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SENATE BILL NO. 913

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee for Courts of Justice
on January 31, 2007)

(Patron Prior to Substitute—Senator Obenshain)

A BILL to amend and reenact § 8.01-195.6 of the Code of Virginia, to amend the Code of Virginia by adding in Chapter 2 of Title 15.2 a section numbered 15.2-209, and to repeal § 8.01-222 of the Code of Virginia, relating to notice of claim; requirements of bringing a lawsuit against a government entity.

Be it enacted by the General Assembly of Virginia:

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

§ 8.01-195.6. 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. ~~The~~ *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 within one year after such cause of action accrued if the claim is against the Commonwealth. If the claim is against a transportation district the statement shall be filed with the chairman of the commission of the transportation district within one year after the 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. The claimant or his agent, attorney or representative shall, in a claim cognizable against the Commonwealth, mail the notice of claim via the United States Postal Service by certified mail, return receipt requested, addressed to the Director of the Division of Risk Management or the Attorney General in Richmond. The notice, in a claim cognizable against a transportation district, shall be mailed via the United States Postal Service by certified mail, return receipt requested, addressed to 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 regular, certified, registered or overnight mail), or by commercial delivery service.*

D. In any action contesting the filing of the notice of claim, the burden of proof shall be on the claimant to establish mailing and receipt of the notice in conformity with this section. ~~The A signed United States mail return receipt indicating the date of delivery to the Director of the Division of Risk Management, the Attorney General, or the chairman of the commission of the transportation district, when admitted into evidence, or any other form of signed and dated acknowledgment of delivery given by authorized personnel in the office of the official with whom the statement is filed, shall be prima facie evidence of filing of the notice under this section. The notice shall be deemed to be timely filed if it is sent by certified mail, return receipt requested, and if the official receipt for the notice shows the mailing was within the prescribed time limits.~~

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

§ 15.2-209. Notice to be given to counties, cities, and towns of tort claims for damages.

A. Every claim cognizable against any county, city, or town for negligence 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, within six months 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. The statement shall be filed with the county, city, or town attorney or with the chief executive or mayor of the county, city, or town.

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

D. In any action contesting the filing of the notice of claim, the burden of proof shall be on the

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

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

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

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

75 **2. That § 8.01-222 of the Code of Virginia is repealed.**