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## **OLR Bill Analysis**

### **sHB 7343**

#### ***AN ACT CONCERNING THE OFFICE OF THE CLAIMS COMMISSIONER.***

#### **SUMMARY**

This bill makes several changes to the laws governing claims against the state.

The bill increases, from \$20,000 to \$50,000, the maximum claim that the claims commissioner may award directly, and correspondingly increases the threshold for claims that require legislative approval or for which a claimant can seek legislative review.

It increases, from \$5,000 to \$10,000, the maximum claim for which the claims commissioner or a magistrate can waive a hearing and proceed on the parties' affidavits (§ 1). As under current law, the commissioner or magistrate can do so on their own motion or that of a claimant or the state.

The bill allows the claims commissioner to hold a hearing on the sole issue of the state's liability if the claimant exclusively seeks permission to sue the state (§ 4). It allows the (1) commissioner to adopt procedural rules for these hearings and (2) state to present the claimant's lack of damages as an affirmative defense. By law, a party has the burden of establishing an affirmative defense by a preponderance of the evidence.

For claims of alleged medical malpractice, it authorizes claimants to file a lawsuit against the state if the statute of limitations for filing the claim has not expired, without requiring the claimant to submit a notice of claim and good faith certificate to the claims commissioner.

Lastly, the bill allows a claims commissioner-designated magistrate to issue a decision on a claim's final disposition (§ 5). Under current

law, the commissioner may designate magistrates to hear cases and make related recommendations, but only the commissioner may issue the final decision.

EFFECTIVE DATE: October 1, 2019, and the provisions on claim thresholds, hearing waivers, hearings on liability only, and medical malpractice are applicable to claims filed on or after October 1, 2019.

### **§§ 2 & 3 — THRESHOLD FOR PAYMENT OR LEGISLATIVE REVIEW**

By law, most claims against the state must be filed with the office of the claims commissioner.

Under current law, the commissioner can (1) deny or dismiss the claim, (2) order a payment of a just claim up to \$20,000, (3) recommend to the legislature a payment of a just claim exceeding \$20,000, or (4) authorize the claimant to sue the state. A person filing a claim exceeding \$20,000 can request legislative review if the claims commissioner dismisses the claim or orders a payment of \$20,000 or less.

The bill increases each of these thresholds to \$50,000. It makes conforming changes to the laws on claims submitted to the legislature for review (see BACKGROUND).

By law, a “just claim” is one which in equity and justice the state should pay, provided the state caused damage or injury or received a benefit.

### **§ 4 — MEDICAL MALPRACTICE**

Under current law, if a claimant seeks to file a lawsuit against the state for a medical malpractice claim, the attorney or claimant must first submit to the claims commissioner a notice of claim and the certificate of good faith that is required in all medical malpractice lawsuits. This certificate must include an affidavit supporting the certificate from a similar health care provider.

Under the bill, such a claimant may instead directly file a lawsuit as

long as it is filed before the statute of limitations for the claim expires. The bill specifically grants authorization for claimants to file such lawsuits, as an exception to the general rule requiring that most claims be presented to the claims commissioner. The lawsuit must be limited to medical malpractice claims. As with other medical malpractice lawsuits, the claimant must file with the court the good faith certificate and accompanying affidavit from a similar provider.

By law, a claim against the state for personal injury, including alleged medical malpractice, generally must be filed within one year after the injury was sustained or discovered, or with reasonable care should have been discovered, but no later than three years from the date the injury was sustained (CGS § 4-148(a)).

## **BACKGROUND**

### ***Legislative Review of Claims***

Claims submitted to the legislature are filed as resolutions with the Judiciary Committee. The committee holds a public hearing on the resolutions and votes on them at a meeting. The House and Senate can then debate and vote on them. For each such claim, the legislature may (1) confirm the commissioner's decision or recommendation, (2) order payment of a different amount, (3) deny payment, (4) authorize the claimant to sue the state, or (5) remand the claim to the commissioner's office to conduct further proceedings (unless the commissioner granted the claimant permission to sue the state).

## **COMMITTEE ACTION**

Judiciary Committee

Joint Favorable Substitute

Yea 25 Nay 13 (04/08/2019)