

## Virginia

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**1. What are the statute of limitations for tort and contract actions as they relate to the transportation industry.**

The statute of limitations for a personal injury action involving a motor vehicle expires after two (2) years from the date of the accident. *See* Va. Code Ann. § 8.01-243. If the injured party is a minor, then the two year statute of limitations does not begin to run until the minor turns 18. *See* Va. Code Ann. § 8.01-229. A wrongful death claim must be brought within two years of the date of death. *See* Va. Code Ann. § 8.01-244. The cause of action in tort actions accrues on the date of the accident/death.

In general, contract actions must be brought within five (5) years for written contracts and three (3) years for oral contracts. *See* Va. Code Ann. § 8.01-246.

**2. What effects, if any, has the COVID Pandemic had on tolling or extending the statute of limitation for filing a transportation suit and the number of jurors that are sat on a jury trial.**

The Supreme Court of Virginia entered an order on March 27, 2020, which read “any applicable statute of limitations *which would otherwise run* during the period that this order is in effect, are hereby tolled and extended[.]” In a July 20, 2020 Order, the Court clarified the tolling period by stating “The tolling period as a result of the Judicial Emergency for such statutes of limitation and deadlines shall be limited to March 16, 2020 through July 19, 2020.” There is ongoing dispute, with varying outcomes, as to whether the 126-day tolling provision was only applicable to statutes of limitation that would have run between March 16 and July 19, 2020, or if the 126 day tolling provision continues to apply to all cases in perpetuity.

The COVID Pandemic has not had any impact on the number of jurors seated for a jury trial.

**3. Does your state recognize comparative negligence and if so, explain the law.**

Virginia follows the contributory negligence doctrine and does not allow comparative negligence. In Virginia, if the plaintiff is found to be a proximate cause of the accident, then she is not permitted to recover. While contributory negligence commonly known as the 1% rule, the jury does not assess a percentage of liability on the plaintiff or any defendants. Also, in practice, the jury will only return a defense verdict if the plaintiff’s negligence was a significant cause of the accident.

**4. Does your state recognize joint tortfeasor liability and if so, explain the law.**

Virginia has joint and several liability. The jury does not place a percentage on each defendant’s liability. If more than one defendant is found liable, then all

defendants are found jointly liable. The Plaintiff can elect which Defendant(s) to pursue for the amount of the judgment. If one defendant pays more than its proportionate share, then the paying defendant has a right of subrogation against the other defendants so that each defendant pays its share.

**5. Are either insurers and/or insureds obligated to provide insurance limit information pre-suit and if so, what is required.**

Yes. Prior to suit being filed, pursuant to Va. Code Ann. § 8.01-417, an attorney or an individual injured in a motor vehicle accident may request, in writing, the applicable policy limits and the last known physical address of the alleged tortfeasor. As part of that request, the insurer must be provided the date of the accident, name/last known address of the insured (if known), a copy of the accident report, and claim number. The requesting party must also submit the injured person's medical records, bills, and wage-loss documentation pertaining to the alleged injury(ies). If the total amount of medical bills and lost wages exceeds \$12,500 or the alleged tortfeasor was charged with certain listed offenses, then the insurer must respond in writing within 30 days and provide the applicable insurance coverage and the insured's address.

**6. Does your state have any monetary caps on compensatory, exemplary or punitive damages.**

In Virginia, there is no cap on compensatory damages in non-medical malpractice suits. Punitive damages are capped at \$350,000.00. See Va. Code Ann. § 8.01-38.1.

**7. Has your state recently implemented any tort reforms which may affect transportation lawsuits or is your state planning to, and if so explain the reforms.**

Virginia has not enacted any recent tort reforms that affect transportation lawsuits. Currently, the General Assembly is not considering any legislation that would have affect on transportation lawsuits.

**8. How many months generally transpire between the filing of a transportation related complaint and a jury trial.**

In Virginia state courts, time to trial varies anywhere from six months to two years depending on the jurisdiction and anticipated length of trial. In federal court, time to trial depends on whether the case is pending on the Eastern or Western side of the state. In the Eastern District of Virginia, known as the "Rocket Docket", cases are generally set for trial within six to eight months of filing. However, in the Western District of Virginia, cases are typically set for trial anywhere from 10 to 18 months from the date of filing.

**9. When does pre-judgment interest begin accumulating and at what percent rate of interest.**

It is up to Virginia juries (or a judge in a bench trial) to determine whether to award pre-judgment interest. If the jury chooses to award pre-judgment interest, the jury also determines the start date (often the date of loss or the date of the plaintiff's last related treatment), which will be listed on the verdict form. The interest rate is set by statute at 6% per annum.

**10. What evidence at trial are the parties allowed to enter into evidence concerning medical expense related damages.**

In Virginia, the charges of a healthcare provider are presumed to be reasonable, and the plaintiff's medical bills will be admissible as evidence of the plaintiff's medical special damages. See Va. Code Ann. § 8.01-

413.01. Further, under Virginia's collateral source rule, the plaintiff may offer evidence of the full amount of her medical bills rather than an amount reduced or credited by insurance deductions or other discounts. See *Burks v. Webb, Adm'x*, 199 Va. 296, 304, 99 S.E.2d 629 (1957) See also *Kelly v. Thomasson*, 48 Va. Cir. 100 (Roanoke City 1999) (citing *Owen v. Dixon*, 162 Va. 601, 175 S.E. 41 (1934)); *Hill v. Tuttle*, 45 Va. Cir. 296 (Roanoke County 1998). However, Virginia trial courts have permitted discovery on medical write-offs. See *Hepper v. Mende*, 46 Va. Cir. 395 (Richmond 1998).

**11. Does your state recognize a self-critical analysis or similar privilege that shields internal accident investigations from discovery?**

Neither Virginia's legislature nor the Supreme Court of Virginia has explicitly created a "self-critical analysis" privilege. At least one Virginia trial court has held that Virginia does not recognize a self-critical analysis privilege. See *Webb v. Norfolk S. Ry. Co.*, 87 Va. Cir. 1 (Nottoway 2013). The Virginia legislature has enacted a statute creating a limited privilege for peer review documents, but the provision only applies to peer reviews performed in the healthcare context. See Va. Code Ann. § 8.01-581.17.

Two federal courts in Virginia have discussed the possible application of a self-critical analysis privilege; however, both courts found that the documents under which a party sought privilege would not qualify for protection under a self-critical analysis privilege without holding whether or not the self-critical analysis privilege exists. In *Etienne v. Mitre Corp.*, Judge Brinkema sitting for the Eastern District of Virginia's Alexandria Division, found that salary and promotion review documents that contained impact ratio analysis relevant to issues of workplace racial discrimination were not privileged because the public interest in disclosure of employment records outweighed the interest in promoting business competitiveness. 146 F.R.D. 145 (E.D. Va., 1993) (distinguishing employment records from hospital and academic peer review). Similarly, in *Deel v. Bank of Am., N.A.*, Judge Turk, sitting for the Western District of Virginia's Roanoke Division questioned the existence of a self-critical analysis privilege and found that even if such a privilege existed, payroll audit records would not be exempt from discovery because of the privilege. 227 F.R.D. 456 (W.D. Va. 2005).

**12. Does your state allow independent negligence claims against a motor carrier (i.e. negligent hiring, retention, training) if the motor carrier admits that it is vicariously liable for any fault or liability assigned to the driver?**

Yes. In Virginia, there are no legal benefits to admitting a driver was in the "course and scope" of employment for a direct negligence claim. Even if the company admits to course and scope, the prevailing case law allows a plaintiff to continue with a direct negligence claim. The case law also supports a Plaintiff proceeding with a direct negligence claim even if the company admits that its driver's negligence caused the accident and admits liability for the accident.

**13. Does your jurisdiction have an independent claim for spoliation? If not, what are the sanctions or repercussions for spoliation?**

Virginia does not allow an independent claim for spoliation. Virginia Code § 8.01-379.2:1 generally tracks the language of Rule 37(e) of the Federal Rules of Civil Procedure but permits an adverse inference instruction only in situations of either intentional or reckless destruction of evidence. If the trial court finds that the spoliation prejudiced the other party, the court has wide discretion to sanction the spoliating party so long as the sanction is "no greater than necessary to cure the prejudice." *Id.* If the trial court finds that the spoliating party acted recklessly or intentionally with regard to the destruction of evidence, the trial court may "(a) presume that the evidence was unfavorable to the party, (b) instruct the jury that it may or shall presume

that the evidence was unfavorable to the party, or (c) dismiss the action or enter a default judgment.” *Id.*