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HOUSE BILL NO. 1617

Offered January 11, 2017

Prefiled January 3, 2017

A BILL to amend and reenact § 64.2-520 of the Code of Virginia and to amend the Code of Virginia by adding in Article 3 of Chapter 5 of Title 64.2 a section numbered 64.2-520.1, relating to legal malpractice; estate planning.

Patron—Habeeb

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That § 64.2-520 of the Code of Virginia is amended and reenacted and that the Code of Virginia is amended by adding in Article 3 of Chapter 5 of Title 64.2 a section numbered 64.2-520.1 as follows:

§ 64.2-520. Action for goods carried away, or for waste, destruction of, or damage to estate of decedent.

A. Any action for damages for the taking or carrying away of any goods, or for the waste, destruction of, or damage to any estate of or by the decedent, whether such damage be direct or indirect, may be maintained by or against the decedent's personal representative.

B. An action for damages, including future tax liability, to the grantor, his estate or his trust, resulting from legal malpractice concerning an irrevocable trust shall accrue upon completion of the representation in which the malpractice occurred. The action may be maintained pursuant to § 8.01-281 by the grantor or by the grantor's personal representative or the trustee if such damages are incurred after the grantor's death. An action for damages pursuant to this section in which a written contract for legal services existed between the grantor and the defendant shall be brought within five years after the cause of action accrues. An action for damages pursuant to this section in which an unwritten contract for legal services existed between the grantor and the defendant shall be brought within three years after the cause of action accrues. Notwithstanding this section, no such action shall be based upon damages that may reasonably be avoided or that result from a change of law subsequent to the representation upon which the action is based.

C. Any action pursuant to this section shall survive pursuant to § 8.01-25.

§ 64.2-520.1. Action for damages from legal malpractice concerning estate planning.

A. An action for damages to an individual or an individual's estate, including future tax liability, resulting from legal malpractice concerning the individual's estate planning, including the provision of legal advice or the preparation of legal documents, regardless of when executed, shall accrue upon completion of the representation during which the malpractice occurred.

B. Notwithstanding § 55-22, but subject to any written agreement between the individual and the defendant that expressly grants standing to a person who is not a party to the representation by specific reference to this subsection, the action may be maintained only by the individual or by the individual's personal representative.

C. An action for damages pursuant to this section in which a written contract for legal services existed between the individual and the defendant shall be brought within five years after the cause of action accrues as provided in this section. An action for damages pursuant to this section in which an unwritten contract for legal services existed between the individual and the defendant shall be brought within three years after the cause of action accrues as provided in this section.

D. Notwithstanding the provisions of this section, no such action shall be based upon damages that may reasonably be avoided or that result from a change of law subsequent to the representation upon which the action is based.

E. Any action pursuant to this section shall survive pursuant to § 8.01-25.

2. That no provision of this act shall affect any suit, action, or other judicial proceeding commenced prior to July 1, 2017, and such proceeding shall proceed under the law applicable at the time the proceeding was commenced.

3. That if a cause of action for legal malpractice covered by this act accrued prior to July 1, 2017, and is barred because of the provisions of this act as of July 1, 2017, such cause of action shall be commenced on or before the earlier of either July 1, 2018 or the expiration of the applicable limitation period under the law in effect prior to the enactment of this act.

INTRODUCED

HB1617