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SENATE BILL NO. 913

Offered January 10, 2007

Prefiled January 8, 2007

A BILL to amend and reenact §§ 8.01-195.4 and 8.01-195.7 of the Code of Virginia, and by adding a section numbered 8.01-195.6:1 and by adding in Chapter 2 of Title 15.2 a section numbered 15.2-209, and to repeal § 8.01-195.6 of the Code of Virginia, relating to notice of claim; requirements of bringing a lawsuit against a government entity.

Patron—Obenshain

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 8.01-195.4 and 8.01-195.7 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding a section numbered 8.01-195.6:1 and by adding in Chapter 2 of Title 15.2 a section numbered 15.2-209 as follows:

§ 8.01-195.4. Jurisdiction of claims under this article; right to jury trial; service on Commonwealth or locality.

The general district courts shall have exclusive original jurisdiction to hear, determine, and render judgment on any claim against the Commonwealth or any transportation district cognizable under this article when the amount of the claim does not exceed \$4,500, exclusive of interest and any attorneys' fees. Jurisdiction shall be concurrent with the circuit courts when the amount of the claim exceeds \$4,500 but does not exceed \$15,000, exclusive of interest and such attorneys' fees. Jurisdiction of claims when the amount exceeds \$15,000 shall be limited to the circuit courts of the Commonwealth. The parties to any such action in the circuit courts shall be entitled to a trial by jury.

In all actions against the Commonwealth commenced pursuant to this article, the Commonwealth shall be a proper party defendant, and service of process shall be made on the Attorney General. The notice of claim shall be filed pursuant to ~~§ 8.01-195.6~~ § 8.01-195.6:1 on the Director of the Division of Risk Management or the Attorney General. In all such actions against a transportation district, the district shall be a proper party and service of process and notices shall be made on the chairman of the commission of the transportation district.

§ 8.01-195.7. Statute of limitations.

Every claim cognizable against the Commonwealth or a transportation district under this article shall be forever barred, unless within one year after the cause of action accrues to the claimant the notice of claim required by ~~§ 8.01-195.6~~ § 8.01-195.6:1 is properly filed. An action may be commenced pursuant to § 8.01-195.4 (i) upon denial of the claim by the Attorney General or the Director of the Division of Risk Management or, in the case of a transportation district, by the chairman of the commission of that district or (ii) after the expiration of six months from the date of filing the notice of claim unless, within that period, the claim has been compromised and discharged pursuant to § 8.01-195.5. All claims against the Commonwealth or a transportation district under this article shall be forever barred unless such action is commenced within eighteen months of the filing of the notice of claim.

The limitations periods prescribed by this section and § 8.01-195.6 shall be subject to the tolling provision of § 8.01-229 and the pleading provision of § 8.01-235. Additionally, claims involving medical malpractice in which the notice required by this section and § 8.01-195.6 has been given shall be subject to the provisions of § 8.01-581.9. Notwithstanding the provisions of this section, if notice of claim against the Commonwealth was filed prior to July 1, 1984, any claimant so filing shall have two years from the date such notice was filed within which to commence an action pursuant to § 8.01-195.4.

§ 8.01-195.6:1. Notice of claim.

A. Every claim cognizable against the Commonwealth or a transportation district shall be forever barred unless the claimant or his agent, attorney or representative has filed a written statement of the nature of the claim, which includes the time and place at which the injury is alleged to have occurred and the agency or agencies alleged to be liable, within one year after such cause of action accrued. However, if the claimant was under a disability at the time the cause of action accrued, the tolling provisions of § 8.01-229 shall apply.

B. If the claim is against the Commonwealth, the statement shall be filed with the Director of the Division of Risk Management or the Attorney General. If the claim is against a transportation district, the statement shall be filed with the chairman of the commission of the transportation district.

C. The notice is deemed filed when it is received in the office of the official to whom the notice is directed. The notice may be delivered by hand, by any form of United States mail service (including

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59 regular, certified, registered or overnight mail), or by commercial delivery service.

60 D. In any action contesting the filing of the notice of claim, the burden of proof shall be on the
61 claimant to establish receipt of the notice in conformity with this section. A signed United States mail
62 return receipt indicating the date of delivery, or any other form of signed and dated acknowledgment of
63 delivery given by authorized personnel in the office of the official with whom the statement is filed, shall
64 be prima facie evidence of filing of the notice under this section.

65 E. Claims against the Commonwealth involving medical malpractice shall be subject to the
66 provisions of this article and the provisions of Chapter 21.1 (§ 8.01-581.1 et seq.). However, the
67 recovery in such a claim involving medical malpractice shall not exceed the limits imposed by
68 § 8.01-195.3.

69 § 15.2-209. Notice to be given to counties, cities, towns, and certain governmental entities and
70 sanitary districts of tort claims for damages.

71 A. Every claim cognizable against any county, city, or town for negligence shall be forever barred
72 unless the claimant or his agent, attorney, or representative has filed a written statement of the nature
73 of the claim, which includes the time and place at which the injury is alleged to have occurred, within
74 six months after such cause of action accrued. However, if the claimant was under a disability at the
75 time the cause of action accrued, the tolling provisions of § 8.01-229 shall apply.

76 B. The statement shall be filed with the county, city, or town attorney or with the chief executive or
77 mayor of the county, city, or town.

78 C. The notice is deemed filed when it is received in the office of the official to whom the notice is
79 directed. The notice may be delivered by hand, by any form of United States mail service (including
80 regular, certified, registered or overnight mail), or by commercial delivery service.

81 D. In any action contesting the filing of the notice of claim, the burden of proof shall be on the
82 claimant to establish receipt of the notice in conformity with this section. A signed United States mail
83 return receipt indicating the date of delivery, or any other form of signed and dated acknowledgment of
84 delivery, given by authorized personnel in the office of the official with whom the statement is filed,
85 shall be prima facie evidence of filing of the notice under this section.

86 E. This section does not, and shall not be construed to, abrogate, limit, expand or modify the
87 sovereign immunity of any county, city, town, or any officer, agent or employee of the foregoing.

88 F. This section, on and after June 30, 1954, shall take precedence over the provisions of all charters
89 and amendments thereto of municipal corporations in conflict herewith granted prior to such date. It is
90 further declared that as to any such charter or amendment thereto, granted on and after such date, that
91 any provision therein in conflict with this section shall be deemed to be invalid as being in conflict with
92 Article IV, Section 12 of the Constitution of Virginia unless such conflict be stated in the title to such
93 proposed charter or amendment thereto by the words "conflicting with § 15.2-209 of the Code" or
94 substantially similar language.

95 G. The provisions of this section are mandatory and shall be strictly construed. This section is
96 procedural and compliance with its provisions is not jurisdictional.

97 **2. That § 8.01-195.6 of the Code of Virginia is repealed.**