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## HOUSE BILL NO. 616

House Amendments in [ ] - February 7, 2008

A *BILL to amend and reenact §§ 8.01-243 and 8.01-244 of the Code of Virginia, relating to malpractice actions; limitation.*

Patron Prior to Engrossment—Delegate Amundson

Referred to Committee for Courts of Justice

**Be it enacted by the General Assembly of Virginia:**

**1. That §§ 8.01-243 and 8.01-244 of the Code of Virginia are amended and reenacted as follows:**

§ 8.01-243. Personal action for injury to person or property generally; extension in actions for malpractice against health care provider.

A. Unless otherwise provided in this section or by other statute, every action for personal injuries, whatever the theory of recovery, and every action for damages resulting from fraud, shall be brought within two years after the cause of action accrues.

B. Every action for injury to property, including actions by a parent or guardian of an infant against a tort-feasor for expenses of curing or attempting to cure such infant from the result of a personal injury or loss of services of such infant, shall be brought within five years after the cause of action accrues.

C. The two-year limitations period specified in subsection A shall be extended in actions for malpractice against a health care provider as follows:

1. In cases arising out of a foreign object having no therapeutic or diagnostic effect being left in a patient's body, for a period of one year from the date the object is discovered or reasonably should have been discovered; and

2. In cases in which fraud, concealment or intentional misrepresentation prevented discovery of the injury within the two-year period, for one year from the date the injury is discovered or, by the exercise of due diligence, reasonably should have been discovered; and

3. ~~[ In cases arising out of the negligent failure to diagnose disease or illness or the negligent failure to communicate such diagnosis to the patient, for a period of one year from the date the disease or illness is communicated to the patient. In a claim for the negligent failure to diagnose a malignant tumor or cancer, for a period of one year from the date the diagnosis of a malignant tumor or cancer is communicated to the patient by a health care provider, provided the health care provider's underlying act or omission was on or after July 1, 2008. Claims under this section for the negligent failure to diagnose a malignant tumor or cancer, where the health care provider's underlying act or omission occurred prior to July 1, 2008, shall be governed by the statute of limitations that existed prior to July 1, 2008. ]~~

However, the provisions of this subsection shall not apply to extend the limitations period beyond ten years from the date the cause of action accrues, except that the provisions of § 8.01-229 A 2 shall apply to toll the statute of limitations in actions brought by or on behalf of a person under a disability.

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

A. Notwithstanding the provisions of § 8.01-229 B, if a person entitled to bring an action for personal injury dies as a result of such injury with no such action pending before the expiration of ~~two~~ years next after the cause of action shall have accrued ~~the limitations period set forth in § 8.01-243~~, then an action under § 8.01-50 may be commenced within the time limits specified in subsection B of this section.

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

ENGROSSED

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