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HOUSE BILL NO. 2139

House Amendments in [] - January 29, 2021

A *BILL to amend and reenact § 8.01-249 of the Code of Virginia, relating to accrual of cause of action; diagnosis of latent injury or disease.*

Patron Prior to Engrossment—Delegate Guzman

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:**1. That § 8.01-249 of the Code of Virginia is amended and reenacted as follows:****§ 8.01-249. When cause of action shall be deemed to accrue in certain personal actions.**

The cause of action in the actions herein listed shall be deemed to accrue as follows:

1. In actions for fraud or mistake, in actions for violations of the Consumer Protection Act (§ 59.1-196 et seq.) based upon any misrepresentation, deception, or fraud, and in actions for rescission of contract for undue influence, when such fraud, mistake, misrepresentation, deception, or undue influence is discovered or by the exercise of due diligence reasonably should have been discovered;

2. In actions or other proceedings for money on deposit with a bank or any person or corporation doing a banking business, when a request in writing be made therefor by check, order, or otherwise;

3. In actions for malicious prosecution or abuse of process, when the relevant criminal or civil action is terminated;

4. In actions for injury to the person resulting from exposure to asbestos or products containing asbestos, when a diagnosis of asbestosis, interstitial fibrosis, mesothelioma, or other disabling asbestos-related injury or disease is first communicated to the person or his agent by a physician. However, no such action may be brought more than two years after the death of such person. The diagnosis of a nonmalignant asbestos-related injury or disease shall not accrue an action based upon the subsequent diagnosis of a malignant asbestos-related injury or disease, and such subsequent diagnosis shall constitute a separate injury that shall accrue an action when such diagnosis is first communicated to the person or his agent by a physician;

4a. *In actions for injury to the person when such injury is latent, other than [(i)] those asbestos-related injuries specified in subdivision 4 [and (ii) claims against health care providers as defined in § 8.01-581.1], when the fact of such injury and its causal connection to an injurious or disease-causing substance [, product, or circumstance] is first communicated to the person or his agent by a physician. [However, no such action may be brought more than two years after the death of such person.] The diagnosis of a nonmalignant substance-related [, product-related, or circumstance-related] latent injury or disease shall not accrue an action based upon the subsequent diagnosis of a malignant substance-related [, product-related, or circumstance-related] latent injury or disease, and such subsequent malignant diagnosis shall constitute a separate injury that shall accrue an action when such diagnosis is communicated to the person or his agent by a physician. For purposes of this subdivision, "latent" refers to injuries or diseases that remain dormant or do not develop and, therefore, are undiagnosable during the period of limitations set forth in subsection A of § 8.01-243;*

5. In actions for contribution or for indemnification, when the contributee or the indemnitee has paid or discharged the obligation. A third-party claim permitted by subsection A of § 8.01-281 and the Rules of Court may be asserted before such cause of action is deemed to accrue hereunder;

6. In actions for injury to the person, whatever the theory of recovery, resulting from sexual abuse occurring during the infancy or incapacity of the person, upon the later of the removal of the disability of infancy or incapacity as provided in § 8.01-229 or when the fact of the injury and its causal connection to the sexual abuse is first communicated to the person by a licensed physician, psychologist, or clinical psychologist. As used in this subdivision, "sexual abuse" means sexual abuse as defined in subdivision 6 of § 18.2-67.10 and acts constituting rape, sodomy, object sexual penetration or sexual battery as defined in Article 7 (§ 18.2-61 et seq.) of Chapter 4 of Title 18.2;

7. In products liability actions against parties other than health care providers as defined in § 8.01-581.1 for injury to the person resulting from or arising as a result of the implantation of any prosthetic device for breast augmentation or reconstruction, when the fact of the injury and its causal connection to the implantation is first communicated to the person by a physician;

8. In actions on an open account, from the later of the last payment or last charge for goods or services rendered on the account;

9. In products liability actions against parties other than health care providers as defined in § 8.01-581.1 for injury to the person resulting from or arising as a result of the implantation of any

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59 medical device, when the person knew or should have known of the injury and its causal connection to
60 the device.