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SENATE BILL NO. 395

Offered January 8, 2014
Prefiled January 7, 2014

A BILL to amend and reenact § 8.01-243 of the Code of Virginia, relating to personal action for injury to person; malpractice against health care provider; failure to diagnose cancer.

Patron—Vogel

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That § 8.01-243 of the Code of Virginia is 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. 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, 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*; and*

4. In a claim against a health care provider who ordered an imaging or diagnostic test or study where negligence for a delay in communicating to a patient the interpretation of an imaging or diagnostic test or study that was interpreted to reveal a diagnosis of 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, 2014. Claims under this subdivision where the health care provider's underlying act or omission occurred prior to July 1, 2014, shall be covered by the statute of limitations that existed prior to July 1, 2014.

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 subdivision A 2 of § 8.01-229 shall apply to toll the statute of limitations in actions brought by or on behalf of a person under a disability.

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

INTRODUCED

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