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SENATE BILL NO. 170

Offered January 13, 2016

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An Act to amend and reenact § 8.01-229 of the Code of Virginia, relating to nonsuits; tolling of limitations; contractual limitation periods.

Patrons—Surovell and Petersen

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:**1. That § 8.01-229 of the Code of Virginia is amended and reenacted as follows:**

§ 8.01-229. Suspension or tolling of statute of limitations; effect of disabilities; effect of death; injunction; prevention of service by defendant; dismissal, nonsuit or abatement; devise for payment of debts; new promises; debts proved in creditors' suits.

A. Disabilities which toll the statute of limitations. — Except as otherwise specifically provided in §§ 8.01-237, 8.01-241, 8.01-242, 8.01-243, 8.01-243.1 and other provisions of this Code,

1. If a person entitled to bring any action is at the time the cause of action accrues an infant, except if such infant has been emancipated pursuant to Article 15 (§ 16.1-331 et seq.) of Chapter 11 of Title 16.1, or incapacitated, such person may bring it within the prescribed limitation period after such disability is removed; or

2. After a cause of action accrues,

a. If an infant becomes entitled to bring such action, the time during which he is within the age of minority shall not be counted as any part of the period within which the action must be brought except as to any such period during which the infant has been judicially declared emancipated; or

b. If a person entitled to bring such action becomes incapacitated, the time during which he is incapacitated shall not be computed as any part of the period within which the action must be brought, except where a conservator, guardian or committee is appointed for such person in which case an action may be commenced by such conservator, committee or guardian before the expiration of the applicable period of limitation or within one year after his qualification as such, whichever occurs later.

For the purposes of subdivisions 1 and 2 of this subsection, a person shall be deemed incapacitated if he is so adjudged by a court of competent jurisdiction, or if it shall otherwise appear to the court or jury determining the issue that such person is or was incapacitated within the prescribed limitation period.

3. If a convict is or becomes entitled to bring an action against his committee, the time during which he is incarcerated shall not be counted as any part of the period within which the action must be brought.

B. Effect of death of a party. — The death of a person entitled to bring an action or of a person against whom an action may be brought shall toll the statute of limitations as follows:

1. Death of person entitled to bring a personal action. — If a person entitled to bring a personal action dies with no such action pending before the expiration of the limitation period for commencement thereof, then an action may be commenced by the decedent's personal representative before the expiration of the limitation period including the limitation period as provided by subdivision E 3 or within one year after his qualification as personal representative, whichever occurs later.

2. Death of person against whom personal action may be brought. — a. If a person against whom a personal action may be brought dies before the commencement of such action and before the expiration of the limitation period for commencement thereof then a claim may be filed against the decedent's estate or an action may be commenced against the decedent's personal representative before the expiration of the applicable limitation period or within one year after the qualification of such personal representative, whichever occurs later.

b. If a person against whom a personal action may be brought dies before suit papers naming such person as defendant have been filed with the court, then such suit papers may be amended to substitute the decedent's personal representative as party defendant before the expiration of the applicable limitation period or within two years after the date such suit papers were filed with the court, whichever occurs later, and such suit papers shall be taken as properly filed.

3. Effect of death on actions for recovery of realty, or a proceeding for enforcement of certain liens relating to realty. — Upon the death of any person in whose favor or against whom an action for recovery of realty, or a proceeding for enforcement of certain liens relating to realty, may be brought, such right of action shall accrue to or against his successors in interest as provided in Article 2 (§ 8.01-236 et seq.) of this chapter.

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4. Accrual of a personal cause of action against the estate of any person subsequent to such person's death. — If a personal cause of action against a decedent accrues subsequent to his death, an action may be brought against the decedent's personal representative or a claim thereon may be filed against the estate of such decedent before the expiration of the applicable limitation period or within two years after the qualification of the decedent's personal representative, whichever occurs later.

5. Accrual of a personal cause of action in favor of decedent. — If a person dies before a personal cause of action which survives would have accrued to him, if he had continued to live, then an action may be commenced by such decedent's personal representative before the expiration of the applicable limitation period or within one year after the qualification of such personal representative, whichever occurs later.

6. Delayed qualification of personal representative. — If there is an interval of more than two years between the death of any person in whose favor or against whom a cause of action has accrued or shall subsequently accrue and the qualification of such person's personal representative, such personal representative shall, for the purposes of this chapter, be deemed to have qualified on the last day of such two-year period.

C. Suspension during injunctions. — When the commencement of any action is stayed by injunction, the time of the continuance of the injunction shall not be computed as any part of the period within which the action must be brought.

D. Obstruction of filing by defendant. — When the filing of an action is obstructed by a defendant's (i) filing a petition in bankruptcy or filing a petition for an extension or arrangement under the United States Bankruptcy Act or (ii) using any other direct or indirect means to obstruct the filing of an action, then the time that such obstruction has continued shall not be counted as any part of the period within which the action must be brought.

E. Dismissal, abatement, or nonsuit.

1. Except as provided in subdivision 3 of this subsection, if any action is commenced within the prescribed limitation period and for any cause abates or is dismissed without determining the merits, the time such action is pending shall not be computed as part of the period within which such action may be brought, and another action may be brought within the remaining period.

2. If a judgment or decree is rendered for the plaintiff in any action commenced within the prescribed limitation period and such judgment or decree is arrested or reversed upon a ground which does not preclude a new action for the same cause, or if there is occasion to bring a new action by reason of the loss or destruction of any of the papers or records in a former action which was commenced within the prescribed limitation period, then a new action may be brought within one year after such arrest or reversal or such loss or destruction, but not after.

3. If a plaintiff suffers a voluntary nonsuit as prescribed in § 8.01-380, the statute of limitations with respect to such action shall be tolled by the commencement of the nonsuited action, *regardless of whether the statute of limitations is statutory or contractual*, and the plaintiff may recommence his action within six months from the date of the order entered by the court, or within the original period of limitation, or within the limitation period as provided by subdivision B 1, whichever period is longer. This tolling provision shall apply irrespective of whether the action is originally filed in a federal or a state court and recommenced in any other court, and shall apply to all actions irrespective of whether they arise under common law or statute.

F. Effect of devise for payment of debts. — No provision in the will of any testator devising his real estate, or any part thereof, subject to the payment of his debts or charging the same therewith, or containing any other provision for the payment of debts, shall prevent this chapter from operating against such debts, unless it plainly appears to be the testator's intent that it shall not so operate.

G. Effect of new promise in writing.

1. If any person against whom a right of action has accrued on any contract, other than a judgment or recognizance, promises, by writing signed by him or his agent, payment of money on such contract, the person to whom the right has accrued may maintain an action for the money so promised, within such number of years after such promise as it might be maintained if such promise were the original cause of action. An acknowledgment in writing, from which a promise of payment may be implied, shall be deemed to be such promise within the meaning of this subsection.

2. The plaintiff may sue on the new promise described in subdivision 1 of this subsection or on the original cause of action, except that when the new promise is of such a nature as to merge the original cause of action then the action shall be only on the new promise.

H. Suspension of limitations in creditors' suits. — When an action is commenced as a general creditors' action, or as a general lien creditors' action, or as an action to enforce a mechanics' lien, the running of the statute of limitations shall be suspended as to debts provable in such action from the commencement of the action, provided they are brought in before the commissioner in chancery under the first reference for an account of debts; but as to claims not so brought in the statute shall continue to run, without interruption by reason either of the commencement of the action or of the order for an

121 account, until a later order for an account, under which they do come in, or they are asserted by petition
122 or independent action.

123 In actions not instituted originally either as general creditors' actions, or as general lien creditors'
124 actions, but which become such by subsequent proceedings, the statute of limitations shall be suspended
125 by an order of reference for an account of debts or of liens only as to those creditors who come in and
126 prove their claims under the order. As to creditors who come in afterwards by petition or under an order
127 of recommitment, or a later order of reference for an account, the statute shall continue to run without
128 interruption by reason of previous orders until filing of the petition, or until the date of the reference
129 under which they prove their claims, as the case may be.

130 I. When an action is commenced within a period of ~~thirty~~ 30 days prior to the expiration of the
131 limitation period for commencement thereof and the defending party or parties desire to institute an
132 action as third-party plaintiff against one or more persons not party to the original action, the running of
133 the period of limitation against such action shall be suspended as to such new party for a period of ~~sixty~~
134 60 days from the expiration of the applicable limitation period.

135 J. If any award of compensation by the Workers' Compensation Commission pursuant to Chapter 5
136 (§ 65.2-500 et seq.) of Title 65.2 is subsequently found void ab initio, other than an award voided for
137 fraudulent procurement of the award by the claimant, the statute of limitations applicable to any civil
138 action upon the same claim or cause of action in a court of this Commonwealth shall be tolled for that
139 period of time during which compensation payments were made.

140 K. Suspension of limitations during criminal proceedings. — In any personal action for damages, if a
141 criminal prosecution arising out of the same facts is commenced, the time such prosecution is pending
142 shall not be computed as part of the period within which such a civil action may be brought. For
143 purposes of this subsection, the time during which a prosecution is pending shall be calculated from the
144 date of the issuance of a warrant, summons or capias, the return or filing of an indictment or
145 information, or the defendant's first appearance in any court as an accused in such a prosecution,
146 whichever date occurs first, until the date of the final judgment or order in the trial court, the date of
147 the final disposition of any direct appeal in state court, or the date on which the time for noting an
148 appeal has expired, whichever date occurs last. Thereafter, the civil action may be brought within the
149 remaining period of the statute or within one year, whichever is longer.

150 If a criminal prosecution is commenced and a grand jury indictment is returned or a grand jury
151 indictment is waived after the period within which a civil action arising out of the same set of facts may
152 be brought, a civil action may be brought within one year of the date of the final judgment or order in
153 the trial court, the date of the final disposition of any direct appeal in state court, or the date on which
154 the time for noting an appeal has expired, whichever date occurs last, but no more than ~~ten~~ 10 years
155 after the date of the crime or two years after the cause of action shall have accrued under § 8.01-249,
156 whichever date occurs last.