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HOUSE BILL NO. 2387

Offered January 13, 2025

Prefiled January 8, 2025

A BILL to amend and reenact §§ 8.01-229 and 8.01-244 of the Code of Virginia, relating to death by wrongful act; suspension of limitations.

Patrons—Mundon King, Clark, Cole, Henson and Martinez

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 8.01-229 and 8.01-244 of the Code of Virginia are amended and reenacted as follows:

§ 8.01-229. Suspension or tolling of statute of limitations; effect of disabilities; effect of death; injunction; prevention of service by defendant; dismissal, nonsuit or abatement; devise for payment of debts; new promises; debts proved in creditors' suits.

A. Disabilities which toll the statute of limitations. -- Except as otherwise specifically provided in §§ 8.01-237, 8.01-241, 8.01-242, 8.01-243, 8.01-243.1 and other provisions of this Code,

1. If a person entitled to bring any action is at the time the cause of action accrues an infant, except if such infant has been emancipated pursuant to Article 15 (§ 16.1-331 et seq.) of Chapter 11 of Title 16.1, or incapacitated, such person may bring it within the prescribed limitation period after such disability is removed; or

2. After a cause of action accrues,

a. If an infant becomes entitled to bring such action, the time during which he is within the age of minority shall not be counted as any part of the period within which the action must be brought except as to any such period during which the infant has been judicially declared emancipated; or

b. If a person entitled to bring such action becomes incapacitated, the time during which he is incapacitated shall not be computed as any part of the period within which the action must be brought, except where a conservator, guardian or committee is appointed for such person in which case an action may be commenced by such conservator, committee or guardian before the expiration of the applicable period of limitation or within one year after his qualification as such, whichever occurs later.

For the purposes of subdivisions 1 and 2, a person shall be deemed incapacitated if he is so adjudged by a court of competent jurisdiction, or if it shall otherwise appear to the court or jury determining the issue that such person is or was incapacitated within the prescribed limitation period.

3. If a convict is or becomes entitled to bring an action against his committee, the time during which he is incarcerated shall not be counted as any part of the period within which the action must be brought.

B. Effect of death of a party. -- The death of a person entitled to bring an action or of a person against whom an action may be brought shall toll the statute of limitations as follows:

1. Death of person entitled to bring a personal action. -- If a person entitled to bring a personal action dies with no such action pending before the expiration of the limitation period for commencement thereof, then an action may be commenced by the decedent's personal representative before the expiration of the limitation period including the limitation period as provided by subdivision E 3 or within one year after his qualification as personal representative, whichever occurs later.

2. Death of person against whom personal action may be brought.

a. If a person against whom a personal action may be brought dies before the commencement of such action and before the expiration of the limitation period for commencement thereof then a claim may be filed against the decedent's estate or an action may be commenced against the decedent's personal representative before the expiration of the applicable limitation period or within one year after the qualification of such personal representative, whichever occurs later.

b. If a person against whom a personal action may be brought dies before suit papers naming such person as defendant have been filed with the court, then such suit papers may be amended to substitute the decedent's personal representative as party defendant before the expiration of the applicable limitation period or within two years after the date such suit papers were filed with the court, whichever occurs later, and such suit papers shall be taken as properly filed.

3. Effect of death on actions for recovery of realty, or a proceeding for enforcement of certain liens relating to realty. -- Upon the death of any person in whose favor or against whom an action for recovery of realty, or a proceeding for enforcement of certain liens relating to realty, may be brought, such right of action shall accrue to or against his successors in interest as provided in Article 2 (§ 8.01-236 et seq.).

4. Accrual of a personal cause of action against the estate of any person subsequent to such person's death. -- If a personal cause of action against a decedent accrues subsequent to his death, an action may be brought

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59 against the decedent's personal representative or a claim thereon may be filed against the estate of such  
60 decedent before the expiration of the applicable limitation period or within two years after the qualification of  
61 the decedent's personal representative, whichever occurs later.

62 5. Accrual of a personal cause of action in favor of decedent. -- If a person dies before a personal cause of  
63 action which survives would have accrued to him, if he had continued to live, then an action may be  
64 commenced by such decedent's personal representative before the expiration of the applicable limitation  
65 period or within one year after the qualification of such personal representative, whichever occurs later.

66 6. Delayed qualification of personal representative. -- If there is an interval of more than two years  
67 between the death of any person in whose favor or against whom a cause of action has accrued or shall  
68 subsequently accrue and the qualification of such person's personal representative, such personal  
69 representative shall, for the purposes of this chapter, be deemed to have qualified on the last day of such two-  
70 year period.

71 C. Suspension during injunctions. -- When the commencement of any action is stayed by injunction, the  
72 time of the continuance of the injunction shall not be computed as any part of the period within which the  
73 action must be brought.

74 D. Obstruction of filing by defendant. -- When the filing of an action is obstructed by a defendant's (i)  
75 filing a petition in bankruptcy or filing a petition for an extension or arrangement under the United States  
76 Bankruptcy Act or (ii) using any other direct or indirect means to obstruct the filing of an action, then the  
77 time that such obstruction has continued shall not be counted as any part of the period within which the action  
78 must be brought.

79 E. Dismissal, abatement, or nonsuit.

80 1. Except as provided in subdivision 3, if any action is commenced within the prescribed limitation period  
81 and for any cause abates or is dismissed without determining the merits, the time such action is pending shall  
82 not be computed as part of the period within which such action may be brought, and another action may be  
83 brought within the remaining period.

84 2. If a judgment or decree is rendered for the plaintiff in any action commenced within the prescribed  
85 limitation period and such judgment or decree is arrested or reversed upon a ground which does not preclude  
86 a new action for the same cause, or if there is occasion to bring a new action by reason of the loss or  
87 destruction of any of the papers or records in a former action which was commenced within the prescribed  
88 limitation period, then a new action may be brought within one year after such arrest or reversal or such loss  
89 or destruction, but not after.

90 3. If a plaintiff suffers a voluntary nonsuit as prescribed in § 8.01-380, the statute of limitations with  
91 respect to such action shall be tolled by the commencement of the nonsuited action, regardless of whether the  
92 statute of limitations is statutory or contractual, and the plaintiff may recommence his action within six  
93 months from the date of the order entered by the court, or within the original period of limitation, or within  
94 the limitation period as provided by subdivision B 1, whichever period is longer. This tolling provision shall  
95 apply irrespective of whether the action is originally filed in a federal or a state court and recommenced in  
96 any other court, and shall apply to all actions irrespective of whether they arise under common law or statute.

97 F. Effect of devise for payment of debts. -- No provision in the will of any testator devising his real estate,  
98 or any part thereof, subject to the payment of his debts or charging the same therewith, or containing any  
99 other provision for the payment of debts, shall prevent this chapter from operating against such debts, unless  
100 it plainly appears to be the testator's intent that it shall not so operate.

101 G. Effect of new promise in writing.

102 1. If any person against whom a right of action has accrued on any contract, other than a judgment or  
103 recognizance, promises, by writing signed by him or his agent, payment of money on such contract, the  
104 person to whom the right has accrued may maintain an action for the money so promised, within such number  
105 of years after such promise as it might be maintained if such promise were the original cause of action. An  
106 acknowledgment in writing, from which a promise of payment may be implied, shall be deemed to be such  
107 promise within the meaning of this subsection.

108 2. The plaintiff may sue on the new promise described in subdivision 1 or on the original cause of action,  
109 except that when the new promise is of such a nature as to merge the original cause of action then the action  
110 shall be only on the new promise.

111 H. Suspension of limitations in creditors' suits. -- When an action is commenced as a general creditors'  
112 action, or as a general lien creditors' action, or as an action to enforce a mechanics' lien, the running of the  
113 statute of limitations shall be suspended as to debts provable in such action from the commencement of the  
114 action, provided they are brought in before the commissioner in chancery under the first reference for an  
115 account of debts; but as to claims not so brought in the statute shall continue to run, without interruption by  
116 reason either of the commencement of the action or of the order for an account, until a later order for an  
117 account, under which they do come in, or they are asserted by petition or independent action.

118 In actions not instituted originally either as general creditors' actions, or as general lien creditors' actions,  
119 but which become such by subsequent proceedings, the statute of limitations shall be suspended by an order

120 of reference for an account of debts or of liens only as to those creditors who come in and prove their claims  
 121 under the order. As to creditors who come in afterwards by petition or under an order of recommittal, or a  
 122 later order of reference for an account, the statute shall continue to run without interruption by reason of  
 123 previous orders until filing of the petition, or until the date of the reference under which they prove their  
 124 claims, as the case may be.

125 I. When an action is commenced within a period of 30 days prior to the expiration of the limitation period  
 126 for commencement thereof and the defending party or parties desire to institute an action as third-party  
 127 plaintiff against one or more persons not party to the original action, the running of the period of limitation  
 128 against such action shall be suspended as to such new party for a period of 60 days from the expiration of the  
 129 applicable limitation period.

130 J. If any award of compensation by the Workers' Compensation Commission pursuant to Chapter 5 (§  
 131 65.2-500 et seq.) of Title 65.2 is subsequently found void ab initio, other than an award voided for fraudulent  
 132 procurement of the award by the claimant, the statute of limitations applicable to any civil action upon the  
 133 same claim or cause of action in a court of this Commonwealth shall be tolled for that period of time during  
 134 which compensation payments were made.

135 K. Suspension of limitations during criminal proceedings. -- In any personal action for damages *or action*  
 136 *for death by wrongful act pursuant to § 8.01-50*, if a criminal prosecution arising out of the same facts is  
 137 commenced, the time such prosecution is pending shall not be computed as part of the period within which  
 138 such a civil action may be brought. For purposes of this subsection, the time during which a prosecution is  
 139 pending shall be calculated from the date of the issuance of a warrant, summons, or capias, the return or filing  
 140 of an indictment or information, or the defendant's first appearance in any court as an accused in such a  
 141 prosecution, whichever date occurs first, until the date of the final judgment or order in the trial court, the  
 142 date of the final disposition of any direct appeal ~~in state court~~, or the date on which the time for noting an  
 143 appeal has expired, whichever date occurs last. Thereafter, the civil action may be brought within the  
 144 remaining period of the statute or within one year, whichever is longer.

145 If a criminal prosecution is commenced and a grand jury indictment is returned or a grand jury indictment  
 146 is waived after the period within which a civil action arising out of the same set of facts may be brought, a  
 147 civil action may be brought within one year of the date of the final judgment or order in the trial court, the  
 148 date of the final disposition of any direct appeal ~~in state court~~, or the date on which the time for noting an  
 149 appeal has expired, whichever date occurs last, but no more than 10 years after the date of the crime or two  
 150 years after the cause of action shall have accrued ~~under § 8.01-249~~, whichever date occurs last.

151 **§ 8.01-244. Actions for wrongful death; limitation.**

152 A. Notwithstanding the provisions of *subsection B of § 8.01-229 B*, if a person entitled to bring an action  
 153 for personal injury dies as a result of such injury with no such action pending before the expiration of the  
 154 limitations period set forth in § 8.01-243, then an action under § 8.01-50 may be commenced within the time  
 155 limits specified in subsection B ~~of this section~~ *or as provided in subsection K of § 8.01-229*.

156 B. Every action under § 8.01-50 shall be brought by the personal representative of the decedent within  
 157 two years after the death of the injured person. If any such action is brought within such period of two years  
 158 after such person's death and for any cause abates or is dismissed without determining the merits of such  
 159 action, the time such action is pending shall not be counted as any part of such period of two years and  
 160 another action may be brought within the remaining period of such two years as if such former action had not  
 161 been instituted. However, if a plaintiff suffers a voluntary nonsuit pursuant to § 8.01-380, the nonsuit shall  
 162 not be deemed an abatement nor a dismissal pursuant to this subsection, and the provisions of subdivision E 3  
 163 of § 8.01-229 shall apply to such a nonsuited action.