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**HOUSE BILL NO. 1418**

Offered January 22, 1996

*A BILL to amend and reenact § 8.01-6 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 8.01-6.1, relating to amendment of pleadings; relation back.*

Patrons—Mims, Cantor, Deeds, Howell, Johnson, Kilgore and McClure

Referred to Committee for Courts of Justice

**Be it enacted by the General Assembly of Virginia:**

**1. That § 8.01-6 of the Code of Virginia is amended and reenacted and that the Code of Virginia is amended by adding a section numbered 8.01-6.1 as follows:**

§ 8.01-6. Amending pleading ; relation back to original pleading.

A misnomer in any pleading may, on the motion of any party, and on affidavit of the right name, be amended by inserting the right name. An amendment changing the party against whom a claim is asserted, *whether to correct a misnomer or otherwise*, relates back to the date of the original pleading if (i) the claim asserted in the amended pleading arose out of the conduct, transaction, or occurrence set forth in the original pleading and (ii) within the limitations period prescribed for commencing the action against the party to be brought in by the amendment, that party received such notice of the institution of the action that he will not be prejudiced in maintaining a defense on the merits and he knew or should have known that but for a mistake concerning the identity of the proper party, the action would have been brought against him.

§ 8.01-6.1. *Amendment of pleading changing or adding a claim or defense; relation back.*

*Subject to any other applicable provisions of law, an amendment of a pleading changing or adding a claim or defense against a party relates back to the date of the original pleadings for purposes of the statute of limitations if the court finds (i) the claim or defense asserted in the amended pleading arose out of the conduct, transaction or occurrence set forth in the original pleading, (ii) the amending party was reasonably diligent in asserting the amended claim or defense and (iii) parties opposing the amendment will not be substantially prejudiced in litigating on the merits as a result of the timing of the amendment. In connection with such an amendment, the trial court may grant a continuance or other relief to protect the parties.*

INTRODUCED

HB1418