

13104553D

SENATE BILL NO. 1164

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee for Courts of Justice
on February 1, 2013)

(Patron Prior to Substitute—Senator Stanley)

A *BILL to amend and reenact §§ 8.01-36 and 8.01-243 of the Code of Virginia, relating to action for expenses for infant's injury; statute of limitations.*

Be it enacted by the General Assembly of Virginia:

1. That §§ 8.01-36 and 8.01-243 of the Code of Virginia are amended and reenacted as follows:

§ 8.01-36. Joinder of action of tort to infant with action for recovery of expenses incurred thereby and claim for recovery of expenses by infant.

A. Where there is pending any action by an infant plaintiff against a tort-feasor for a personal injury, *where the cause of action accrued prior to July 1, 2013*, any parent, or guardian of such infant, who is entitled to recover from the same tort-feasor the expenses of curing or attempting to cure such infant from the result of such personal injury, may bring an action against such tort-feasor for such expenses, in the same court where such infant's case is pending, either in the action filed in behalf of the infant or in a separate action. If the claim for expenses be by separate action, upon motion of any party to either case, made to the court at least one week before the trial, both cases shall be tried together at the same time as parts of the same transaction. But separate verdicts when there is a jury trial shall be rendered, and the judgment shall distinctly separate the decision and judgment in the separate causes of action.

In the event of the cases being carried to the Supreme Court, which may be done if there be the jurisdictional amount in either case, they shall both be carried together as one case and record, but the Supreme Court shall clearly specify the decision in each case, separating them in the decision to the extent necessary to do justice among the parties.

B. *For causes of action that accrue on or after July 1, 2013, the past and future expenses of curing or attempting to cure an infant of personal injuries proximately caused by a tort-feasor are damages recoverable by an infant in a cause of action against the tort-feasor and, if applicable to the infant's cause of action, are subject to the limitation on damages in § 8.01-581.15. Any parent or guardian of such infant who has paid for or is personally obligated to pay for past or future expenses to cure or attempt to cure the infant shall have a lien and right of reimbursement against any recovery by the infant up to the amount the parent or guardian has actually paid or is personally obligated to pay. The right to reimbursement of any parent or guardian shall accrue upon the first tender of funds of any recovery from a tort-feasor to the infant. Court approval of the infant settlement shall release party defendants from all claims for past or future expenses of curing or attempting to cure the infant.*

Nothing in this section shall relieve a parent of the obligation to pay for the medical expenses of curing or attempting to cure the infant as such obligation exists under current law.

§ 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. *An infant's claim for medical expenses pursuant to subsection B of § 8.01-36 accruing on or after July 1, 2013, shall be governed by the applicable statute of limitations that applies to the infant's cause of action.*

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;

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 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,

60 where the health care provider's underlying act or omission occurred prior to July 1, 2008, shall be
61 governed by the statute of limitations that existed prior to July 1, 2008.

62 However, the provisions of this subsection shall not apply to extend the limitations period beyond ten
63 years from the date the cause of action accrues, except that the provisions of *subdivision A 2 of*
64 § 8.01-229 A 2 shall apply to toll the statute of limitations in actions brought by or on behalf of a
65 person under a disability.

66 D. Every action for injury to the person, whatever the theory of recovery, resulting from sexual
67 abuse occurring during the infancy or incapacity of the person as set forth in subdivision 6 of
68 § 8.01-249 shall be brought within 20 years after the cause of action accrues.