

VIRGINIA ACTS OF ASSEMBLY -- 2016 RECONVENED SESSION

CHAPTER 772

An Act to amend and reenact §§ 8.01-195.6, 8.01-195.7, and 15.2-209 of the Code of Virginia, relating to notice of tort claim against the Commonwealth, transportation district, or locality; statute of limitations.

[S 611]

Approved May 16, 2016

Be it enacted by the General Assembly of Virginia:

1. That §§ 8.01-195.6, 8.01-195.7, and 15.2-209 of the Code of Virginia are amended and reenacted 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. *Failure to provide such statement shall not bar a claim against the Commonwealth or a transportation district, provided that (i) for claims against the Commonwealth, the Division of Risk Management or any insurer or entity providing coverage or indemnification of the claim or the Attorney General or (ii) for claims against a transportation district, the chairman of the commission of the transportation district, had actual knowledge of the claim, which includes the nature of the claim, 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 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 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. 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~~ 18 months of the filing of the notice of claim, *or within two years after the cause of action accrues.*

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.

§ 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. *Failure to provide such statement shall not bar a claim against any county, city, or town, provided that the attorney, chief executive, or mayor of such locality, or any insurer or entity providing coverage or indemnification of the claim, had actual knowledge of the claim, which includes the nature of the claim and 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 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. This section does not, and shall not be construed to, abrogate, limit, expand or modify the sovereign immunity of any county, city, town, or any officer, agent or employee of the foregoing.

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

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