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HOUSE BILL NO. 409

Offered January 12, 2022

Prefiled January 11, 2022

A BILL to amend and reenact § 8.01-232 of the Code of Virginia, relating to effect of promises not to plead statute of limitations.

Patrons—Ballard and Campbell, J.L.

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:**1. That § 8.01-232 of the Code of Virginia is amended and reenacted as follows:****§ 8.01-232. Effect of promises not to plead statute of limitations.**

A. Whenever the failure to enforce a promise, written or unwritten, not to plead the statute of limitations would operate as a fraud on the promisee, the promisor shall be estopped to plead the statute. In all other cases, an unwritten promise not to plead the statute shall be void, and a written promise not to plead such statute shall be valid *and enforceable to prevent assertion of the defense of the statute only* when (i) ~~it is the written promise~~ *the written promise is made to avoid or defer litigation pending settlement of any case cause of action that has accrued in favor of the promisee against the promisor,* (ii) ~~it is not made contemporaneously with any other contract~~ *the written promise is signed by the promisor or his agent,* and (iii) ~~it is made for an additional term not longer than the promisee commences an action asserting such cause of action within the earlier of (a) the applicable limitations period running from the date the written promise is made or (b) any shorter time as may be provided in the written promise. No provision of this subsection shall operate contrary to subsections B and C.~~

B. No acknowledgment or promise by any personal representative of a decedent shall charge the estate of the decedent, revive a cause of action otherwise barred, or relieve the personal representative of his duty to defend under § 64.2-1415 in any case in which but for such acknowledgment or promise, the decedent's estate could have been protected under a statute of limitations.

C. No acknowledgment or promise by one of two or more joint contractors shall charge any of such contractors in any case in which but for such acknowledgment another contractor would have been protected under a statute of limitations.

D. Subsections A and C shall not apply to, limit, or prohibit written promises to waive or not to plead the statute of limitations that are made in, or contemporaneously with, subcontracts of any tier that are related to contracts for construction, construction management, design-build, architecture, or engineering under Chapter 43 (§ 2.2-4300 et seq.) or 43.1 (§ 2.2-4378 et seq.) of Title 2.2; under the policies and procedures adopted by any county, city, or town or school board; under Title 23.1; or under authorizing provisions, policies, or procedures for procurement of such contracts by any public body exempted from the foregoing; however, such waiver or promise not to plead applies only to demands, claims, or actions asserted under such contracts by a public body. As used in this subsection, "subcontract" includes any contract or purchase order to supply labor, equipment, materials, or services to an entity awarded a contract with a public body or to any lower-tier entity performing work provided for in such a contract.

INTRODUCED

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