

VIRGINIA ACTS OF ASSEMBLY -- 2007 SESSION

CHAPTER 598

An Act to amend and reenact § 8.01-404 of the Code of Virginia, relating to contradiction of a witness by extrajudicial statement.

[S 912]

Approved March 20, 2007

Be it enacted by the General Assembly of Virginia:

1. That § 8.01-404 of the Code of Virginia is amended and reenacted as follows:

§ 8.01-404. Contradiction by prior inconsistent writing.

A witness may be cross-examined as to previous statements made by him in writing or reduced into writing, relative to the subject matter of the civil action, without such writing being shown to him; but if it is intended to contradict such witness by the writing, his attention must, before such contradictory proof can be given, be called to the particular occasion on which the writing is supposed to have been made, and he may be asked if he did not make a writing of the purport of the one to be offered to contradict him, and if he denies making it, or does not admit its execution, it shall then be shown to him, and if he admits its genuineness, he shall be allowed to make his own explanation of it; but it shall be competent for the court at any time during the trial to require the production of the writing for its inspection, and the court may thereupon make such use of it for the purpose of the trial as it may think best. This section is subject to the qualification, that in an action to recover for a personal injury or death by wrongful act or neglect, no ex parte affidavit or statement in writing other than a deposition, after due notice, of a witness and no extrajudicial recording *made at any time other than simultaneously with the wrongful act or negligence at issue* of the voice of such witness, or reproduction or transcript thereof, as to the facts or circumstances attending the wrongful act or neglect complained of, shall be used to contradict him as a witness in the case. Nothing in this section shall be construed to prohibit the use of any such ex parte affidavit or statement in an action on an insurance policy based upon a judgment recovered in a personal injury or death by wrongful act case.