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HOUSE BILL NO. 449
AMENDMENT IN THE NATURE OF A SUBSTITUTE
(Proposed by the Governor
on April 11, 2026)

(Patron Prior to Substitute—Delegate Simon)

A BILL to amend and reenact §§ 17.1-405 and 59.1-204 of the Code of Virginia and to amend the Code of Virginia by adding in Title 8.01 a chapter numbered 5.2, consisting of sections numbered 8.01-267.10 through 8.01-267.16, relating to civil actions filed on behalf of multiple persons; class actions; violations of Virginia Consumer Protection Act; award of damages.

Be it enacted by the General Assembly of Virginia:

1. That §§ 17.1-405 and 59.1-204 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding in Title 8.01 a chapter numbered 5.2, consisting of sections numbered 8.01-267.10 through 8.01-267.16, as follows:

CHAPTER 5.2.
CLASS ACTIONS.

§ 8.01-267.10. Requirements for certification; types of class actions.

A. One or more members of a class may, as representative parties on behalf of all members, bring a civil action or may be proceeded against in a civil action, provided that:

- 1. The class is so numerous that joinder of all members is impracticable;
 - 2. There are questions of law or fact common to the class;
 - 3. The claims or defenses of the representative parties are typical of the claims or defenses of the class;
- and
- 4. The representative parties shall fairly and adequately protect the interests of the class.

B. An action may be certified as a class action if all the requirements of subsection A are satisfied and if:

- 1. Prosecuting separate actions by or against individual class members would create a risk of (i) inconsistent or varying adjudications of individual class members that would establish incompatible standards of conduct for the opposing party or (ii) adjudications of individual class members that, as a practical matter, would be dispositive of the interests of the other members that are not parties to the individual adjudications or would substantially impair or impede their ability to protect their interests;

2. The party opposing the class has acted or refused to act on grounds that apply generally to the class, so that the final injunctive relief or corresponding declaratory relief is appropriate to the class as a whole; or

3. The court finds that the questions of law or fact common to class members predominate over any questions affecting only individual members, and that a class action is superior to other available methods for fairly and efficiently adjudicating the controversy. In making this finding, the court may consider (i) the class members' interests in individually controlling the prosecution or defense of separate actions, (ii) the extent and nature of any litigation concerning the controversy already begun by or against class members, (iii) the desirability or undesirability of concentrating the litigation of the claims in a particular forum, and (iv) the likely difficulties in managing a class action.

§ 8.01-267.11. Certification order; notice to class members; judgment.

A. A class action shall be certified by order only if the requirements described in § 8.01-267.10 are met. Such order shall define the class and class claims being certified, identify the representative party or parties, and appoint class counsel pursuant to the criteria set forth in § 8.01-267.12. The court shall determine as early as is practicable after a person brings an action or an action is brought against a person as a class representative whether to certify the action as a class action. Any order that grants or denies class certification may be amended or altered prior to final judgment.

B. For any class certified pursuant to subdivision B 1 or 2 of § 8.01-267.10, the court may direct appropriate notice to such class. For any class certified pursuant to subdivision B 3 of § 8.01-267.10, or upon ordering notice pursuant to § 8.01-267.13 to a class proposed to be certified for the purposes of settlement in accordance with subdivision B 3 of § 8.01-267.10, the court shall direct to class members notice as is reasonable under the circumstances, including sending individual notice to all members that can be identified through reasonable effort. The notice may be sent through the United States Postal Service, electronic means, or any other appropriate means. The notice shall state clearly and concisely in plain, easily understood language (i) the nature of the action; (ii) the definition of the class certified; (iii) the class claims, issues, or defenses; (iv) that a class member may enter an appearance through an attorney; (v) that the court shall exclude from the class any member that requests exclusion; (vi) the time and manner for requesting such exclusion; and (vii) the binding effect of a class judgment on members in accordance with subsection C.

C. Whether or not favorable to the class, the judgment in a class action shall, for any class certified pursuant to subdivision B 1 or 2 of § 8.01-267.10, include and describe those that the court determines to be class members, and, for any class certified pursuant to subdivision B 3 of § 8.01-267.10, include and specify

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60 or describe those to which notice pursuant to this section was directed, that have not requested exclusion,
61 and that the court finds to be class members.

62 D. In certain cases, an action may be brought or maintained as a class action for particular issues.

63 E. When appropriate, a class may be divided into subclasses that are each treated as a class pursuant to
64 this chapter.

65 **§ 8.01-267.12. Class counsel; duties; order of appointment.**

66 A. Unless otherwise provided by law, a court that certifies a class shall appoint at least one discreet and
67 competent attorney-at-law as class counsel. In making such appointment, the court shall consider (i) the work
68 such attorney has done in identifying or investigating potential claims in the action; (ii) such attorney's
69 experience in handling class actions, other complex litigation, and the types of claims asserted in the action;
70 (iii) such attorney's knowledge of the applicable law; and (iv) the resources such attorney shall commit to
71 representing the class. The court may also consider any other matter pertinent to such attorney's ability to
72 fairly and adequately represent the interests of the class.

73 B. The court may order potential class counsel to provide information on any subject pertinent to such
74 appointment and to propose terms for attorney fees and costs and may include provisions about such attorney
75 fees and costs in the order of appointment. The court may make any further necessary orders in connection
76 with such appointment.

77 C. When any attorney seeks appointment as class counsel, the court shall only appoint such attorney if he
78 adequately meets the considerations pursuant to this section. If more than one applicant seeks appointment,
79 the court shall appoint the applicant or applicants it deems best able to represent the interests of the class.

80 D. The court may designate interim counsel to act on behalf of a putative class at any time prior to
81 determining whether to certify the action as a class action.

82 E. Class counsel appointed pursuant to this section shall have a duty to fairly and adequately represent
83 the interests of the class.

84 **§ 8.01-267.13. Conducting a class action.**

85 A. In conducting a class action pursuant to this chapter, the court may issue orders that:

86 1. Determine the course of proceedings or prescribe measures to prevent undue repetition or
87 complication in presenting evidence or argument;

88 2. Require, for the purpose of protecting class members and conducting the action fairly, giving
89 appropriate notice to some or all class members about (i) any step in the action; (ii) the proposed extent of
90 the judgment; or (iii) the members' opportunity to signify whether they consider the representation fair and
91 adequate, to intervene and present claims or defenses, or to otherwise join the action;

92 3. Impose conditions on the representative or intervening parties;

93 4. Require that the pleadings be amended to eliminate allegation about representation of absent persons
94 and that the action proceed accordingly; or

95 5. Deal with similar procedural matters.

96 B. The provisions of subsection A of § 8.01-420 shall not apply to any class action. A motion for summary
97 judgment seeking dismissal of any claim in a class action may be sustained when based in whole or in part
98 upon any discovery depositions under Rule 4:5 of the Rules of the Supreme Court.

99 C. An order issued pursuant to this section may be altered or amended under limited circumstances and
100 may be combined with an order for a pretrial conference.

101 D. A claim for attorney fees and costs shall be made by motion, and, upon such motion, the court may
102 award reasonable attorney fees and costs as authorized by law or by agreement of the parties. A class
103 member or party from whom payment is sought may object to such motion for attorney fees and costs.

104 **§ 8.01-267.14. Settlement, voluntary dismissal, or compromise; court approval required.**

105 A. The claims, issues, or defenses of a certified class or a class proposed to be certified for purposes of
106 settlement may be settled, voluntarily dismissed, or compromised only with the approval of the court.

107 B. Notice of the proposed dismissal of an action previously certified as a class action shall be provided to
108 all members of the class. Notice shall be given in such a reasonable manner as the court directs. The court
109 may order such dismissal without notice if such dismissal is to be without prejudice to the class or with
110 prejudice to the plaintiff only. Such notice may be given by any appropriate means as approved by the court,
111 including through first-class mail, email, or publication.

112 C. The parties seeking approval shall file a statement identifying any agreement made in connection with
113 such proposed settlement, voluntary dismissal, or compromise. If the proposed settlement, voluntary
114 dismissal, or compromise would bind class members, the court may approve such proposal only upon a
115 hearing and a finding that such proposal is fair, reasonable, and adequate. In making such finding, the court
116 shall consider whether:

117 1. The class representatives and class counsel have adequately represented the class;

118 2. The proposal was negotiated at arm's length;

119 3. The relief provided for the class is adequate, including the costs, risks, and delay of a trial and appeal,
120 the effectiveness of any proposed method of distributing relief to the class, the agreement identified by the
121 parties seeking approval required by this subsection, and the terms of any proposed award of attorney fees;

122 and

123 4. The proposal treats the class members equitably relative to each other.

124 D. If the class action was previously certified pursuant to subdivision B 3 of § 8.01-267.10, the court may
125 refuse to approve a settlement unless such settlement affords a new opportunity for an individual class
126 member to request exclusion if such individual class member had an earlier opportunity to request exclusion
127 but did not do so.

128 E. In addition to the procedures enumerated in subsection C, a class member may object to the proposed
129 settlement, voluntary dismissal, or compromise if such proposal requires court approval. Such class member
130 shall state whether such objection applies only to the objector, to a specific subset of the class, or to the
131 entire class, and shall state specifically the grounds for such objection. Unless such proposal is approved
132 after a hearing, no payment or other consideration shall be provided for forgoing or withdrawing such
133 objection or forgoing, dismissing, or abandoning an appeal from a judgment approving such proposal.

134 F. Any order approving a settlement pursuant to this section that establishes a process for compensating
135 class members shall provide for the disbursement of residual funds, if any.

136 **§ 8.01-267.15. Venue and transfer.**

137 A. For the purposes of this chapter and notwithstanding any other provision of law, venue shall properly
138 lie exclusively in the following circuit courts: (i) City of Richmond; (ii) City of Roanoke; (iii) Fairfax County;
139 and (iv) City of Norfolk. Among these enumerated courts, venue shall be proper in whichever circuit court is
140 closest geographically to any named class representative.

141 B. When two or more separate civil actions requesting certification of a class pursuant to this chapter
142 involve common questions of law or fact arising out of the same transaction, occurrence, or series of
143 transactions or occurrences and such classes, if certified, would encompass one or more of the same
144 plaintiffs suing in the same capacities, any party may apply to a panel of circuit court judges designated by
145 the Supreme Court of Virginia for an order of transfer to the exclusive venue listed in subsection A where the
146 related matter is pending. Such panel of judges shall consider (i) the nature of common questions of law or
147 fact; (ii) the convenience of the parties, witnesses, and counsel; (iii) the efficient use of judicial facilities and
148 personnel; (iv) the calendar of the courts; and (v) any other relevant factors.

149 **§ 8.01-267.16. Interlocutory appeal.**

150 A. The Court of Appeals may permit an appeal to be taken from an order certifying or declining to certify
151 a class pursuant to § 8.01-267.11.

152 B. The Court of Appeals may allow an appeal to be taken from any other order of the circuit court in an
153 action pursuant to this chapter although the order is not a final order, provided that the written order of the
154 circuit court states that the order involves a controlling question of law as to which there is substantial
155 ground for difference of opinion and that an immediate appeal from such order may materially advance the
156 ultimate termination of the litigation.

157 C. Application for an appeal pursuant to this section shall be made within 10 days after the entry of the
158 order and shall not stay proceedings in the circuit court unless the circuit court or the appellate court shall
159 so order.

160 **§ 17.1-405. Appellate jurisdiction — Administrative agency, Virginia Workers' Compensation
161 Commission, and civil matter appeals.**

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

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

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

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

168 4. Any interlocutory decree or order pursuant to § 8.01-267.8, 8.01-267.16, or 8.01-675.5;

169 5. Except as provided in subsection B, any interlocutory decree or order involving an equitable claim in
170 which the decree or order (i) requires money to be paid or the possession or title of property to be changed or
171 (ii) adjudicates the principles of a cause; or

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

176 B. Except as provided in § 8.01-675.5, no interlocutory decree or order shall be appealed if such decree or
177 order involves:

178 1. Affirmance or annulment of a marriage;

179 2. Divorce;

180 3. Custody of a minor child;

181 4. Spousal or child support;

182 5. Control or disposition of a minor child;

183 6. Any other domestic relations matter arising under Title 16.1 or 20; or

184 7. Any protective order other than a final protective order issued by a circuit court.

185 **§ 59.1-204. Individual action or class action for damages or penalty.**

186 A. Any person who suffers loss as the result of a violation of this chapter shall be entitled to initiate an
187 action to recover actual damages, or \$500, whichever is greater. If the trier of fact finds that the violation was
188 willful, it may increase damages to an amount not exceeding three times the actual damages sustained, or
189 \$1,000, whichever is greater. Any person who accepts a cure offer under this chapter may not initiate or
190 maintain any other or additional action based on any cause of action arising under any other statute or
191 common law theory if such other action is substantially based on the same allegations of fact on which the
192 action initiated under this chapter is based.

193 B. Notwithstanding any other provision of law to the contrary, in addition to any damages awarded, such
194 person also may be awarded reasonable attorneys' fees and court costs.

195 C. No cure offer shall be admissible in any proceeding initiated under this section, unless the cure offer is
196 delivered by a supplier to the person claiming loss or to any attorney representing such person, prior to the
197 filing of the supplier's initial responsive pleading in such proceeding. If the cure offer is timely delivered by
198 the supplier, then the supplier may introduce the cure offer into evidence at trial. The supplier shall not be
199 liable for such person's attorneys' fees and court costs incurred following delivery of the cure offer unless the
200 actual damages found to have been sustained and awarded, without consideration of attorneys' fees and court
201 costs, exceed the value of the cure offer.

202 D. In any action *in* which the parties desire to settle all matters in dispute, the question of whether the
203 plaintiff shall be awarded reasonable attorneys' fees and court costs in accordance with subsections B and C
204 may be tendered to the court for consideration of the amount of such an award, if any.

205 *E. To the extent practicable, the provisions of this section shall also apply in a class action pursuant to*
206 *Chapter 5.2 (§ 8.01-267.10 et seq.) of Title 8.01 where the class claims allege a loss suffered by class*
207 *members for violations of this chapter. Damages in a class action shall be limited to actual damages.*

208 **2. That the provisions of this act are procedural in nature and shall become effective on January 1,**
209 **2027.**

210 **3. That the Office of the Executive Secretary of the Supreme Court of Virginia shall amend the Rules**
211 **of the Supreme Court of Virginia to adopt Federal Rule of Civil Procedure 56 as the governing**
212 **procedural rules for summary judgment practice in class action cases.**