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SENATE BILL NO. 611

Senate Amendments in [] — February 10, 2016

A BILL to amend and reenact §§ 8.01-195.6 and 15.2-209 of the Code of Virginia, relating to notice of tort claim against the Commonwealth, transportation district, or locality.

Patron Prior to Engrossment—Senator Stanley

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 8.01-195.6 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. 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. *Failure to provide such statement shall not bar a claim against the Commonwealth or a transportation district provided that the Commonwealth, the agency alleged to be liable, the Division of Risk Management or any insurer or entity providing coverage or indemnification of the claim, the Attorney General, or the transportation district had actual knowledge of the claim within one year after such cause of action accrued.*

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.

§ 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. *Failure to provide such statement shall not bar a claim against any county, city, or town, provided that such locality, or any insurer or entity providing coverage or indemnification of the claim, had actual knowledge of the claim within [~~one year~~ six months] after such cause of action accrued.*

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

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60 and amendments thereto of municipal corporations in conflict herewith granted prior to such date. It is
61 further declared that as to any such charter or amendment thereto, granted on and after such date, that
62 any provision therein in conflict with this section shall be deemed to be invalid as being in conflict with
63 Article IV, Section 12 of the Constitution of Virginia unless such conflict be stated in the title to such
64 proposed charter or amendment thereto by the words "conflicting with § 15.2-209 of the Code " or
65 substantially similar language.

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