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HOUSE BILL NO. 624**AMENDMENT IN THE NATURE OF A SUBSTITUTE**

(Proposed by the House Committee for Courts of Justice
on February 13, 2004)

(Patron Prior to Substitute—Delegate O'Bannon)

A BILL to amend and reenact § 8.01-380 of the Code of Virginia, relating to medical malpractice actions; nonsuits.

Be it enacted by the General Assembly of Virginia:

1. That § 8.01-380 of the Code of Virginia is amended and reenacted as follows:

§ 8.01-380. Dismissal of action by nonsuit; fees and costs.

A. A party shall not be allowed to suffer a nonsuit as to any cause of action or claim, or any other party to the proceeding, unless he does so before a motion to strike the evidence has been sustained or before the jury retires from the bar or before the action has been submitted to the court for decision. After a nonsuit no new proceeding on the same cause of action or against the same party shall be had in any court other than that in which the nonsuit was taken, unless that court is without jurisdiction, or not a proper venue, or other good cause is shown for proceeding in another court, or when such new proceeding is instituted in a federal court. If after a nonsuit an improper venue is chosen, the court shall not dismiss the matter but shall transfer it to the proper venue upon motion of any party.

B. Only one nonsuit may be taken to a cause of action or against the same party to the proceeding, as a matter of right, although the court may allow additional nonsuits or counsel may stipulate to additional nonsuits. The court, in the event additional nonsuits are allowed, may assess costs and reasonable attorneys' fees against the nonsuiting party.

C. *Except as provided in subsection E, if notice to take a nonsuit of right is given to the opposing party within five days of trial or, in an action or claim maintained pursuant to Chapter 21.1 (§ 8.01-581.1 et seq.) of this title, within eight days of trial, the court in its discretion may assess against the nonsuiting party reasonable witness fees and travel costs of expert witnesses scheduled to appear at trial, which are actually incurred by the opposing party solely by reason of the failure to give notice at least five days prior to trial or, in an action or claim maintained pursuant to Chapter 21.1 (§ 8.01-581.1 et seq.) of this title, eight days prior to trial. The court shall have the authority to determine the reasonableness of expert witness fees and travel costs.*

D. A party shall not be allowed to nonsuit a cause of action, without the consent of the adverse party who has filed a counterclaim, cross claim or third-party claim which arises out of the same transaction or occurrence as the claim of the party desiring to nonsuit unless the counterclaim, cross claim or third-party claim can remain pending for independent adjudication by the court.

E. If notice to suffer a nonsuit of right in an action or claim maintained pursuant to Chapter 21.1 (§ 8.01-581.1 et seq.) of this title is given to the opposing party on or after the first day of trial, the court may assess against the nonsuiting party reasonable costs incurred by the opposing party by reason of the nonsuiting party's failure to give notice prior to the first day of trial. For the purposes of this subsection, "costs" means reasonable expert witness fees including travel expenses incurred; court reporter appearance fees incurred; and fees for service of process incurred for witnesses at trial.