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SENATE BILL NO. 1180

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on the Judiciary)

(Patron Prior to Substitute—Senator Surovell)

Senate Amendments in [] - February 1, 2021

A BILL to amend and reenact § 8.01-267.1 of the Code of Virginia, relating to civil actions filed on behalf of multiple persons.

Be it enacted by the General Assembly of Virginia:

1. That § 8.01-267.1 of the Code of Virginia is amended and reenacted as follows:

§ 8.01-267.1. Standards governing consolidation, etc., and transfer.

On motion of any party, a circuit court may enter an order joining, coordinating, consolidating, or transferring civil actions as provided in this chapter upon finding that:

1. Separate civil actions brought by six or more plaintiffs ~~involve~~ or a civil action brought by a plaintiff on behalf of multiple similarly situated persons involves common questions of law or fact and arise out of the same transaction, occurrence, or series of transactions or occurrences;

2. The common questions of law or fact predominate and are significant to the actions; and

3. The order (i) will promote the ends of justice and the just and efficient conduct and disposition of the actions, and (ii) is consistent with each party's right to due process of law, and (iii) does not prejudice each individual party's right to a fair and impartial resolution of each action.

Factors to be considered by the court include, but are not limited to, ~~(i)~~ (a) the nature of the common questions of law or fact; ~~(ii)~~ (b) the convenience of the parties, witnesses, and counsel; ~~(iii)~~ (c) the relative stages of the actions and the work of counsel; ~~(iv)~~ (d) the efficient utilization of judicial facilities and personnel; ~~(v)~~ (e) the calendar of the courts; ~~(vi)~~ (f) the likelihood and disadvantages of duplicative and inconsistent rulings, orders, or judgments; ~~(vii)~~ (g) the likelihood of prompt settlement of the actions without the entry of the order; and ~~(viii)~~ (h) as to joint trials by jury, the likelihood of prejudice or confusion.

The court may organize and manage the combined litigation and enter further orders consistent with the right of each party to a fair trial as may be appropriate to avoid unnecessary costs, duplicative litigation, or delay and to assure fair and efficient conduct and resolution of the litigation, including but not limited to orders which organize the parties into groups with like interest; appoint counsel to have lead responsibility for certain matters; allocate costs and fees to separate issues into common questions that require treatment on a consolidated basis and individual cases that do not; and to stay discovery on the issues that are not consolidated.

2. That the Supreme Court of Virginia shall promulgate rules no later than November 1, 2021, governing the joining, coordinating, consolidating, or transferring [and settlement] of actions pursuant to this act. Such rules shall be no more restrictive than those contained in Rule 23 of the Federal Rules of Civil Procedure. [Such rules shall include provisions comparable to those provided in 28 U.S.C. §§ 1712 and 1713 and shall require notice in the event of settlement to the Attorney General in a manner comparable to that provided by 28 U.S.C. § 1715.]

3. That the first enactment of this act shall become effective on July 1, 2022.

ENGROSSED

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