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HOUSE BILL NO. 2387

House Amendments in [] - January 29, 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.*

Patron Prior to Engrossment—Delegate Mundon King

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 against the decedent's personal representative or a claim thereon may be filed against the estate of such

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59 decedent before the expiration of the applicable limitation period or within two years after the qualification of
60 the decedent's personal representative, whichever occurs later.

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

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

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

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

78 E. Dismissal, abatement, or nonsuit.

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

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

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

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

100 G. Effect of new promise in writing.

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

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

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

117 In actions not instituted originally either as general creditors' actions, or as general lien creditors' actions,
118 but which become such by subsequent proceedings, the statute of limitations shall be suspended by an order
119 of reference for an account of debts or of liens only as to those creditors who come in and prove their claims

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

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

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

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

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

150 **§ 8.01-244. Actions for wrongful death; limitation.**

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

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

163 [**2. That the provisions of this act shall apply only to causes of action accruing on or after July 1, 2025.**
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