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HOUSE BILL NO. 547

Offered January 9, 2002

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A BILL to amend and reenact §§ 8.01-195.3 and 8.01-410 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, and to repeal § 8.01-243.2 of the Code of Virginia, relating to limiting civil law suits by prisoners.

 Patron—Kilgore

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 8.01-195.3 and 8.01-410 of the Code of Virginia are 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, 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

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59 (§ 53.1-261 et seq.); arising out of institutional disciplinary proceedings; parole consideration or denial;
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 § 8.01-410. Convicts as witnesses in civil actions.

68 Whenever any party in a civil action in any circuit court in this Commonwealth shall require as a
69 witness in his behalf, a convict or prisoner in a correctional or penal institution as defined in § 53.1-1,
70 the court, on the application of such party or his attorney may, in its discretion and upon consideration
71 of the importance of the personal appearance of the witness and the nature of the offense for which he
72 is imprisoned, issue an order to the Director of the Department of Corrections to deliver such witness to
73 the sheriff of the jurisdiction of the court issuing the order. The sheriff shall transport the convict to the
74 court to testify as such witness, and after he shall have so testified and been released as such witness,
75 the sheriff shall return the witness to the custody of the Department.

76 If necessary the sheriff may confine the convict for the night in any convenient city or county
77 correctional institution.

78 Under such rules and regulations as the superintendent of such an institution may prescribe, any
79 party to a civil action in any circuit court in this Commonwealth may take the deposition of a convict or
80 prisoner in the institution, which deposition, when taken, may be admissible in evidence as other
81 depositions in civil actions.

82 The party seeking the testimony of such prisoner shall advance a sum sufficient to defray the
83 expenses and compensation of the correctional officers and sheriff, which the court shall tax as other
84 costs.

85 For the purposes of this section, "correctional officers" shall have the same meaning as provided in
86 § 53.1-1.

87 Notwithstanding the provisions of this section, in any action in which the plaintiff is a convict, the
88 provisions of Chapter 27 (§ 8.01-689 et seq.) of Title 8.01 shall apply.

89 CHAPTER 27.

90 SUITS BY PRISONERS.

91 § 8.01-689. Definitions. As used in this chapter:

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

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

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

98 "Attorneys' fees" means any fees assessed by any court of the Commonwealth to reimburse counsel
99 or the agency for defending any action; it may also include sanctions awarded under § 8.01-271.1 or
100 any other statute.

101 "Complaint" means a written motion for judgment.

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

105 "Department" means the Virginia Department of Corrections or the Virginia Department of Juvenile
106 Justice.

107 "Director" means the Director of the Virginia Department of Corrections or the Virginia Department
108 of Juvenile Justice.

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

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

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

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

119 "Prisoner" means any adult or juvenile confined in a prison.

120 "Transport costs" means the costs and fees associated with bringing the prisoner and any prisoner

witnesses to and from court for any hearing.

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

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

§ 8.01-691. When in forma pauperis status denied.

In forma pauperis status shall be denied to any prisoner if he has had three or more cases or appeals dismissed by any federal court or any court of the Commonwealth for being frivolous, malicious, or for failure to state a claim, absent a showing that he is in imminent danger of serious physical injury.

§ 8.01-692. Venue of prisoner civil actions.

Notwithstanding any other provision of law, no prisoner 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 § 8.01-693 and, if the court determines the complaint states a claim that requires further inquiry, it shall transfer the matter to the city or county in which the prison is located where the cause of action arose.

§ 8.01-693. 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. In cases arising under the Virginia Tort Claims Act (§ 8.01-195.1 et seq.), the court shall dismiss without prejudice any complaint that is not supported by (i) a copy of the notice of claim; (ii) a copy of the certified mailing receipt; (iii) copies of all grievances and responses at all levels of the institutional grievance procedure; and (iv) the affidavit of exhaustion of inmate grievance remedies pursuant to subdivision 7 of § 8.01-195.3. In cases arising under 42 U.S.C. § 1983, the court shall dismiss without prejudice any complaint that is not supported by copies of all grievances and responses at all levels of the institutional grievance procedure. In cases arising under 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. In cases arising under 42 U.S.C. § 1983, the court shall dismiss all claims against the Commonwealth, any agency, and employees acting in their official capacities. 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.

§ 8.01-694. Service of process; notice of non-representation; time for response; requirement for further service.

Upon completion of the screening required pursuant to §§ 8.01-690, 8.01-691 and 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 its receipt of pleadings. 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 non-represented parties within sixty days; if service is not effected, such parties shall be dismissed from the case. No trial, hearing or return date shall be set by any court until the provisions of §§ 8.01-695 and 8.01-696 have been followed.

§ 8.01-695. 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 review and rule upon the record.

182 § 8.01-696. When hearings held; transport costs of prisoner and witnesses; limitation on prisoner
183 witnesses; limitation on subpoenas; telephonic or video hearing.

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

197 § 8.01-697. Attorney's fees; sanctions; prohibition on future filings.

198 At the conclusion of each case, the court shall determine if the prisoner's civil action was frivolous,
199 malicious or without merit. If the court makes such a determination, the court shall award the Office of
200 the Attorney General or other defense counsel such sums as are necessary to reimburse counsel for the
201 time spent in preparing for and defending the case, including travel time, lodging, meals and all other
202 associated costs. In appropriate cases, the court may also assess additional sanctions pursuant to
203 § 8.01-271.1. No prisoner shall be permitted to file any future civil action in any court until such time
204 as he demonstrates that he has paid the attorneys' fees and sanctions assessed in any previous matter in
205 full, absent a showing that he is in imminent danger of serious physical injury.

206 § 8.01-698. Discovery; subpoenas; in camera submissions; privacy and security considerations.

207 No prisoner shall be permitted to make any discovery requests of any kind until the court has ruled
208 upon all preliminary and dispositive motions in the case. The court shall permit limited discovery only
209 upon a showing of actual need. The court shall screen the prisoner's discovery requests and require the
210 defendants to respond only to those that are germane, relevant and material to the case. In no event
211 shall the defendants be required to respond to more than five interrogatories, five requests for
212 production of documents and five requests for admissions. In no event shall a prisoner be entitled to
213 disclosure of:

214 1. Department or Institutional Operating Procedures dealing with security matters;

215 2. Any information containing personal information of defendants, employees, volunteers, or other
216 prisoners;

217 3. The prisoner's or any other prisoner's central criminal file or parole file;

218 4. Records of the Division of Forensic Science;

219 5. Records of the Virginia State Police;

220 6. Records of the Virginia Parole Board; or

221 7. Any other privileged or confidential records. In appropriate circumstances, such material may be
222 submitted to the court for its in camera review and shall be held by the court under seal. At the
223 conclusion of the case or appeal, such sealed material shall be returned to counsel, unless required for
224 an appeal.

225 § 8.01-699. Recovery by prisoner; offsets; attorneys' fee for successful prisoner.

226 No prisoner shall recover any monetary damages for mental or emotional injury absent a showing of
227 serious physical injury. If the court or jury determines that a prisoner is entitled to monetary damages,
228 any such award shall be offset by all amounts owing as a result of:

229 1. Outstanding child or spousal support awards;

230 2. Amounts owing for victim restitution;

231 3. Amounts owing for criminal fines and costs; and

232 4. Amounts awarded by any court for sanctions, attorneys' fees, costs or any other reason. No
233 attorneys' fee shall be permitted to counsel representing a successful prisoner.

234 § 8.01-700. Amendment of pleadings by prisoners.

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

237 § 8.01-701. Exhaustion of remedies.

238 No prisoner shall be permitted to file or maintain an action unless he has fully exhausted all
239 remedies available to him under the institutional grievance system. No prisoner shall be excused from
240 this requirement because he seeks a remedy not available to him under the institutional grievance
241 system. If a prisoner fails to exhaust all levels of appeal, or misses the time deadline for completing
242 each step of the institutional grievance system, he shall be deemed to have failed to exhaust his
243 remedies and his civil action shall be dismissed with prejudice. No person shall be excused from

244 complying with the provisions of this section due to his release from confinement after his cause of
245 action arose.

246 § 8.01-702. Loss of good time credits for filing frivolous or malicious actions.

247 Upon motion of the defendants or upon its own motion, in addition to the requirements of
248 § 8.01-697, the court shall, whenever it appears that the prisoner has filed three or more cases of
249 appeals in any court of this Commonwealth that were frivolous or malicious or without merit, issue a
250 written finding to that effect and shall direct the Virginia Department of Corrections to forfeit the
251 prisoner's accumulated good time allowance, good conduct credits, earned sentence credits, or all of
252 them.

253 § 8.01-703. Prosecution for perjury.

254 Upon motion of the defendants or upon its own motion, if any court determines that a prisoner or
255 prisoner witness committed or suborned perjury in any testimony or filings with the court, the court
256 shall refer the prisoner or prisoner witness to the attorney for the Commonwealth for prosecution for
257 perjury. No portion of any sentence resulting from a conviction for perjury shall be suspended and shall
258 be served consecutively with any other sentences.

259 § 8.01-704. Statute of limitations for prisoner civil action.

260 No prisoner shall bring or have brought on his behalf any personal action relating to the conditions
261 of his confinement, including claims of excessive force, until all available administrative remedies are
262 exhausted as required by § 8.01-701. Such action shall be brought by or on behalf of such prisoner
263 within one year after the cause of action accrues or within six months after all administrative remedies
264 are exhausted, whichever occurs later.

265 § 8.01-705. Waiver of privilege.

266 No prisoner shall have any privilege with regard to his criminal, medical, dental and mental history
267 records, that are in the possession of the Commonwealth or any law-enforcement agency, and all such
268 records may be used in any lawful fashion.

269 § 8.01-706. Actions not cognizable.

270 No court shall entertain any class actions upon behalf of any prisoners, nor shall it grant any
271 declaratory or injunctive relief on behalf of any prisoner.

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