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HOUSE BILL NO. 1754

Offered January 9, 2013

Prefiled January 8, 2013

A BILL to amend and reenact §§ 8.01-275.1 and 8.01-277 of the Code of Virginia, relating to service of process; timing.

Patron—Wright

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

- 1. That §§ 8.01-275.1 and 8.01-277 of the Code of Virginia are amended and reenacted as follows:
 - § 8.01-275.1. When service of process is timely.

Service of process in an action or suit within ~~twelve months~~ 90 days of commencement of the action or suit against a defendant shall be timely as to that defendant. Service of process on a defendant more than ~~twelve months~~ 90 days after the suit or action was commenced shall be timely upon a finding by the court that the plaintiff exercised due diligence to have timely service made on the defendant.

§ 8.01-277. Defective process; motion to quash; untimely service; motion to dismiss.

A. A person, upon whom process to answer any action has been served, may take advantage of any defect in the issuance, service, or return thereof by a motion to quash filed prior to or simultaneously with the filing of any pleading to the merits. Upon sustaining the motion, the court may strike the proof of service or permit amendment of the process or its return as may seem just.

B. A person, upon whom process has not been served within ~~one year~~ 90 days of commencement of the action against him, may make a special appearance, which does not constitute a general appearance, to file a motion to dismiss. Upon finding that the plaintiff did not exercise due diligence to have timely service and sustaining the motion to dismiss, the court shall dismiss the action with prejudice. Upon finding that the plaintiff did exercise due diligence to have timely service and denying the motion to dismiss, the court shall require the person filing such motion to file a responsive pleading within 21 days of such ruling. Nothing herein shall prevent the plaintiff from filing a nonsuit under § 8.01-380 before the entry of an order granting a motion to dismiss pursuant to the provisions of this section within 90 days of the commencement of the action, provided that in the absence of timely service, no nonsuit may be taken more than 90 days after the commencement of the action except upon a finding that the plaintiff did exercise due diligence to have timely service. Nothing in this subsection shall pertain to cases involving asbestos.

INTRODUCED

HB1754