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HOUSE BILL NO. 2452

Offered January 19, 2011

A BILL to amend and reenact §§ 8.01-195.2 through 8.01-195.8 of the Code of Virginia, relating to the Virginia Tort Claims Act; localities.

Patrons—Alexander, Joannou, Phillips and Surovell

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 8.01-195.2 through 8.01-195.8 of the Code of Virginia are amended and reenacted as follows:

§ 8.01-195.2. Definitions.

As used in this article:

"Agency" means any department, institution, authority, instrumentality, board or other administrative agency of the government of the Commonwealth of Virginia *or of the government of any locality* and any transportation district created pursuant to Chapter 45 (§ 15.2-4500 et seq.) of Title 15.2 and Chapter 630 of the 1964 Acts of Assembly.

"Employee" means any officer, employee or agent of any agency, or any person acting on behalf of an agency in an official capacity, temporarily or permanently in the service of the Commonwealth, *any locality*, or any transportation district, whether with or without compensation.

"Locality" means any county, city, or town.

"School boards" as defined in § 22.1-1 are not state agencies nor are employees of school boards state employees.

"Transportation district" shall be limited to any transportation district or districts which have entered into an agreement in which the Northern Virginia Transportation District is a party with any firm or corporation as an agent to provide passenger rail services for such district or districts while such firm or corporation is performing in accordance with such agreement.

§ 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, *and any locality shall be liable for claims for money only accruing on or after July 1, 2011*, 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 locality, or any transportation district shall not* 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.

1b. Any claim against a locality based upon an act or omission which occurred prior to July 1, 2011.

2. Any claim based upon an act or omission of the General Assembly, *the governing body of any locality*, 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

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59 of this article.

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

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

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

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

69 Nothing contained herein shall operate to reduce or limit the extent to which the Commonwealth or
70 any transportation district, agency or employee was deemed liable for negligence as of July 1, 1982, ~~nor~~
71 ~~shall any provision of this article be applicable to any county, city or town in the Commonwealth or be~~
72 ~~so construed as to remove or in any way diminish the sovereign immunity of any county, city or town~~
73 ~~in the Commonwealth or to which any locality was deemed liable for negligence as of July 1, 2011.~~

74 § 8.01-195.4. Jurisdiction of claims under this article; right to jury trial; service on Commonwealth or
75 locality.

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

83 In all actions against the Commonwealth commenced pursuant to this article, the Commonwealth
84 shall be a proper party defendant, and service of process shall be made on the Attorney General. The
85 notice of claim shall be filed pursuant to § 8.01-195.6 on the Director of the Division of Risk
86 Management or the Attorney General. In all such actions against a transportation district, the district
87 shall be a proper party and service of process and notices shall be made on the chairman of the
88 commission of the transportation district. *In all such actions against a locality, the locality shall be a*
89 *proper party and service of process and notices shall be made pursuant to § 8.01-300.*

90 § 8.01-195.5. Settlement of certain cases.

91 The Attorney General shall have authority in accordance with § 2.2-514 to compromise and settle
92 claims against the Commonwealth cognizable under this article.

93 *The attorney for the locality, the chief executive or mayor of the locality, or such other person as*
94 *may be designated by the locality, shall have the authority to compromise and settle claims against the*
95 *locality cognizable under this article provided (i) the proposed settlement and reasons therefor are*
96 *submitted to the governing body of the locality in writing and approved by its members or (ii) the*
97 *settlement is made in accordance with a written policy approved by the governing body of the locality*
98 *for such settlements.*

99 The chairman of the commission for a transportation district against which a claim was filed pursuant
100 to this article, or such other person as may be designated by the commission, shall have the authority to
101 compromise, settle and discharge the claim provided (i) the proposed settlement and reasons therefor are
102 submitted to the commission in writing and approved by its members or (ii) the settlement is made in
103 accordance with a written policy approved by the transportation district commission for such settlements.
104 The Director of the Division of Risk Management may adjust, compromise and settle claims against the
105 Commonwealth cognizable under this article prior to the commencement of suit unless otherwise
106 directed by the Attorney General.

107 § 8.01-195.6. Notice of claim.

108 A. Every claim cognizable against the Commonwealth or a transportation district shall be forever
109 barred unless the claimant or his agent, attorney or representative has filed a written statement of the
110 nature of the claim, which includes the time and place at which the injury is alleged to have occurred
111 and the agency or agencies alleged to be liable, within one year after such cause of action accrued.
112 However, if the claimant was under a disability at the time the cause of action accrued, the tolling
113 provisions of § 8.01-229 shall apply. *Every claim cognizable against a locality shall be forever barred*
114 *unless the claimant or his agent, attorney, or representative has complied with the provisions of*
115 *§ 15.2-209.*

116 B. If the claim is against the Commonwealth, the statement shall be filed with the Director of the
117 Division of Risk Management or the Attorney General. If the claim is against a transportation district
118 the statement shall be filed with the chairman of the commission of the transportation district. *If the*
119 *claim is against a locality, the statement shall be filed with the attorney for the locality or with the chief*
120 *executive or mayor of the locality.*

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 receipt of the notice in conformity with this section. A signed United States mail return receipt indicating the date of delivery, 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.

E. Claims against the Commonwealth *or any locality* 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.

§ 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 is properly filed. *Every claim cognizable against a locality under this article shall be forever barred unless within six months after the cause of action accrues to the claimant the notice of claim required by § 8.01-195.6 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, *in the case of a locality, by the attorney for the locality or the chief executive or mayor of the locality,* 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, *a locality,* or a transportation district under this article shall be forever barred unless such action is commenced within ~~eighteen~~ 18 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.

§ 8.01-195.8. Release of further claims.

Notwithstanding any provision of this article, the liability for any claim or judgment cognizable under this article shall be conditioned upon the execution by the claimant of a release of all claims against the Commonwealth, *and its political subdivisions, agencies, and instrumentalities,* *against the locality and its agencies and instrumentalities,* or against the transportation district, and against any officer or employee of the Commonwealth, *the locality,* or the transportation district in connection with, or arising out of, the occurrence complained of.