

**BOYD-GRAVES SOVEREIGN IMMUNITY
STUDY COMMITTEE RECOMMENDATIONS**

PROPOSED STATE TORT CLAIMS ACT AMENDMENTS

§ 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. 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 ~~mailing and~~ 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 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.

PROPOSED NOTICE STATUTE FOR LOCALITIES

(new language, completely replacing Code §8.01-222, and
tracking amended §8.01-195.6 as proposed above)

§ 15.2-110. Notice to be given to counties, cities, towns, and certain governmental entities and sanitary districts of tort claims for damages.

A. Every claim cognizable against any county, city, town, any government entity formed by one or more localities pursuant to subtitle IV of this title, or any sanitary district created under the provisions of chapter 2 of title 21, for tortious injury to any person or property or for wrongful death, including the creation or sufferance of a nuisance, 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, town, governmental entity or sanitation 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. This section does not, and shall not be construed to, abrogate, limit, or modify the sovereign immunity of any county, city, town, any government entity formed by one or more localities pursuant to subtitle IV of this title, or any sanitary district created under the provisions of chapter 2 of title 21, or any officer, agent or employee of any 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 § 15.2-110 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.

PROVISIONS FOR INTERLOCUTORY APPEALS

Final Judgment and Partial Final Judgment Following Decision of Sovereign or Governmental Immunity Issues on a Special Plea. [A NEW PROVISION]

A. *Final Judgment.* Where all claims in a case are dismissed upon a finding that all defendants are protected from liability under the doctrines of sovereign or governmental immunity, final judgment shall be entered accordingly.

B. *Partial Final Judgment.* In any civil action where issues are decided by the circuit court upon a special plea raising the defenses of sovereign or governmental immunity of an individual or governmental body such that fewer than all claims against all defendants are dismissed, the court may, upon an express determination

that immediate appeal may either materially shorten the litigation or conserve resources of the parties and the court, enter a partial final judgment setting forth the disposition of such immunity claims, which shall be appealable pursuant to Code §8.01-670(A). In the absence of such express determination and entry of partial final judgment, any order or other form of decision, however designated, which adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties in such action shall not terminate the action as to any of the claims or parties.

In the alternative, the Committee recommends that the following highlighted amendment be made to the general appeal statute:

§ 8.01-670. In what cases awarded

A. Except as provided by §17.1-405, any person may present a petition for an appeal to the Supreme Court if he believes himself aggrieved:

1. By any judgment in a controversy concerning:
 - a. The title to or boundaries of land,
 - b. The condemnation of property,
 - c. The probate of a will,
 - d. The appointment or qualification of a personal representative, guardian, conservator, committee, or curator,
 - e. A mill, roadway, ferry, wharf, or landing,
 - f. The right of the Commonwealth, or a county, or municipal corporation to levy tolls or taxes, or
 - g. The construction of any statute, ordinance, or county proceeding imposing taxes;or
2. By the order of a court refusing a writ of quo warranto or by the final judgment on any such writ; or
3. By the order of a court sustaining or overruling a special plea of sovereign or governmental immunity as to one or more claims against any person or entity who is a defendant in a civil action; or [PROPOSED LANGUAGE TO BE ADDED]
- ~~3-4.~~ By a final judgment in any other civil case.

B. Except as provided by § 17.1-405, any party may present a petition for an appeal to the Supreme Court in any case on an equitable claim wherein there is an interlocutory decree or order:

1. Granting, dissolving or denying an injunction; or
2. Requiring money to be paid or the possession or title of property to be changed; or
3. Adjudicating the principles of a cause.

C. Except in cases where appeal from a final judgment lies in the Court of Appeals, as provided in § 17.1-405, any party may present a petition pursuant to § 8.01-670.1 for appeal to the Supreme Court.

PRIORITY DOCKETING

Rule 5:23. Perfection of Appeal; Docketing.

* * * *

(b) *Docketing*. Cases shall be placed on the docket when they mature. Precedence shall be given to the following cases:

(1) review of sentences of death;

(2) criminal cases;

(3) cases from the State Corporation Commission;

(4) cases of original jurisdiction;

(5) sovereign immunity or governmental immunity decisions. [TO BE ADDED]

(6) cases to be reheard; and

(7) any other cases required by statute to be given precedence. This Court may, however, for good cause shown or for reasons appearing sufficient to the Court, give preference to other cases.