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## SENATE BILL NO. 259

## AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee for Courts of Justice  
on February 16, 2024)

(Patrons Prior to Substitute—Senators Surovell and Bagby [SB 587])

A BILL 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 8.01-267.15, relating to civil actions filed on behalf of multiple persons; class actions.

Be it enacted by the General Assembly of Virginia:

1. 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 8.01-267.15, 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 in accordance with chapter 5.1 (§ 8.01-267.1 et seq.) or proceeding with such actions on an individual basis is impracticable or contrary to judicial economy;

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 under the Consumer Protection Act (§ 59.1-196 et seq.) if all the requirements of subsection A are satisfied. All other actions may be certified as a class action only if all the requirements of this section are satisfied and:

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 who 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; (iv) the likely difficulties in managing a class action; and (v) the practical ability of individual class members to pursue their claims without certification.

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

A. A class action shall be certified by order. Such order shall define the class, identify the representative party or parties, and appoint class counsel. 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 who 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 who requests exclusion; (vi) the time and manner for requesting such exclusion; and (vii) the binding effect of a class judgment on

60 members in accordance with subsection C. Unless the parties agree otherwise, the opponents of the  
61 class shall bear the expense of the notice required by this subsection. The court may require the party  
62 opposing the class to cooperate in securing the names and addresses of the persons within the class  
63 defined by the court for the purpose of providing individual notice.

64 C. Whether or not favorable to the class, the judgment in a class action shall, for any class certified  
65 pursuant to subdivision B 1 or 2 of § 8.01-267.10, include and describe those whom the court  
66 determines to be class members, and, for any class certified pursuant to subdivision B 3 of  
67 § 8.01-267.10, include and specify or describe those to whom notice pursuant to this section was  
68 directed, who have not requested exclusion, and whom the court finds to be class members.

69 D. In certain cases, an action may be brought or maintained as a class action for particular issues.  
70 A class may be divided into subclasses that are each treated as a class pursuant to this chapter.

71 **§ 8.01-267.12. Class counsel; duties; order of appointment.**

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

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

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

87 D. The court may designate interim counsel to act on behalf of a putative class prior to determining  
88 whether to certify the action as a class action.

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

91 **§ 8.01-267.13. Conducting a class action.**

92 A. In conducting an action pursuant to this chapter, the court may issue orders that:

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

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

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

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

103 5. Deal with similar procedural matters.

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

106 C. A claim for attorney fees and costs shall be made by motion, and, upon such motion, the court  
107 may award reasonable attorney fees and costs.

108 **§ 8.01-267.14. Settlement, voluntary dismissal, or compromise; court approval required.**

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

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

116 C. If the proposed settlement, voluntary dismissal, or compromise would bind class members, the  
117 court may approve such proposal only upon a hearing and a finding that such proposal is fair,  
118 reasonable, and adequate. In making such finding the court shall consider whether:

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

120 2. The proposal was negotiated objectively;

121 3. The relief provided for the class is adequate, including the costs, risks, and delay of a trial and

appeal, the effectiveness of any proposed method of distributing relief to the class, the terms of any proposed award of attorney fees, and any agreement required to be identified in accordance with subsection D; and

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

D. The parties seeking approval shall file a statement identifying any agreement made in connection with such proposed settlement, voluntary dismissal, or compromise.

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

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

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

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

A. For the purposes of this chapter, venue shall be proper in the circuit court where any putative class member's transaction, occurrence, or injury occurred.

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

**2. That the provisions of this act shall become effective on July 1, 2025.**