

VIRGINIA ACTS OF ASSEMBLY — CHAPTER

An Act to amend the Code of Virginia by adding in Title 8.01 a chapter numbered 5.1, consisting of sections numbered 8.01-267.1 through 8.01-267.9, relating to multiple claimant litigation.

[H 250]

Approved

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 5.1, consisting of sections numbered 8.01-267.1 through 8.01-267.9, as follows:

CHAPTER 5.1.

MULTIPLE CLAIMANT LITIGATION ACT.

§ 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 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) the nature of the common questions of law or fact; (ii) the convenience of the parties, witnesses and counsel; (iii) the relative stages of the actions and the work of counsel; (iv) the efficient utilization of judicial facilities and personnel; (v) the calendar of the courts; (vi) the likelihood and disadvantages of duplicative and inconsistent rulings, orders or judgments; (vii) the likelihood of prompt settlement of the actions without the entry of the order; and (viii) 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; and 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.

§ 8.01-267.2. When actions pending in same court.

For purposes of this chapter, actions shall be considered pending in the same circuit court when they have been (i) filed in that court, regardless of whether the defendant has been served with process, or (ii) properly transferred to that court.

§ 8.01-267.3. Consolidation and other combined proceedings.

On motion of any party, a circuit court in which separate civil actions are pending which were brought by six or more plaintiffs may enter an order coordinating, consolidating or joining any or all of the proceedings in the actions upon making the findings required by § 8.01-267.1. The order may provide for any or all of the following:

1. Coordinated or consolidated pretrial proceedings;

2. A joint hearing or, if requested by any party, trial by jury with respect to any or all common questions at issue in the actions; or

3. Consolidation of the actions.

§ 8.01-267.4. Transfer.

A. Whenever there are pending in different circuit courts of the Commonwealth civil actions brought by six or more plaintiffs which involve common issues of law or fact and arise out of the same transaction, occurrence or the same series of transactions or occurrences, any party may apply to a panel of circuit court judges designated by the Supreme Court for an order of transfer. Upon such application and upon making the findings required by § 8.01-267.1, the panel may order some or all of the actions transferred to a circuit court in which one or more of the actions are pending for purposes of coordinated or consolidated pretrial proceedings. The circuit court to which actions are transferred may enter further orders as provided in § 8.01-267.3. Any subsequent application for further transfer shall be made to the circuit court to which the actions were transferred. Upon completion of pretrial proceedings and any joint hearings or trials, the circuit court may remand the actions to the circuit

courts in which they were originally filed or may retain them for final disposition.

B. Any party who files an application for transfer shall at the same time give notice of such application to all parties and to the clerk of each circuit court in which an action that is the subject of the application is pending. Upon receipt of the notice, a circuit court shall not enter any further orders under § 8.01-267.3 until after the panel has entered an order granting or denying an application for transfer pursuant to subsection A.

§ 8.01-267.5. Joinder and Severance.

Six or more parties may be joined initially as plaintiffs in a single action if their claims involve common issues of fact and arise out of the same transaction or occurrence or the same series of transactions or occurrences. On motion of a defendant, the actions so joined shall be severed unless the court finds that the claims of the plaintiffs were ones which, if they had been filed separately, would have met the standards of § 8.01-267.1 and would have been consolidated under § 8.01-267.3. If the court orders severance, the claims may proceed separately upon payment of any appropriate filing fees due in the separate circuit courts within sixty days of entry of the order. The date of the original filing shall be the date of filing for each of the severed actions for purposes of applying the statutes of limitations.

§ 8.01-267.6. Separate trials; special interrogatories.

In any combined action under this chapter, the court, on motion of any party, may order separate or bifurcated trials of any one or more claims, cross-claims, counterclaims, third-party claims, or separate issues, always preserving the right of trial by jury.

Additionally, the court may submit special interrogatories to the jury to resolve specific issues of fact.

§ 8.01-267.7. Later-filed actions.

Later-filed actions may be joined with ongoing litigation in accordance with the procedures of § 8.01-267.3 or § 8.01-267.4 and the standards of § 8.01-267.1. Parties in later-filed actions joined with on-going multiple claimant litigation may, in the discretion of the court, be bound to prior proceedings but only to the extent permitted by law and only to the extent that the court finds that the interests of such parties were adequately and fairly represented. Consistent with the language of this section and the standards of § 8.01-267.1, the parties may utilize all prior discovery taken by any party in on-going multiple party litigation as if the parties in the later-filed actions had been parties at the time the discovery was taken. On motion of any party or by the person from whom discovery is sought, the court may limit or prohibit discovery by parties in later-filed actions if the court finds that the matters on which the discovery is sought have been covered adequately by prior discovery.

§ 8.01-267.8. Interlocutory appeal.

A. The Supreme Court or the Court of Appeals, in its discretion, may permit an appeal to be taken from an order of a circuit court although the order is not a final order where the circuit court has ordered a consolidated trial of claims joined or consolidated pursuant to this chapter.

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

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

§ 8.01-267.9. Effect on other law.

The procedures set out in this chapter are in addition to procedures otherwise available by statute, rule or common law and do not limit in any way the availability of such procedures, but shall not apply to any action against a manufacturer or supplier of asbestos or product for industrial use that contains asbestos to which the provisions of § 8.01-374.1 may apply.