complete list of the numerous civil statutes of limitation is attached as Appendix C.

III. WORK OF THE SUBCOMMITTEE

The subcommittee met twice during 1993 to hear testimony and consider its charge under HJR 703. The work of the subcommittee culminated in a final work session at which recommendations for legislation were formulated.

A. TESTIMONY

Staff provided the joint subcommittee with an overview of the Department of Professional and Occupational Regulation and its authority over

its regulants. Additionally, the subcommittee heard from Bonnie S. Salzman, Director of the Department of Professional and Occupational Regulation, concerning the Department's investigative and enforcement activities. A summary of that information follows.

In the last two years, the Department has received 1,800 complaints against persons regulated by its various boards. A sampling of 60 complaints revealed that the average time from the transaction which gave rise to the complaint to the time when the complaint was filed with the Department was 11 months in fiscal year 92 and six months in fiscal year 93. The majority of complaints were against contractors and real estate agents.

When a complaint is made to the Department, personnel conduct an independent review of the complaint to determine if there is cause to believe that a regulatory or statutory violation has occurred. Other factors considered include the age of the complaint (*i.e.*, when the transaction occurred which gave rise to the complaint) and the availability of witnesses, records or other evidence of the transaction which may be dispositive of the complaint. If the preliminary review reveals that such evidence is no longer available, then the Department closes the complaint file without further action.

Ms. Salzman raised the concern that because the Department has such a broad spectrum of regulatory boards, a single statute of limitation may work to the disadvantage of Virginia consumers. For example, a violation by a land surveyor or real estate agent may not be discoverable until the property is transferred, typically 10 to 15 years from the date of the violation. However, a violation by a cosmetologist or contractor typically is discoverable by a consumer in a much shorter period of time (*i.e.*, one year or less), if not immediately.

The subcommittee asked Ms. Salzman to provide a statistical sampling over a three-year period of the number of complaints by board, the disposition of those complaints, and the complaint filing time on a per board basis. The following illustrations tabulate those results prepared by the Department.

Illustration I

DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL REGULATION BOARD
DECISIONS

Fiscal Years 1991, 1992, and 1993

BOARD	SAMPLE	NO VIOLATION	VIOLATION	OTHER*
Accountancy	48	7	30	11
APELSCLA**	17	5	1	11
Asbestos	20	8	5	7
Auctioneers	15	4	5	6
Barbers	4	1	2	1
Contractors	324	91	65	168
Cosmetology	55	10	17	28
Employment Agencies	4	0	2	2
Geology	1	1	0	0
Hearing Aid Specialists	1	1	0	0
Private Security***	20	3	8	9
Real Estate	184	90	43	51
Real Estate Appraisers	7	2	0	5
Water/Wastewater	2	0	1	1
TOTAL	702	223	179	300

*Other dispositions include closing based on insufficient evidence or otherwise undetermined.

**Architects, Professional Engineers, Land Surveyors, and Landscape Architects.

***Program transferred to the Department of Criminal Justice Services on July 1, 1993.

Illustration II

DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL REGULATION
COMPLAINT FILING TIME BY BOARD

Fiscal Years 1991, 1992, and 1993

BOARD	AVERAGE (DAYS)	BOARD	AVERAGE (DAYS)
Accountancy	182	Employment Agencies	214
APELSCLA	523	Geology	113
Asbestos	133	Hearing Aid Specialists	310
Auctioneers	177	Private Security	210
Barbers	86	Real Estate Appraisers	211
Contractors	352	Real Estate	291
Cosmetology	126	Water/Wastewater	161
TOTAL = 290			

Illustration III

**DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL REGULATION
DISPOSITION OF COMPLAINTS
Fiscal Years 1991, 1992, and 1993**

FILING TIME	NO VIOLATION	VIOLATION	OTHER
1 Day Through 1 Year	124	109	150
1 Year Through 2 Years	30	21	29
2 Years Through 3 Years	16	8	15
3 Years Through 4 Years	5	4	6
4 Years Through 5 Years	2	0	3
5 Years Through 6 Years	1	0	1
6 Years Through 7 Years	2	0	3
7 Years Through 8 Years	0	0	1
TOTAL	180	142	208

Illustration IV

**DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL REGULATION
DISPOSITION IN RELATION TO FILING**

DISPOSITION	AVERAGE
No Violation	295 Days
Violation	234 Days

Susan Campbell Meyer with the law firm of Mays & Valentine and representing the Virginia Association of Realtors (VAR), advised the subcommittee that VAR was the motivating force behind the study. Ms. Meyer reported that the issue was brought to the attention of VAR by its members because of several instances where complaints were not filed against regulants of the Real Estate Board for as many as 10 years after the transaction which gave rise to the complaint. Ms. Meyer argued that the notion that a regulant may adequately defend himself after the passage of such a length of time ignores evidentiary reality. Ms. Meyer noted that, by regulation, regulants of the Real Estate Board are required to keep records for three years.

B. DELIBERATIONS

Discussing the policy reasons behind statutes of limitations generally, the subcommittee pointed out that criminal statutes focus on punishment; civil statutes on restoration of the plaintiff to the status quo ante; and administrative laws on the protection of the public health, safety, and welfare. A majority of the subcommittee favored imposing a statute of limitations on complaints against regulants of the Department's various boards, believing that without a statute of limitations, people would delay in seeking redress.

The subcommittee sought to strike a balance between protection of the public health, safety and welfare and fairness to regulants against state claims.

IV. RECOMMENDATIONS

The subcommittee, by consensus, recommended that a five-year statute of limitations be imposed on the filing of complaints against regulants of the various boards of the Department. Such statute would be instituted without regard to the type of regulant and would exclude complaints of a criminal nature. A copy of the subcommittee's legislative recommendation is attached as Appendix D.

Respectfully submitted,

Jean W. Cunningham, **Chairman**
Robert E. Russell, Sr., **Vice Chairman**
Joseph P. Johnson, Jr.
J. Randy Forbes
Henry L. Marsh, III

V. APPENDICES

- Appendix A: House Joint Resolution No. 703 (1993)**
- Appendix B: Regulatory Boards Within the Department of Professional and Occupational Regulation**
- Appendix C: List of Civil Statutes of Limitations**
- Appendix D: Proposed Legislation**

Appendix A

House Joint Resolution No. 703 (1993)

GENERAL ASSEMBLY OF VIRGINIA--1993 SESSION
HOUSE JOINT RESOLUTION NO. 703

Establishing a joint subcommittee to study the need for limitation periods for complaints against regulants.

Agreed to by the House of Delegates, February 9, 1993
Agreed to by the Senate, February 16, 1993

WHEREAS, regulants of the Department of Commerce are subject to disciplinary actions, including fines and suspension or revocation of licenses for violations of statutes and regulations governing licensure; and

WHEREAS, no limitations currently exist on the time in which complaints may be brought against regulants for such violations; and

WHEREAS, in some instances regulants are required to retain documentation relating to transactions for as little as three years, although such transactions may give rise to disciplinary actions many years in the future; and

WHEREAS, the defense of complaints arising from transactions many years old is extremely difficult in light of the inevitable fading of memories, the unavailability of witnesses and evidence, and other difficulties in reconstructing the events surrounding such transactions; and

WHEREAS, statutes of limitation are established by the Code of Virginia to protect respondents from judicial actions, and because no compelling public policy exists for subjecting regulants to regulatory penalties when regulants are immune from civil actions in a court of law; and

WHEREAS, Department of Commerce investigative, adjudicative, and other staff members can make more productive use of time and resources pursuing violations which have more recently occurred; now, therefore, be it

RESOLVED by the House of Delegates, the Senate concurring, That a joint subcommittee be established to study the need for limitation periods for complaints against regulants. The joint subcommittee shall be composed of five members to be appointed as follows: three members of the House of Delegates to be appointed by the Speaker of the House and two members of the Senate to be appointed by the Senate Committee on Privileges and Elections.

The joint subcommittee shall examine and determine the necessity for the establishment of time limitations for bringing complaints against regulants which balance the goals of protecting the public and being fair to regulants.

The joint subcommittee shall complete its work in time to submit its findings and recommendations to the Governor and the 1994 Session of the General Assembly in accordance with the procedures of the Division of Legislative Automated Systems for the processing of legislative documents.

The indirect costs of this study are estimated to be \$13,675; the direct costs of this study shall not exceed \$4,500.

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.

Appendix B

Regulatory Boards Within the Department of Professional and Occupational Regulation

**PROFESSIONS AND OCCUPATIONS
REGULATED BY THE
DEPARTMENT OF PROFESSIONAL AND
OCCUPATIONAL REGULATION
AND
BOARDS WITHIN THE DEPARTMENT**

1. **Architects, Engineers, Surveyors, Landscape Architects and Interior Designers, §§ 54.1-400 through 54.1-415.**
2. **Asbestos Contractors and Workers, §§ 54.1-500 through 54.1-517.**
3. **Auctioneers, §§ 54.1-600 through 54.1-606.**
4. **Barbers, §§ 54.1-700 through 54.1-705.**
5. **Boxing and Wrestling Matches, §§ 54.1-800 through 54.1-826.**
6. **Branch Pilots, §§ 54.1-900 through 54.1-927.**
7. **Contractors, §§ 54.1-1100 through 54.1-1127.**
8. **Cosmetologists, §§ 54.1-1200 through 54.1-1207.**
9. **Employment Agencies, §§ 54.1-1300 through 54.1-1308.**
10. **Geologists, §§ 54.1-1400 through 54.1-1405.**
11. **Hearing Aid Specialists, §§ 54.1-1500 through 54.1-1505.**
12. **Opticians, §§ 54.1-1700 through 54.1-1706.**
13. **Polygraph Examiners, §§ 54.1-1800 through 54.1-1806.**
14. **Public Accountancy, §§ 54.1-2000 through 54.1-2008.**
15. **Real Estate Appraisers, §§ 54.1-2009 through 54.1-2019.**
16. **Real Estate Brokers, Sales Persons and Rental Location Agents, §§ 54.1-2100 through 54.1-2120.**
17. **Soil Scientists, §§ 54.1-2200 through 54.1-2208.**
18. **Waste Management Facility Operators, §§ 54.1-2209 through 54.1-2212.**
19. **Waterworks and Wastewater Works Operators, §§ 54.1-2300 through 54.1-2302.**

Appendix C

List of Civil Statutes of Limitations

STATUTES OF LIMITATIONS

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).

§ 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.

§ 8.01-40.2 Action for damages resulting from an unauthorized FAX transmission must be brought within **2 years**.

§ 8.01-124 Action for unlawful entry and detainer must be brought within **3 years** of entry or detainer.
§ 8.01-236

NOTE: Includes an accrual rule.

§ 8.01-195.6 Claim against State under the Tort Claims Act is barred unless (i)
§ 8.01-195.7 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.

§ 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 within **20 years** of docketing assessment.

NOTE: This section includes an accrual rule.

§ 8.01-241 Action to enforce a deed of trust or mortgage or a lien to secure
§ 8.01-242 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.

§ 8.01-253 Suit to avoid a voluntary conveyance (gift, assignment, etc.) because (i) no valuable consideration was given or (ii) it was 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 or termination of the fee.

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

- § 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 Act 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 or receipt of written notice, but in no event more than **6 months** after 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 Claims under the Birth-Related Neurological Injury Compensation Program must be filed within **10 years** of the child's 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 within **6 months** from recordation of lien or **60 days** from termination of work, whichever is later.
- § 46.2-112 Civil action for tampering with odometer must be brought within **2 years** that the act is discovered or reasonably should have been discovered..
- § 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 a lien on a condominium must be brought within **24 months** of recording 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**.
- § 55-383 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 brought within **6 years** (or a shorter period, not less than **2 years**, if 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, assessment can be made or collection proceeding commenced within **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 must be brought within **20 years** from assessment.
- § 58.1-1825 (*state*) Action to challenge tax assessment must be filed with court within
& **3 years** of assessment.
§ 58.1-3984 (*local*)
- § 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, whichever is later. Action by Commonwealth for recovery of civil penalties must be brought within **4 years**.
- § 59.1-21.12 Action for liquidated damages under Petroleum Products Franchise 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 vehicles) must be brought (i) within **6 months** or later of 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 of (i) lemon law rights period (**18 months** after date of original delivery) or (ii) **12 months** of final action taken in dispute settlement proceedings.
- § 59.1-335.11 Action to enforce liability under the Credit Services Businesses Act must be brought within **2 years**.
- § 59.1-340 Action for misappropriation of trade secrets must be brought within **3 years**.

<p>NOTE: Includes a discovery accrual provision and a continuing tort rule.</p>

- § 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).
- § 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.
- § 65.2-406 Workers' Compensation 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.
- § 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.
- § 38.2-314 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 under the Birth-Related Neurological Compensation Program.
- § 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.
- § 65.2-528 Tolling for incompetency or minority applies in workers' compensation cases only if there is no guardian, committee or trustee for the person.
- § 65.2-602 SOL tolled on compensation claim during period when employer makes voluntary payments as compensation for injury.

Source: House Document No. 83 (1993), Final Report of the Joint Subcommittee Studying Statutes of Limitation and Accrual of Actions. References contained therein checked and updated May 1994.

Appendix D

Proposed Legislation

1994 SESSION ENGROSSED

HOUSE BILL NO. 1192

House Amendments in [] — February 7, 1994

A BILL to amend the Code of Virginia by adding a section numbered 54.1-307.1, relating to the Department of Professional and Occupational Regulation.

Patrons—Cunningham, Almand, Baker, Callahan, Fisher, Forbes, Griffith, Hall, Hamilton, Hargrove, Harris, Howell, Hull, Johnson, Jones, J.C., Marshall, Martin, McClure, Melvin, Miller, Mims, Wagner, Watkins and Way; Senators: Benedetti, Calhoun, Colgan, Earley, Marsh, Miller, K.G., Nolen, Russell, Stosch and Wampler

Referred to Committee on General Laws

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding a section numbered 54.1-307.1 as follows:

§ 54.1-307.1. Time for filing complaints against regulants.

A. Except as otherwise provided in § 35-96.9 and subsections B and C of this section, any complaint against a regulant for any violation of statutes or regulations pertaining to the regulatory boards within Subtitle II of this title or any of the programs which may be in another title of the Code for which any regulatory board within Subtitle II has enforcement responsibility, in order to be investigated by the Department, shall be made in writing and received by the Department within [~~five~~ three] years of the act, omission or occurrence giving rise to the violation.

B. However, where a regulant has materially and willfully misrepresented any information required by statute or regulations to be disclosed to a complainant and the information so misrepresented is material to the establishment of the violation, the complaint may be made at any time within two years after discovery of the misrepresentation.

C. This section shall not apply to any complaint for which a criminal proceeding may be instituted in a court of competent jurisdiction.