Senate

General Assembly

File No. 617

January Session, 2013

Substitute Senate Bill No. 1154

Senate, April 24, 2013

The Committee on Judiciary reported through SEN. COLEMAN of the 2nd Dist., Chairperson of the Committee on the part of the Senate, that the substitute bill ought to pass.

AN ACT CONCERNING THE ACCIDENTAL FAILURE OF SUIT STATUTE.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

Section 1. Section 52-592 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective from passage and applicable to actions pending on or filed on or after said date*):

(a) If any action, commenced within the time limited by law, has failed one or more times to be tried on its merits because of insufficient service or return of the writ due to unavoidable accident or the default or neglect of the officer to whom it was committed, or because the action has been dismissed for want of jurisdiction, or <u>because</u> the action has been otherwise avoided or defeated by the death of a party or for any matter of form<u>, or because the action has been dismissed once pursuant to subsection (c) of section 52-190a</u>; or if, in any such action after a verdict for the plaintiff, the judgment has been set aside, or if a judgment of nonsuit has been rendered or a judgment for the plaintiff reversed, the plaintiff, or, if the plaintiff is dead and the action

15 by law survives, [his] the plaintiff's executor or administrator, may
16 commence a new action, except as provided in subsection (b) of this
17 section, for the same cause at any time within one year after the
18 determination of the original action or after the reversal of the
19 judgment.

20 (b) When any action has been brought against an executor or
21 administrator or continued against an executor or administrator after
22 the death of the defendant and has failed for any of the causes listed in
23 subsection (a) of this section, the plaintiff, or [his] the plaintiff's
24 executor or administrator in case a cause of action survives, may
25 commence a new action within six months after the determination of
26 the original action.

27 (c) If an appeal is had from any such judgment to the Supreme
28 Court or Appellate Court, the time the case is pending upon appeal
29 shall be excluded in computing the time as [above] limited in
30 subsections (a) and (b) of this section.

31 (d) The provisions of this section shall apply to any defendant who
32 files a cross complaint in any action, and to any action between the
33 same parties or the legal representatives of either of them for the same
34 cause of action or subject of action brought to any court in this state,
35 either before dismissal of the original action and its affirmance or
36 within one year after the dismissal and affirmance, and to any action
37 brought to the United States circuit or district court for the district of
38 Connecticut which has been dismissed without trial upon its merits or
39 because of lack of jurisdiction in such court. If such action is within the
40 jurisdiction of any state court, the time for bringing the action to the
41 state court shall commence from the date of dismissal in the United
42 States court, or, if an appeal or writ of error has been taken from the
43 dismissal, from the final determination of the appeal or writ of error.

44 (e) The provisions of this section shall apply to any claim against the
45 state for which a notice of claim has been properly and timely filed
46 with the Office of the Claims Commissioner in accordance with
47 sections 4-147 and 4-148 and which thereafter has been dismissed by

48 the Claims Commissioner pursuant to section 4-142.

This act shall take effect as follows and shall amend the following sections:		
Section 1	*from passage and applicable to actions pending on or filed on or after said date*	52-592

JUD *Joint Favorable Subst.*

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

OFA Fiscal Note

State Impact:

Agency Affected	Fund-Effect	FY 14 $	FY 15 $
UConn Health Center	Other Funds - Cost	Potential	Potential

Municipal Impact: None

Explanation

The bill allows someone whose medical malpractice case was dismissed to file a subsequent case under the accidental failure of suit statute.

Should the provisions of the bill lead to an increase in the number of malpractice cases that are litigated, the University of Connecticut Health Center (UCHC) may realize additional legal and medical malpractice costs. The extent of these costs cannot be known in advance. However, for purposes of illustration, UCHC has incurred legal costs of $1.8 million over a recent four year period defending malpractice claims that ultimately resulted in no payment to the claimant.

The Out Years

The annualized ongoing fiscal impact identified above would continue into the future subject to inflation.

OLR Bill Analysis
sSB 1154

AN ACT CONCERNING THE ACCIDENTAL FAILURE OF SUIT STATUTE.

SUMMARY:

By law, before filing a medical malpractice lawsuit, an attorney or claimant must obtain a written, signed opinion from a similar health care provider that there appears to be evidence of medical negligence. (The letter is often referred to as a certificate of merit.)

This bill allows someone whose malpractice case was dismissed for failure to meet this requirement to file a subsequent case once under the accidental failure-of-suit statute, even if the dismissal was for a reason not currently covered by that statute. The accidental failure-of-suit statute allows plaintiffs to file a lawsuit within one year after a timely filed action was dismissed for certain reasons, including dismissals for "any matter of form," even though the statute of limitations has since expired (see BACKGROUND).

The bill specifies that it allows only one such automatic use of the accidental failure-of-suit statute. Presumably, the bill would allow a subsequent case to be brought if a case brought under the bill is dismissed and the subsequent case would otherwise be authorized by the statute.

The bill also makes technical changes.

In 2011, the state Supreme Court ruled that a malpractice case dismissed for failure to comply with the certificate of merit requirement could not be revived under the "matter of form" provision of the accidental failure-of-suit statute if the failure was due to egregious conduct or gross negligence (see BACKGROUND).

EFFECTIVE DATE: Upon passage and applicable to actions pending on or filed on or after that date.

BACKGROUND

Accidental Failure-of-Suit Statute

The accidental failure-of-suit statute generally authorizes a lawsuit to be filed within one year after an action was dismissed by the court for certain reasons, although the statute of limitations has expired since the dismissal. The statute applies to cases dismissed due to lack of jurisdiction, problems with service, the death of a party, or a matter of form. The time period is reduced to six months if the dismissed case was against an executor or administrator of a defendant who had died.

Related Case

In 2011, the Connecticut Supreme Court heard a case involving the intersection of the certificate of merit requirement and the accidental failure-of-suit statute. The plaintiff argued that the prior dismissal was due to lack of jurisdiction and a matter of form and thus the case should be subject to the statute.

The court held that a dismissal for failure to meet this requirement does not affect the court's subject matter jurisdiction over the claim. The court also held that in this situation, the plaintiff may commence an otherwise time-barred new action under the "matter of form" provision only if the failure was due to the plaintiff's or attorney's mistake, inadvertence, or excusable neglect, rather than egregious conduct or gross negligence (*Plante v. Charlotte Hungerford Hosp.*, 300 Conn. 33 (2011)).

The court agreed with the lower court's determination that, as the prior case involved psychiatric care and the defendants were a psychiatrist and a social worker, it was "blatant and egregious conduct" to attach an opinion letter from a registered nurse with limited psychiatric care experience, as she was clearly not a similar health care provider under the malpractice law.

Related Bill

HB 6687, reported favorably by the Judiciary Committee, makes changes concerning the certificate of merit requirement, including (1) expanding the types of health care providers qualified to submit an opinion letter and (2) giving claimants 60 days to cure a failure to obtain and file the letter, after being ordered to do so, before dismissal of the case.

COMMITTEE ACTION

Judiciary Committee

Joint Favorable Substitute
Yea 27 Nay 17 (04/12/2013)