SOVEREIGN IMMUNITY IN VIRGINIA

— AN OVERVIEW —

by

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(The opinions, findings, and conclusions expressed in this report are those of the authors and not necessarily those of the sponsoring agencies).

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SUMMARY OF FINDINGS AND CONCLUSIONS

1. In February 1981 the General Assembly passed the Virginia Tort Claims Act, which makes the state liable to a limited extent for its employees' negligence. The Act, which will not take effect until July 1, 1982, leaves intact much of Virginia's common law of sovereign immunity.

2. The Virginia common law of sovereign immunity was recently restated by the Virginia Supreme Court. Generally, Virginia retains a very broad scope of tort immunity for the state itself and its highway agencies. The immunity enjoyed by individual state employees is less sweeping.

3. In other states, there has been a widespread movement by the courts and legislatures toward abrogation of the sovereign immunity defense.

4. In other states, the effects of modification or abrogation of the doctrine have been significant. First, the number of suits has increased substantially. Second, state agencies often have required a corresponding increase in their legal staffs. Finally, the costs of either insuring against liability, if such insurance is available, or paying the judgements and settlements out of a department's budget have had deleterious effects upon other programs and upon the budget planning process.

5. Further modification of sovereign immunity seems unlikely in Virginia in the immediate future. The Virginia Supreme Court has indicated its intent to let the General Assembly decide when and if to modify the state's immunity status. As to the liability of individual employees, the Court will probably not depart substantially from the guidelines it has so recently elaborated. In the General Assembly, the enactment of the Tort Claims Act should defuse any drive for more substantial modifications, at least until after the effects of the new Act become known. Finally, federal action affecting Virginia's sovereign immunity doctrine seems unlikely from the new state-oriented Congress.

6. Because of the uncertainties that attend both the legislative and judicial deliberations which might lead to modification of the sovereign immunity doctrine, it is very difficult to predict when, if ever, Virginia will further reduce its immunity from tort liability.

RECOMMENDATIONS

1. Because of the uncertainty about when, if ever, the sovereign immunity doctrine will be further modified, it is very difficult to recommend any particular course of action. Of course, the best thing to do is not act negligently, for then there is no liability, regardless of the status of sovereign immunity.

2. It would be wise to keep abreast of developments in the General Assembly, the Supreme Court, and Congress which could reduce sovereign immunity. This would allow the state, agencies, or employees to budget for or insure against new liability in a timely manner.

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INTRODUCTION

Most states have reduced or eliminated their immunity from tort liability under the sovereign immunity doctrine and now allow persons injured by the state's negligence to press their claims for damages. In contrast, until February of this year Virginia was one of a very small number of states which retained sovereign immunity in a virtually unlimited form. An injured party's only hope was to appeal to the Claims Committee of the General Assembly for aid, based not on legal liability, but on the Committee's good will. With the passage of the Tort Claims Act in February, Virginia allowed itself to be held liable for the negligence of state employees occurring within the scope of employment and arising after July 1, 1982, up to $25,000 or the maximum limits of any liability policy in force. The Act does not affect the immunity of individual employees. Thus, the Act is quite limited in scope, but is nevertheless a significant departure in Virginia law.

PURPOSE AND SCOPE

This report is primarily designed to apprise persons in state agencies of the law of sovereign immunity in Virginia, to determine the likelihood of this law being changed, and to identify the possible sources of such change. The report addresses the potential tort liability both of individual state employees and of the agencies themselves.

The report first discusses the common law doctrine of sovereign immunity in Virginia. Next, the status of sovereign immunity and trends in other states are reviewed with particular focus on highway agencies' liability. The impact of abrogation on other states is then addressed. Finally, the report assesses the likelihood of more far-reaching changes in Virginia's immunity doctrine through either judicial or legislative action at the state or federal level.

METHOD

A survey of Virginia court decisions on sovereign immunity was conducted. In addition, reports of other states on the status of the doctrine and the effects of any modifications were reviewed. Finally, the Division of Legislative Services provided a very helpful compilation of the bills introduced in the General Assembly in recent years which would have affected the law of sovereign immunity in Virginia.

ANALYSIS

Virginia Common Law of Sovereign Immunity

State and Its Agencies

The common law of sovereign immunity pertaining to the state and its agencies was recently restated by the Virginia Supreme Court in Freeman v. City of Norfolk, No. 780482 (Va. Sup. Ct., June 6, 1980) and Transportation, Inc. v. City of Falls Church, 219 Va. 1004, 254 S.E. 2d 62 (1979). Although municipalities were the defendants in these two cases, the rule articulated applies with equal force to the state and its agencies. Sovereign immunity protects the entity from tort liability when it is engaged in "governmental" as opposed to "proprietary" functions. See Board of Public Works v. Gannt, 76 Va. 455 (1882) and Franklin v. Richlands, 161 Va. 156, 170 S.E. 718 (1933), both cited in Freeman at page 2 of the slip opinion.

The difficulty in this area of law is in making the crucial governmental/proprietary distinction. Basically, the Court has chosen to expansively interpret "governmental function," often interpreting it as one involving the exercise of discretion, and has thus kept very narrow the scope of potential state liability. For example, selecting and adopting a plan for the construction of public streets is a governmental function involving the exercise

of discretion for which the state or highway agency will not be liable. City of Norfolk v. Hall, 175 Va. 545, 9 S.E.2d 356 (1949) cited at page 2 of Freeman. Similarly, acts deemed to be within the ambit of "traffic regulation" are of a governmental nature and cannot give rise to liability. Freeman, Transportation, Inc. This traffic regulation category of protected activity includes the decision to install or not to install traffic lights, blinking lights, warning signals, roadway markings, railings, barriers, guardrails, curbings and like devices. Freeman. The maintenance of a traffic light, and apparently, by implication, the maintenance of any other traffic regulation devices is also treated as a governmental function, and so is protected by the sovereign immunity doctrine. Transportation, Inc. Conversely, the court has held that maintenance of the roadway surface is not traffic regulation but rather is a proprietary function involving no discretion. Therefore, sovereign immunity does not apply, and liability could be found in cases where negligent maintenance of the road surface is shown. The court thus allows the state to retain its very broad immunity from tort liability with only a few limited exceptions.

State Employees

The Virginia Supreme Court also recently addressed the common law of sovereign immunity pertaining to state employees in James v. Jane, ___Va.___, 267 S.E. 2d 108 (1980). In James, the Court noted that there is no single, all-inclusive rule for determining an employee's entitlement to immunity for actions taken during the course of employment. There are, however, several factors which the court may consider, including the amount of discretion exercised by an employee, degree of control and direction exercised by the state over the employee, and the state's interest in the activity. Thus, the Governor, judges and other state officials enjoy immunity because they are required by law to exercise broad discretionary powers in determining and implementing the law. Likewise, a state hospital administrator charged with wide discretionary powers was afforded immunity in Lawhorne v. Harlan, 214 Va. 405, 200 S.E. 2d 569 (1973). However, doctors were not afforded immunity, despite the more than minimal discretion they exercised in treating patients, because the court determined that the state's interest in the treatment of specific patients and its control over the physicians were too minimal to justify denying the patients the right to bring actions against the doctors for negligent treatment. James.

These examples should indicate the difficulty involved in predicting when individual employee immunity will be available. Sometimes the Court has used the test, similar to the governmental/proprietary distinction discussed regarding state and agency immunity, that if an employee is exercising more than minimal discretion or engaging in a policy-making task when a person is injured, the employee

will be immune from liability. Because almost every task involves some exercise of discretion, this standard is often slippery. Sometimes the Court may instead attempt to balance several factors, consequently making the outcome even more difficult to predict. Compounding the uncertainty is the Court's tendency to determine employee liability on a case-by-case basis, without straining to narrowly circumscribe the area of liability in the same way that it carefully confines the state's potential liability. The new Tort Claims Act will not clear up any of this uncertainty. It will, however, protect employees if a plaintiff chooses to sue the state, rather than the employee, for the employee's negligence.

In cases where employees exceed their authority and discretion or act in a wantonly or grossly negligent manner, the common law is much clearer. These employees lose their qualified immunity. Thus, in Elder v. Holland, 208 Va. 15, 155 S.E. 2d 369 (1967), a state police officer was not granted immunity for speaking defamatory words during the course of his employment. The Tort Claims Act will continue to deny immunity for acts committed outside the scope of employment. As for grossly negligent acts, the Act would seem to afford employees some protection by covering such acts within the meaning of "negligent or wrongful" acts or omissions. However, it is also conceivable that a court could define wantonly or grossly negligent acts as necessarily outside the scope of employment and thus beyond the coverage of the Act. James at 114.

Sovereign Immunity in Other States

At one time the doctrine of sovereign immunity protected all the states from suit due to their status as sovereign entities. However, reliance on the doctrine has decreased as many states have limited or abrogated the doctrine. Very few states retain it in its broadest form, which immunizes the state from all tort and contract actions.*

While some state courts have abolished common law sovereign immunity, more commonly state legislatures have altered the doctrine statutorily where it existed as a common law, statutory or state constitutional rule. Typically, statutory modifications of the doctrine take three forms: a tort claims act (often modeled after the Federal

*Only Alabama, Mississippi, and North Dakota retain it for both tort and contract actions. Virginia and Maryland retain broad sovereign immunity for tort actions only. Survey on the Status of Sovereign Immunity in the States, AASHTO, August 1980, (hereinafter referred to as the AASHTO Report).

Tort Claims Act of 1946), a claims board to adjudicate claims against the state, or a highway defects statute.

Tort claims acts vary from state to state in the amounts plaintiffs are allowed to recover and actions for which the state is still protected. Usually, tort claims acts either retain the principle of sovereign immunity with exceptions for specified actions of the state and its employees or generally permit suits against the state but exempt certain activities from suit.*

Other state legislatures have specifically waived sovereign immunity and established separate boards of claims to hear claims against the state. Like the statutes enacting tort claims acts, the statutes establishing claims boards frequently contain limits on recovery and exclude certain activities from suit.**

A third statutory change directly affecting liability for highways are highway defect statutes. These statutes impose liability on states for damages resulting from defects in state highways.***

Impact of Abrogation of Sovereign Immunity

The abrogation of sovereign immunity in various states has had many effects, often dramatic, on state insurance practices, the number of suits filed, and the number of lawyers needed to represent highway agencies.

The number of tort claims and lawsuits has significantly increased over the past several years, the period during which many of the states have abrogated their sovereign immunity.**** For

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*See e.g., Cal. Govt. Code §815; Iowa Code Ann. §25A.1 et. seq.

**See e.g., Minn. Stat. 3.66 et seq.; Tenn. Code Ann. §20-1702 et seq.

***See e.g., Gen. Stat. of Conn. Tit. 13a, §144; Kan. Sta. Ann. §68-419.

****Survey on the Status of Sovereign Immunity in the States, Committee Report by Administrative Subcommittee on Legal Affairs of the American Association of State Highway and Transportation Officials, August 1980.

example, in 1978 the Pennsylvania Supreme Court abrogated the state's immunity in Mayle v. Pennsylvania Dept. of Highways, 479 Pa. 385, 388 A. 2d 709 (1978). According to the AASHTO Report, from 1974 to 1977 there had been virtually no suits filed in Pennsylvania. However, in 1978, 212 suits were filed against the highway department, and by 1979 that figure rose to 622. Other states show a similar pattern.

The effect of the abrogation on the number of staff lawyers or assistant attorneys general needed to represent highway agencies has also been significant. According to the AASHTO Report, 18 state agencies reported they had had to increase the number of counsel employed. And of 15 states that reported no direct need for additional legal staff, one reported that it expected its situation to change drastically in the near future, and another cited a general increase in staff due at least in part to abrogation.

Finally, abrogation of sovereign immunity has had important effects on state insurance practices. To provide for settlements or judgements against it, the state or agency may purchase coverage from commercial insurers or they may self-insure. If the state or agency purchases commercial insurance, the cost of premiums is imposed on the state budget. For fiscal year 1979, the premiums reported by 19 state highway agencies in the AASHTO Report averaged over $400,000. This includes states whose insurance is limited to the motor vehicle fleet as well as general liability coverage. It also includes a wide range of coverage limits. In addition to the costly premium, there have also been problems in the past several years with insurance companies cancelling the policies. Two states reported at least partial cancellations, three reported total cancellations and two states' insurers would not renew the insurance. For these and other reasons, 27 states reported that they were employing self-insurance to meet their liability needs. But a state or highway agency which chooses to pay settlements and judgements out of its revenue faces "the possibility of a disastrous loss at an inopportune time. The soundness of this approach depends principally on the size of the governmental entity, its budget volume, its flexibility in shifting priorities, and its tax base or other resources."* Unless a sufficient liability reserve is created, a large judgement may force the agency or state to alter proposed programs or incur the financial and/or political cost of procuring additional funds in the middle of a budget period. The reserve (which is affected by liability limits, if any) is also not without its difficulties. "Establishing, maintaining, and updating the reserves requires an extraordinary amount of prudence,

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*Governments and Their Risks: How to Spread the Ever-Increasing Burden, 64 ABA J 688 (1978).

responsibility, foresight, and fiscal restraint on the part of many successive administrations."* Thus, the self-insurance method may place a substantial strain on the budgetary and political processes of the state and its agencies. Unfortunately, this strain may be unavoidable when insurance companies decline to insure states and their highway agencies.

Prospects for Further Limitation of Sovereign Immunity in Virginia

On February 20, 1981, the General Assembly passed the Virginia Tort Claims Act, which allows a party to sue the state for damage caused by the negligence of state employees up to $25,000 or the maximum limits of any liability policy maintained at the time of injury or loss. Further changes in Virginia's sovereign immunity doctrine could occur through state legislative or judicial action or through federal initiatives.

Virginia Supreme Court

As discussed in the sections on Virginia's common law of sovereign immunity, the Virginia Supreme Court treats the state's immunity differently from employees' immunity. Basically, the Court seems inclined to defer to the legislature regarding any changes in the state's immunity, but it will alter employee immunity without any legislative direction.

The cases which best illustrate the Court's different approaches are *Freeman* and *James*. In *Freeman*, the Court stated that "*in the absence of statute*, negligence cannot be imputed to the sovereign and therefore no private action will lie against the state." (emphasis added) This language, and similar language in other cases, indicates that the Court will not likely change the doctrine despite the strong trend throughout the country toward abrogation. Now that the legislature has begun to deal with the issue, it seems even more unlikely that the Court will preempt legislative action.

In *James*, however, the Court showed no hesitation in changing the scope of employee immunity, probably because such cases have typically fallen within the judiciary's province both in Virginia and in many other states. Also typical is the case-by-case approach to employee immunity, which often leads to incremental rather than drastic changes. Thus the Court might be expected to apply the

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**Id.*, at 690.

factors it suggested in James for determining eligibility for immunity, at least in the immediate future, before making more drastic changes. In any case, the trend seems to be toward steadily limiting the scope of employee immunity. As the concurrence in James may foreshadow, "Negligence is negligence" — no matter if the employer is immune, agents and employees ought to be liable if they fail to meet the reasonable man test.

General Assembly

The General Assembly also is unlikely to make major changes in the sovereign immunity doctrine in the immediate future. First, the legislature generally seems content to let the judiciary determine employee eligibility for immunity. As for the state's immunity, the history of sovereign immunity bills in the General Assembly and the limited nature of the Tort Claims Act which it finally did pass indicate a cautious approach to changing the common law, though a major uncompensated accident could influence the legislature to act quickly. The Tort Claims Act may very well represent just a first step toward an eventual abrogation of sovereign immunity, especially if the Act proves successful, but the General Assembly is expected to await the results of the Act before working toward any other modifications.

The first significant step toward modifying sovereign immunity came in March 1974 when the Senate and the House of Delegates agreed to House Joint Resolution No. 20 authorizing the committees for Courts of Justice to study the doctrine. That Resolution noted the tendency of the doctrine to result in uncompensated loss and the existence of the federal Tort Claims Act.

The report which stemmed from that Resolution, House Document No. 31 (January 1975), found that the doctrine of sovereign immunity is obsolete and often has unfair results, but that it was difficult to fashion a method by which to supplant it. The report proposed for further consideration a limited abrogation bill in which the maximum liability would be limited to the greater of the insurance coverage or $100,000. It also made false arrest and several other intentional torts not actionable. A bill which paralleled many of the report's recommendations, HB 327, was introduced in 1974 and carried over to the 1975 session, but died in the Senate.*

Other less extensive measures were proposed in subsequent years. In 1976, HB 340 was introduced. That bill would have waived the immunity of officers and employees of the Department of Corrections for damages caused by escapees. However, it died in the House

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*Correspondence from Legislative Services.

of Delegates after being referred to the Committee for Courts of Justice.* In 1979, a bill was introduced which would have waived the defense of governmental immunity in certain cases. This bill, HB 1796, died in the House when no action was taken on it by the Committee.

In 1980, HB 833 was introduced to waive governmental immunity when the governmental body or employee was covered against liability for negligence. The amount of plaintiff's recovery in such an action would be limited to the amount of liability insurance coverage. HB 833 was passed by in House Committee during the 1981 session.

However, on February 20, 1981, the Virginia Tort Claims Act did pass, despite worries about the financial impact of the bill on the state budget and concerns about clogging the courts with tort actions. One important expected effect of the bill would be to foreclose insurance companies from claiming sovereign immunity, leaving plaintiffs uncompensated, after agencies had already expended funds for insurance premiums.** Many other effects of the bill will be unclear until it goes into effect in 1982.

Abrogation Through Federal Action

Federal action could also alter Virginia's sovereign immunity. First, Congress may limit Virginia's own common law immunity. Second, Congress may allow an action to be brought in federal court which would be dismissed in the state courts because of sovereign immunity.

The United States Supreme Court recognized in Parden v. Terminal Ry., 377 U. S. 184 (1964) that under the commerce clause of the Constitution Congress has power to limit a state's sovereign immunity. However, Congress must specifically act to limit a state's general immunity; limitations are not inferred generally from operation of the commerce clause. Employees of the Dept. of Public Health and Welfare v. Department of Public Health and Welfare, 411 U.S. 279 (1973).

Congress may remove a state's common law sovereign immunity without removing its immunity to suit in a federal court. The converse, however, is not true. Ordinarily, a state is immune under the 11th Amendment from suits in federal court brought by citizens of other states, and by judicial extension of the meaning of the 11th Amendment, is also immune from suits brought in federal court by its own citizens. However, a state may waive its immunity to

*Correspondence from Legislative Services.

**Conversation with Legislative Services.

suit in federal court in order to participate in a federal program which creates a remedy in federal courts for private parties against the state for violations of applicable regulatory statutes. This waiver operates to defeat a state's common law immunity also, for Congress has abrogated that defense by creating a federal cause of action which the state consents to by participating in the program.

For example, the Court in Parden stated that in operating a railroad in interstate commerce, a state must have consented to the congressionally imposed condition that it be amenable to suit in a federal forum for alleged violations of the Federal Employer's Liability Act.

However, it must be clear that Congress did indeed intend to create a federal private cause of action against the state. Thus, one federal court has held that a state's participation in the Federal-Aid Highway Act and the Highway Safety Act did not waive the 11th Amendment immunity from suit in a federal court because no federal cause of action was created by either act. Daye v. Pennsylvania, 344 F. Supp. 1337 (E.D. Pa. 1972), aff'd 483 F.2d 294 (3d Cir. 1973), cert. denied 416 U.S. 946 (1974). One commentator concluded that "until Congress expresses an intent that states should be subject to civil liability for breach of regulations under the federal highway program, persons injured on defective state highways may not look to federal law as a means of circumventing a state policy of nonliability." Comment, State Liability for Highway Defects, 27 Emory L.J. 337, 358-9 (1978). Of course, Congress could at any time amend the federal highway program acts to create a federal cause of action. Presently, however, there do not appear to be any acts which affect either the sovereign immunity of the states or their immunity from suits in federal court for highway related injuries, and the Ninety-Seventh Congress, with its interest in state sovereignty, would be unlikely to alter these laws.

Responses to Modified Sovereign Immunity Doctrine

It is impossible to predict all the effects the newly passed Tort Claims Act will have. Likewise, it is very difficult to predict when, if ever, Virginia's sovereign immunity doctrine will be modified again. Thus, an attempt to identify areas of uncertainty and to suggest possible agency and employee responses may be helpful.

Of major concern to agencies and their employees are the liability limits of the Tort Claims Act. The new Act will make the state liable up to $25,000 or the limits of any liability policy in force. Some agencies already have insurance. For example, the Department of Highways and Transportation provides coverage for the negligence of employees engaged in ministerial (proprietary) functions. Agencies will need to adapt their current policies to protect against all the negligent acts of their employees which occur within the scope of employment, or must acquire insurance or self-insure by July 1, 1982.

There are no incentives built into the Act to encourage agencies to provide more than $25,000 worth of coverage. This should present no problems in the majority of cases since most claims should fall within the $25,000 limit, and most plaintiffs would be expected to sue the state on the theory that the state has a deeper pocket than the individual employee. When a plaintiff sues both the state and an employee for more than $25,000, however, it is unclear, especially when an employee has a personal liability policy, whether the employee becomes liable for the excess over $25,000. If the courts or legislature determine that an employee would be liable, then all employees must cope with the possibility of unlimited personal liability. And even if employees would not be liable for the excess, a plaintiff might then choose to sue just the employee rather than be barred from recovering any more than $25,000.

Thus, agencies ought to examine whether more than the minimum coverage is required. Of course, higher coverage would increase premium costs. In addition, an agency may more easily self-insure, if it chooses, when the limit is low. However, larger policies would provide added protection for employees if they are determined liable for damages beyond $25,000. In addition, if one of the purposes of the Act was to compensate plaintiffs, the low limit would seem to thwart the compensation of the neediest victims, unless they could recover from individual employees or from the state through the Claims Committee.

The role of the Claims Committee under the new Act will probably not change much. Nothing in the new Act seems to prevent a plaintiff from appealing to the Committee for assistance, even if he has already sued the state, recovered up to $25,000, and signed a release of further claims, because the Committee dispenses aid independently. However, it is not absolutely clear that the Committee will continue to operate as before, and it is difficult to predict how its willingness to provide assistance might be altered by a plaintiff's prior recovery from the state.

Another area of uncertainty is whether the state could seek indemnification from the negligent employee. When the Federal Tort Claims Act was silent on this issue, as the Virginia Act is silent, the courts decided that it did not confer upon the United States the right to seek indemnity from the negligent employee. Even when actions for indemnity are allowed, governmental bodies seldom initiate them. Yet, this could be an important subject of litigation in the future and ought to be carefully examined.

On the other hand, if a plaintiff does choose to sue the individual employee rather than the state or agency, it is unclear whether the employee could seek indemnification from the government. Better still from the employee's point of view would be for the state to directly pay judgements against him, which would eliminate the need to bring a separate action against the government for indemnification. Of course, indemnification would add to the costs the state must bear, but it would increase the protection available to individual employees. Again, given the silence of the Act on this issue, the courts may ultimately decide it.

A perplexing problem with the above unresolved issues, and with the uncertainty about any future change in the sovereign immunity doctrine, is deciding whether to assume the risk of change or insure against it. For example, if an employee is concerned about being held liable for a judgement beyond $25,000, he must take a risk of unlimited liability, or insure, perhaps uselessly, until the issue of liability is determined. Thus, it may be wise to keep abreast of developments in the courts, the General Assembly, and the Congress which could affect application of the Act or further modify sovereign immunity, and then, if necessary, lobby actively for or against them.

APPENDIX

TORT CLAIMS ACT

ARTICLE 18.1.

Tort Claims Against the Commonwealth of Virginia.

(this article is effective July 1, 1982.)

§ **8.01-195.1. Short title.** — This article shall be known and may be cited as the "Virginia Tort Claims Act." (1981, c. 449.)

Effective date. — This article is effective July 1, 1982.

§ **8.01-195.2. Definitions.** — As used in this article:

1. *"State agency"* means any department, institution, authority, instrumentality, board or other administrative agency of the government of the Commonwealth of Virginia; and
2. *"State employee"* means any officer, employee or agent of any State agency, or any person acting on behalf of a State agency in an official capacity, temporarily or permanently in the service of the Commonwealth, whether with or without compensation. (1981, c. 449.)

§ **8.01-195.3. Commonwealth 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 one, nineteen hundred eighty-two, 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 State employee while acting within the scope of his employment under circumstances where the Commonwealth, if a private person, would be liable to the claimant for such damage, loss, injury or death; provided, however, that the Commonwealth shall not be liable for interest prior to judgment or for punitive damages, nor shall the amount recoverable by any claimant exceed twenty-five thousand dollars, or 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, Commonwealth's attorneys, 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 based upon an act or omission which occurred prior to July one, nineteen hundred eighty-two.
2. Any claim based upon an act or omission of the legislature, 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 of this article.
4. Any claim based upon an act or omission of an officer, agent or employee of any agency of government in the execution of a lawful order of any court.
5. Any claim arising in connection with the assessment or collection of taxes.
6. Any claim arising out of the institution or prosecution of any judicial or administrative proceeding, even if without probable cause.

Nothing contained herein shall operate to reduce or limit the extent to which the Commonwealth, any State agency or employee was deemed liable for negligence as of July one, nineteen hundred eighty-two. (1981, c. 449.)

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§ **8.01-195.4. Jurisdiction of claims under this article.** — Original jurisdiction to hear, determine, and render judgment on any claim against the Commonwealth cognizable under this article shall be limited to the circuit courts of the Commonwealth. Venue shall lie in the circuit court of the county or city wherein the claimant resides or wherein the act or omission complained of occurred or, if the claimant resides outside the Commonwealth and the act or omission complained of occurred outside the Commonwealth, in the Circuit Court of the city of Richmond. (1981, c. 449.)

§ **8.01-195.5. Settlement of certain cases.** — The Attorney General shall have authority in accordance with § 2.1-127 of the Code of Virginia to compromise and settle claims cognizable under this article. (1981, c. 449.)

§ **8.01-195.6. Notice of claim.** — Every claim cognizable against the Commonwealth shall be forever barred unless the claimant or his agent, attorney or representative has filed a written statement of the nature of the claim and the time and place at which the injury is alleged to have occurred. The statement shall be filed within six months after such cause of action shall have accrued with the head of the State agency for which the State employee was acting when the alleged injury occurred. A copy of such written statement shall also be filed with the Attorney General. In the event the claimant is unable to determine the State agency for which the State employee was acting when the alleged injury occurred, the claimant, his agent, attorney or representative shall file such written statement with the Governor and a copy shall also be filed with the Attorney General. (1981, c. 449.)

§ **8.01-195.7. Statute of limitations.** — Every claim cognizable against the Commonwealth under this article shall be forever barred, regardless of whether a notice of claim shall have been properly filed within the six-month period required by § 8.01-195.6, unless within two years after the cause of action shall have accrued to the claimant an action shall be commenced pursuant to § 8.01-195.4. (1981, c. 449.)

§ **8.01-195.8. Release of further claims.** — Notwithstanding any provision of this article, the liability of the Commonwealth 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, its political subdivisions, agencies, instrumentalities, and against any officer or employee of the Commonwealth, in connection with, or arising out of, the occurrence complained of. (1981, c. 449.)