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HOUSE BILL NO. 848

House Amendments in [] — February 14, 2000

A BILL to amend and reenact § 8.01-195.3 of the Code of Virginia, to amend the Code of Virginia by adding in Title 8.01 a chapter numbered 27, consisting of sections numbered 8.01-689 through [~~8.01-706~~ 8.01-705] , and to repeal § 8.01-243.2 of the Code of Virginia, relating to suits by prisoners.

Patrons—Kilgore, Albo, Harris and Howell

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That § 8.01-195.3 of the Code of Virginia is amended and reenacted and that the Code of Virginia is amended by adding in Title 8.01 a chapter numbered 27, consisting of sections numbered 8.01-689 through [~~8.01-706~~ 8.01-705] , as follows:

§ 8.01-195.3. Commonwealth, transportation district or locality liable for damages in certain cases.

Subject to the provisions of this article, the Commonwealth shall be liable for claims for money only accruing on or after July 1, 1982, and any transportation district shall be liable for claims for money only accruing on or after July 1, 1986, on account of damage to or loss of property or personal injury or death caused by the negligent or wrongful act or omission of any employee while acting within the scope of his employment under circumstances where the Commonwealth or transportation district, if a private person, would be liable to the claimant for such damage, loss, injury or death. However, except to the extent that a transportation district contracts to do so pursuant to § 15.2-4518, neither the Commonwealth nor any transportation district shall be liable for interest prior to judgment or for punitive damages. The amount recoverable by any claimant shall not exceed (i) \$25,000 for causes of action accruing prior to July 1, 1988, \$75,000 for causes of action accruing on or after July 1, 1988, or \$100,000 for causes of action accruing on or after July 1, 1993, or (ii) the maximum limits of any liability policy maintained to insure against such negligence or other tort, if such policy is in force at the time of the act or omission complained of, whichever is greater, exclusive of interest and costs.

Notwithstanding any provision hereof, the individual immunity of judges, the Attorney General, attorneys for the Commonwealth, and other public officers, their agents and employees from tort claims for damages is hereby preserved to the extent and degree that such persons presently are immunized. Any recovery based on the following claims are hereby excluded from the provisions of this article:

1. Any claim against the Commonwealth based upon an act or omission which occurred prior to July 1, 1982.

1a. Any claim against a transportation district based upon an act or omission which occurred prior to July 1, 1986.

2. Any claim based upon an act or omission of the General Assembly or district commission of any transportation district, or any member or staff thereof acting in his official capacity, or to the legislative function of any agency subject to the provisions of this article.

3. Any claim based upon an act or omission of any court of the Commonwealth, or any member thereof acting in his official capacity, or to the judicial functions of any agency subject to the provisions of this article.

4. Any claim based upon an act or omission of an officer, agent or employee of any agency of government in the execution of a lawful order of any court.

5. Any claim arising in connection with the assessment or collection of taxes.

6. Any claim arising out of the institution or prosecution of any judicial or administrative proceeding, even if without probable cause.

7. Any claim by an inmate of a state correctional facility, as defined in § 53.1-1, unless the claimant verifies under oath, by affidavit, that he has exhausted his remedies under the adult institutional inmate grievance procedures promulgated by the Department of Corrections. The time for filing the notice of tort claim shall be tolled during the pendency of the grievance procedure.

8. Any claim arising from the failure of a computer, software program, database, network, information system, firmware or any other device, whether operated by or on behalf of the Commonwealth of Virginia or one of its agencies, to interpret, produce, calculate, generate, or account for a date which is compatible with the "Year 2000" date change.

9. Any claim by an inmate of a state or local correctional facility, whether or not such facility is (i) located in the Commonwealth or (ii) operated pursuant to the Corrections Private Management Act (§ 53.1-261 et seq.); arising out of institutional disciplinary proceedings; parole consideration or denial;

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60 custody or classification decisions; housing assignments; jobs; educational or therapeutic program
61 assignments; or computation of sentences.

62 Nothing contained herein shall operate to reduce or limit the extent to which the Commonwealth or
63 any transportation district, agency or employee was deemed liable for negligence as of July 1, 1982, nor
64 shall any provision of this article be applicable to any county, city or town in the Commonwealth or be
65 so construed as to remove or in any way diminish the sovereign immunity of any county, city or town
66 in the Commonwealth.

67 CHAPTER 27.

68 SUITS BY PRISONERS.

69 § 8.01-689. Definitions. As used in this chapter:

70 "Action" means any civil lawsuit initiated by a prisoner [*pro se*] in any state or federal court,
71 wherever located. [An action brought by a prisoner who is represented by counsel is excluded from the
72 provisions of this chapter; provided, however, the provisions of § 8.01-703 shall apply to such actions.]

73 "Agency" means any department, institution, authority, instrumentality, board or other administrative
74 agency of the Commonwealth of Virginia.

75 "Appeal" means any appeal taken from any adverse decision by any court of the Commonwealth.

76 "Attorney's fees" means any fees assessed by any court of the Commonwealth to reimburse counsel
77 or the agency for defending any action; it may also include sanctions awarded under [~~§ 8.01-27.1~~ §
78 8.01-271.1] or any other statute.

79 "Complaint" means a written motion for judgment.

80 "Costs and fees" means any filing fees, costs, writ taxes, appeal bonds, service of process fees, or
81 any other cost or fee associated with filing, maintaining, or appealing any action in any court of the
82 Commonwealth.

83 "Department" means the Virginia Department of Corrections or the Virginia Department of Juvenile
84 Justice.

85 "Director" means the Director of the Virginia Department of Corrections or the Virginia Department
86 of Juvenile Justice.

87 "Employee" means any officer, employee or agent of any agency, or any person acting on behalf of
88 an agency in an official capacity, temporarily or permanently in the service of the Commonwealth.

89 "Filing" means file with the clerk of the court; it does not mean to place in the prison mail system.

90 "Inmate Account" means any checking or savings account maintained in the prisoner's name or on
91 his behalf in any banking institution, within or without the Commonwealth, and any inmate trust account
92 maintained by the Department.

93 "Prison" means any federal, or state or local correctional facility, including those owned or operated
94 by the Virginia Department of Corrections, the Virginia Department of Juvenile Justice, or operated
95 pursuant to the Corrections Private Management Act (§ 53.1-261, et seq.).

96 "Prisoner" means any adult or juvenile confined in any state, local or federal correctional facility,
97 whether or not such facility is (i) located in the Commonwealth or (ii) operated pursuant to the
98 Corrections Private Management Act (§ 53.1-261, et seq.).

99 "Transport costs" means the costs and fees associated with bringing the prisoner and any prisoner
100 witnesses to and from court for any hearing.

101 § 8.01-690. Filing of civil actions by prisoners; payment of fees and costs; request for in forma
102 pauperis status; when actions deemed filed; what to be filed; nonsuits.

103 No action by a prisoner shall be deemed filed, including petitions for writs of mandamus, unless it is
104 accompanied by prepayment in full of all costs and fees. A prisoner may submit his civil action to the
105 clerk accompanied by a request for in forma pauperis status, together with a certified copy of his
106 inmate account showing all deposits and disbursements for the previous twelve months. The court shall
107 promptly rule upon the prisoner's request for in forma pauperis status. The grant of in forma pauperis
108 status shall not relieve the prisoner from the full payment of costs and fees, but shall permit him to pay
109 same in three equal installments. Any action in which in forma pauperis status is granted shall be
110 deemed filed on the date such status is granted. If a prisoner to whom in forma pauperis status is
111 granted fails to make any installment payment when due, the court shall dismiss the case for want of
112 prosecution; the prisoner shall not be permitted to refile the case without prepayment in full of court
113 costs and fees for both the previous and current filing. No prisoner shall be permitted to file a warrant
114 in debt, warrant in detinue or other such pleading; all prisoner civil actions shall be commenced by a
115 complaint clearly and plainly setting forth the prisoner's claims. No prisoner shall be permitted to
116 nonsuit a case unless such nonsuit is taken with prejudice.

117 [§ 8.01-691. When in forma pauperis status denied: In forma pauperis status shall be denied to any
118 prisoner if he has had three or more cases or appeals dismissed by any federal court or any court of
119 the Commonwealth for being frivolous, malicious, or for failure to state a claim, absent a showing that
120 he is in imminent danger of serious physical injury.]

121 § 8.01-691 Venue of prisoner civil actions.

Notwithstanding any other provision of law, no prisoner civil action shall be filed except in the city or county in which the prison is located where the prisoner was housed when the cause of action arose. Upon motion of the defendants, the court shall transfer the case to a more convenient venue. If a prisoner files a civil action in an improper venue, the court shall screen the case pursuant to § 8.01-692 and, if the court determines the complaint states a claim that requires further [~~merit~~ inquiry], it shall transfer the matter to the city or county in which the prison is located where the cause of action arose.

§ 8.01-692 Screening and dismissal by court.

Before the court directs that service be made in any case, the court shall screen the prisoner's complaint to determine whether it states a claim that warrants further inquiry. The court shall dismiss with prejudice any complaint that does not state a claim that warrants further inquiry, or that is not supported by copies of the notice of claim, certified mailing receipt, grievances and responses at all levels of the institutional grievance procedure and affidavit required by the Virginia Tort Claims Act (§ 8.01-195.1 et seq.). The court shall dismiss all claims against individual employees, and shall substitute the Commonwealth as the sole party defendant; the case shall thereafter proceed under the provisions of the Virginia Tort Claims Act (§ 8.01-195.1 et seq.). Whenever a court screens and dismisses a prisoner civil action, the court shall direct the clerk to send a complete copy of the case file to the Office of the Attorney General.

§ 8.01-693 Service of process; notice of non-representation; time for response; requirement for further service.

[~~Whenever a prisoner files a civil action against the Commonwealth, any agency, or any employee, for acts or omissions arising out of the performance of their official duties~~ Upon completion of the screening required pursuant to §§ 8.01-690 through 8.01-692], the clerk of such court shall send a complete copy of all suit papers to the Office of the Attorney General. The Office of the Attorney General shall, in all cases, be allowed no fewer than thirty days in which to file responsive pleadings from the date of their receipt of same. When the responsive pleadings are filed, the Office of the Attorney General shall also advise the court of those parties for whom it cannot accept service of process. The court shall direct that the prisoner effect service upon the nonrepresented parties within [~~twenty~~ sixty] days; if service is not effected, such parties shall be dismissed from the case.

§ 8.01-694. Affidavits permitted; sequence of responses; filing on the record.

Affidavits shall be permitted in the defense of prisoner civil actions. Once responsive pleadings have been filed by the Office of the Attorney General or other defense counsel, the court shall direct the prisoner to file his response within twenty days thereafter. The court shall promptly thereafter review the record and rule upon same.

§ 8.01-695. When hearings held; transport costs of prisoner and witnesses; limitation on prisoner witnesses; limitation on subpoenas; telephonic or video hearing.

Whenever possible, the court shall rule upon the record and shall not hold a hearing unless the ends of justice mandate that a hearing be held. No hearing shall be held until the prisoner prepays in full the transport costs for himself and any prisoner witnesses to the hearing. Absent extraordinary circumstances, no prisoner shall be permitted to request attendance of more than one prisoner witness at any hearing. If the prisoner fails to prepay the transport cost for himself and any prisoner witness within thirty days after being ordered to do so, the hearing shall be cancelled. The court may then give the prisoner the option of having the hearing held telephonically or continued until the prisoner is released from confinement. Notwithstanding the foregoing, the court may, in its discretion, hold any hearing via telephonic or video devices rather than conduct a hearing in court. No prisoner shall be permitted to issue subpoenas for nonprisoner witnesses or for documents, absent permission of court. The court shall screen all subpoenas for nonprisoner witnesses and for documents and shall limit the issuance of such subpoenas to only those that are actually germane, relevant and material to the case.

§ 8.01-696. Attorney's fees; sanctions; prohibition on future filings.

At the conclusion of each case, the court shall determine if the prisoner's civil action was frivolous, malicious or meritless. If the court makes such a determination, the court shall award the Office of the Attorney General or other defense counsel such sums as are necessary to reimburse counsel for the time spent in preparing for and defending the case, including travel time, lodging, meals and all other associated costs. In appropriate cases, the court may also assess additional sanctions pursuant to § 8.01-271.1. No prisoner shall be permitted to file any future civil action in any court until such time as he demonstrates that he has paid the attorney's fees or sanctions assessed in any previous matter in full, absent a showing that he is in imminent danger of serious physical injury.

§ 8.01-697. Discovery; subpoenas; in camera submissions; privacy and security considerations.

No prisoner shall be permitted to make any discovery requests of any kind until the court has ruled upon all preliminary and dispositive motions in the case. The court shall permit limited discovery only upon a showing of actual need. The court shall screen the prisoner's discovery requests and require the defendants to respond only to those that are germane, relevant and material to the case. In no event

shall the defendants be required to respond to more than five interrogatories, five requests for production of documents and five requests for admissions. In no event shall a prisoner be entitled to disclosure of: (1) Department or Institutional Operating Procedures dealing with security matters; (2) any information containing personal information of defendants, employees, volunteers, or other prisoners; (3) the prisoner's or any other prisoner's central criminal file or parole file; (4) records of the Division of Forensic Science; (5) records of the Virginia State Police; (6) records of the Virginia Parole Board. In appropriate circumstances, such material may be submitted to the court for its in camera review and shall be held by the court under seal. At the conclusion of the case or appeal, such sealed material shall be returned to counsel submitting same.

§ 8.01-698. Recovery by prisoner; offsets [~~; attorney's fee for successful prisoner~~] .

No prisoner shall recover any monetary damages for mental or emotional injury absent a showing of serious physical injury. If the court or jury determines that a prisoner is entitled to monetary damages, any such award shall be offset by all amounts owing as a result of: (1) outstanding child or spousal support awards; (2) amounts owing for victim restitution; (3) amounts owing for criminal fines and costs; (4) amounts awarded under § 8.01-696; and (5) the costs of the inmate's confinement. [~~No attorney's fee shall be permitted to counsel representing a successful prisoner.~~]

§ 8.01-699. Amendment of pleadings by prisoners.

No prisoner shall be permitted to amend his pleading more than once without leave of court. Leave shall not be granted except in compelling circumstances.

§ 8.01-700 Exhaustion of remedies.

No prisoner shall be permitted to file or maintain a civil action unless he has fully exhausted all remedies available to him under the institutional grievance system. No prisoner shall be excused from this requirement because he seeks a remedy not available to him under the institutional grievance system. If a prisoner fails to exhaust all levels of appeal, or misses the time deadline for completing each step of the institutional grievance system, he shall be deemed to have failed to exhaust his remedies and his civil action shall be dismissed with prejudice. [~~No person shall be excused from complying with the provisions of this section due to his release from confinement after his cause of action arose.~~]

§ 8.01-701 Loss of good time credits for filing frivolous or malicious actions.

Upon motion of the defendants or upon its own motion, in addition to the requirements of § 8.01-696, the court shall, whenever it appears that the prisoner has filed three or more cases of appeals in any court of this Commonwealth that were frivolous or malicious, issue a written finding to that effect and shall direct the Virginia Department of Corrections to forfeit the prisoner's accumulated good time allowance, good conduct credits, earned sentence credits, or all of them.

§ 8.01-702. Prosecution for perjury.

Upon motion of the defendants or upon its own motion, if any court determines that a prisoner committed or suborned perjury in any testimony or filings with the court, or any prisoner witness committed or suborned perjury in any testimony or filings with the court, the court shall refer the prisoner or prisoner witness to the attorney for the Commonwealth for prosecution for perjury.

§ 8.01-703. Statute of limitations for prisoner civil action.

No prisoner shall bring or have brought on his behalf any personal action relating to the conditions of his confinement, including claims of excessive force, until all available administrative remedies are exhausted as required by § 8.01-700. Such action shall be brought by or on behalf of such prisoner within one year after the cause of action accrues or within six months after all administrative remedies are exhausted, whichever occurs later.

§ 8.01-704 Waiver of privilege.

No prisoner shall have any privilege with regard to his criminal, medical, dental and mental history records [that are in the possession of the Commonwealth or any law-enforcement agency] , and all such records may be used in any lawful fashion. [~~Notwithstanding any other provision of law, no prisoner shall be entitled to claim any privilege of any kind with regard to any medical, dental or mental health professionals, whether directly employed by the Department, providing professional services via a contract or serving as independent contractors. The Department, the Office of the Attorney General and any attorneys appointed by the Governor or the Office of the Attorney General to defend prisoner civil lawsuits, shall have full access at all times to any prisoner's criminal, medical, dental or mental health records or treating health care professionals, whether or not a suit or grievance has been filed.~~]

§ 8.01-705. Actions cognizable.

No court shall entertain any class actions upon behalf of any prisoners.

2. That § 8.01-243.2 of the Code of Virginia is repealed.

3. That the General Assembly of Virginia has found that the number of lawsuits filed by prisoners in state courts has risen precipitously each year. This has caused state courts to devote larger and larger amounts of resources to deal with matters which are generally frivolous, malicious and

245 meant only to harass jailers. This has also caused an increase in the expense to the
246 Commonwealth, the Virginia Department of Corrections, the Virginia Department of Juvenile
247 Justice, local governments, the Office of the Attorney General, the attorneys for the
248 Commonwealth, the Sheriffs and counsel for all of the foregoing. This has also reduced the judicial
249 services available to the public and legitimate claims by other inmates. This act is designated to
250 provide state courts with the tools to effectively manage prisoner filings and to reduce the burdens
251 on the courts and the public.

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