



House of Representatives

General Assembly

File No. 785

January Session, 2019

Substitute House Bill No. 7343

House of Representatives, April 25, 2019

The Committee on Judiciary reported through REP. STAFSTROM of the 129th Dist., Chairperson of the Committee on the part of the House, that the substitute bill ought to pass.

AN ACT CONCERNING THE OFFICE OF THE CLAIMS COMMISSIONER.

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

1 Section 1. Section 4-151a of the general statutes is repealed and the
2 following is substituted in lieu thereof (*Effective October 1, 2019, and*
3 *applicable to any claim filed on or after said date*):

4 On his or her own motion or at the request of the claimant or the
5 representative for the state, which representative may in appropriate
6 cases be the Attorney General, the Claims Commissioner or a
7 magistrate may waive the hearing of any claim for [five] ten thousand
8 dollars or less and proceed upon affidavits filed by the claimant and
9 the state agency concerned.

10 Sec. 2. Section 4-158 of the general statutes is repealed and the
11 following is substituted in lieu thereof (*Effective October 1, 2019, and*
12 *applicable to any claim filed on or after said date*):

13 (a) The Claims Commissioner may (1) order that a claim be denied
14 or dismissed, (2) order immediate payment of a just claim in an
15 amount not exceeding [twenty] fifty thousand dollars, (3) recommend
16 to the General Assembly payment of a just claim in an amount
17 exceeding [twenty] fifty thousand dollars, or (4) authorize a claimant
18 to sue the state, as provided in section 4-160, as amended by this act.

19 (b) Any person who has filed a claim for more than [twenty] fifty
20 thousand dollars may request the General Assembly to review a
21 decision of the Claims Commissioner (1) ordering the denial or
22 dismissal of the claim pursuant to subdivision (1) of subsection (a) of
23 this section, including denying or dismissing a claim that requests
24 permission to sue the state, or (2) ordering immediate payment of a
25 just claim in an amount not exceeding [twenty] fifty thousand dollars
26 pursuant to subdivision (2) of subsection (a) of this section. A request
27 for review shall be in writing and filed with the Office of the Claims
28 Commissioner not later than twenty days after the date the person
29 requesting such review receives a copy of the decision. The filing of a
30 request for review shall automatically stay the decision of the Claims
31 Commissioner.

32 (c) The Office of the Claims Commissioner shall submit each claim
33 for which a request for review is filed pursuant to this section to the
34 General Assembly pursuant to section 4-159, as amended by this act.

35 (d) If the Claims Commissioner orders immediate payment of a just
36 claim in an amount not exceeding [twenty] fifty thousand dollars
37 pursuant to subdivision (2) of subsection (a) of this section and a
38 request for review is not timely filed pursuant to subsection (b) of this
39 section, the Office of the Claims Commissioner shall deliver to the
40 Comptroller a certified copy of the Claims Commissioner's order and
41 the Comptroller shall make payment from such appropriation as the
42 General Assembly may have made for the payment of claims or, in the
43 case of contractual claims for goods or services furnished or for
44 property leased, from the appropriation of the agency which received
45 such goods or services or occupied such property.

46 (e) Whenever the Claims Commissioner deems it just and equitable,
47 the Claims Commissioner may, at any time prior to the submission of a
48 claim to the General Assembly pursuant to subsection (a) of section 4-
49 159, amended by this act, vacate the decision made pursuant to
50 subsection (a) of this section and undertake such further proceedings
51 in accordance with this chapter as the Claims Commissioner may, in
52 his or her discretion, deem appropriate.

53 (f) Not later than five days after the convening of each regular
54 session, the Office of the Claims Commissioner shall report to the
55 General Assembly on all claims decided pursuant to this section.

56 Sec. 3. Section 4-159 of the general statutes is repealed and the
57 following is substituted in lieu thereof (*Effective October 1, 2019, and*
58 *applicable to any claim filed on or after said date*):

59 (a) Not later than five days after the convening of each regular
60 session and at such other times as the speaker of the House of
61 Representatives and president pro tempore of the Senate may desire,
62 the Office of the Claims Commissioner shall submit to the General
63 Assembly (1) all claims for which the Claims Commissioner or a
64 magistrate recommended payment of a just claim in an amount
65 exceeding [twenty] fifty thousand dollars pursuant to subdivision (3)
66 of subsection (a) of section 4-158, as amended by this act, and (2) all
67 claims for which a request for review has been filed pursuant to
68 subsection (b) of section 4-158, as amended by this act, together with a
69 copy of the Claims Commissioner's or the magistrate's findings and the
70 hearing record of each claim so reported.

71 (b) The General Assembly shall:

72 (1) With respect to a decision of the Claims Commissioner ordering
73 the denial or dismissal of a claim pursuant to subdivision (1) of
74 subsection (a) of section 4-158, as amended by this act:

75 (A) Confirm the decision; or

76 (B) Vacate the decision and, in lieu thereof, (i) order the payment of

77 the claim in a specified amount, or (ii) authorize the claimant to sue the
78 state;

79 (2) With respect to a decision of the Claims Commissioner ordering
80 the immediate payment of a just claim in an amount not exceeding
81 [twenty] fifty thousand dollars pursuant to subdivision (2) of
82 subsection (a) of section 4-158, as amended by this act:

83 (A) Confirm the decision;

84 (B) Modify the decision by ordering that a different amount be paid;
85 or

86 (C) Vacate the decision and, in lieu thereof, (i) order no payment be
87 made, or (ii) authorize the claimant to sue the state;

88 (3) With respect to a decision of the Claims Commissioner
89 recommending payment of a just claim in an amount exceeding
90 [twenty] fifty thousand dollars pursuant to subdivision (3) of
91 subsection (a) of section 4-158, as amended by this act:

92 (A) Accept the recommendation and order payment of the specified
93 amount;

94 (B) Modify the recommendation by ordering that a different amount
95 be paid; or

96 (C) Reject the recommendation and, in lieu thereof, (i) order no
97 payment be made, or (ii) authorize the claimant to sue the state; or

98 (4) With respect to a decision of the Claims Commissioner pursuant
99 to subdivision (1), (2) or (3) of subsection (a) of section 4-158, as
100 amended by this act, remand the claim to the Office of the Claims
101 Commissioner for such further proceedings as the General Assembly
102 may direct.

103 (c) The General Assembly may grant the claimant permission to sue
104 the state under the provisions of this section when the General
105 Assembly deems it just and equitable and believes the claim to present

106 an issue of law or fact under which the state, were it a private person,
107 could be liable.

108 (d) If the General Assembly orders the payment of a claim, the
109 Office of the Claims Commissioner shall deliver to the Comptroller a
110 notice of the order and the Comptroller shall make payment in the
111 manner prescribed for payment of an order of the Claims
112 Commissioner pursuant to section 4-158, as amended by this act.

113 (e) The review by the General Assembly of claims submitted to it by
114 the Office of the Claims Commissioner under this section shall be
115 conducted in accordance with such procedures as the General
116 Assembly may prescribe.

117 Sec. 4. Section 4-160 of the general statutes is repealed and the
118 following is substituted in lieu thereof (*Effective October 1, 2019, and*
119 *applicable to any claim filed on or after said date*):

120 (a) Whenever the Claims Commissioner deems it just and equitable,
121 the Claims Commissioner may authorize suit against the state on any
122 claim which, in the opinion of the Claims Commissioner, presents an
123 issue of law or fact under which the state, were it a private person,
124 could be liable. Whenever a person files a claim that exclusively seeks
125 permission to the sue the state, the Claims Commissioner may hold a
126 hearing on the sole issue of the state's liability. During such hearing,
127 the state may present as an affirmative defense the claimant's lack of
128 damages. The Claims Commissioner may prescribe rules pursuant to
129 section 4-157 concerning a hearing that is held solely to address the
130 state's liability under this subsection.

131 (b) In any claim alleging malpractice against the state, a state
132 hospital or against a physician, surgeon, dentist, podiatrist,
133 chiropractor or other licensed health care provider employed by the
134 state, the attorney or party filing the claim may submit a certificate of
135 good faith to the Office of the Claims Commissioner in accordance
136 with section 52-190a. If such a certificate is submitted, the Claims
137 Commissioner shall authorize suit against the state on such claim. In

138 lieu of filing a notice of claim pursuant to section 4-147, a claimant may
139 commence a medical malpractice action against the state prior to the
140 expiration of the limitation period set forth in section 4-148 and
141 authorization for such action against the state shall be deemed granted.
142 Any such action shall be limited to medical malpractice claims only
143 and any such action shall be deemed a suit otherwise authorized by
144 law in accordance with subsection (a) of section 4-142.

145 (c) In each action authorized by the Claims Commissioner pursuant
146 to subsection (a) or (b) of this section or by the General Assembly
147 pursuant to section 4-159, as amended by this act, or 4-159a, the
148 claimant shall allege such authorization and the date on which it was
149 granted, except that evidence of such authorization shall not be
150 admissible in such action as evidence of the state's liability. The state
151 waives its immunity from liability and from suit in each such action
152 and waives all defenses which might arise from the eleemosynary or
153 governmental nature of the activity complained of. The rights and
154 liability of the state in each such action shall be coextensive with and
155 shall equal the rights and liability of private persons in like
156 circumstances.

157 (d) No such action shall be brought but within one year from the
158 date such authorization to sue is granted. With respect to any claim
159 presented to the Office of the Claims Commissioner for which
160 authorization to sue is granted, any statute of limitation applicable to
161 such action shall be tolled until the date such authorization to sue is
162 granted. The claimant shall bring such action against the state as party
163 defendant in the judicial district in which the claimant resides or, if the
164 claimant is not a resident of this state, in the judicial district of
165 Hartford or in the judicial district in which the claim arose.

166 (e) Civil process directed against the state shall be served as
167 provided by section 52-64.

168 (f) Issues arising in such actions shall be tried to the court without a
169 jury.

170 (g) The laws and rules of practice governing disclosures in civil
171 actions shall apply against state agencies and state officers and
172 employees possessing books, papers, records, documents or
173 information pertinent to the issues involved in any such action.

174 (h) The Attorney General, with the consent of the court, may
175 compromise or settle any such action. The terms of every such
176 compromise or settlement shall be expressed in a judgment of the
177 court.

178 (i) Costs may be allowed against the state as the court deems just,
179 consistent with the provisions of chapter 901.

180 (j) The clerk of the court in which judgment is entered against the
181 state shall forward a certified copy of such judgment to the
182 Comptroller. The Attorney General shall certify to the Comptroller
183 when the time allowed by law for proceeding subsequent to final
184 judgment has expired and the Attorney General shall designate the
185 state agency involved in the action. Upon receipt of such judgment and
186 certification the Comptroller shall make payment as follows: Amounts
187 directed by law to be paid from a special fund shall be paid from such
188 special fund; amounts awarded upon contractual claims for goods or
189 services furnished or for property leased shall be paid from the
190 appropriation of the agency which received such goods or services or
191 occupied such property; all other amounts shall be paid from such
192 appropriation as the General Assembly may have made for the
193 payment of claims.

194 (k) Not later than five days after the convening of each regular
195 session, the Attorney General shall report to the joint standing
196 committee of the General Assembly having cognizance of matters
197 relating to the judiciary on the status and disposition of all actions
198 authorized pursuant to this section or section 4-159, as amended by
199 this act, or brought against the state under any other provision of law
200 and in which the interests of the state are represented by the Attorney
201 General. The report shall include: (1) The number of such actions
202 pending in state and federal court, categorized by the alleged ground

203 for the action, (2) the number of new actions brought in the preceding
204 year in state and federal court, categorized by the alleged ground for
205 the action, (3) the number of actions disposed of in the preceding year,
206 categorized by the ground for the action that was disposed of and
207 whether the action was disposed of by settlement or litigation to final
208 judgment, and the amount paid for actions within the respective
209 categories, and (4) such other information as may be requested, from
210 time to time, by the joint standing committee of the General Assembly
211 having cognizance of matters relating to the judiciary. The report shall
212 identify each action disposed of by payment of an amount exceeding
213 one hundred thousand dollars.

214 Sec. 5. Section 4-142b of the general statutes is repealed and the
215 following is substituted in lieu thereof (*Effective October 1, 2019*):

216 The Office of the Claims Commissioner shall maintain a permanent
217 office in Hartford County in such suitable space as the Commissioner
218 of Administrative Services provides. All papers required to be filed
219 with the Office of the Claims Commissioner shall be delivered to such
220 office. The Claims Commissioner may designate one or more
221 magistrates who shall be available to the Office of the Claims
222 Commissioner to hear [and determine claims] a claim and issue a
223 decision concerning the final disposition of a claim against the state, as
224 provided for in this chapter. The Claims Commissioner may appoint
225 any magistrate who is on the list of available magistrates maintained
226 by the Chief Court Administrator. [The Claims Commissioner shall be
227 solely responsible for making any decision concerning the final
228 disposition of a claim, provided any] A magistrate appointed by the
229 Claims Commissioner may review, [and hear a claim and] hear and
230 decide a claim, or make a recommendation to the Claims
231 Commissioner concerning the final disposition of a claim. The Claims
232 Commissioner shall establish such rules as he or she deems necessary
233 to provide for the appointment of a magistrate to hear and decide
234 matters pursuant to the provisions of this chapter. Such rules may
235 include limitations on the types of matters that may be heard and
236 decided by a magistrate and may provide for the issuance of a

237 recommendation by a magistrate concerning the final disposition of a
238 claim that is subject to review and approval by the Claims
239 Commissioner.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>October 1, 2019, and applicable to any claim filed on or after said date</i>	4-151a
Sec. 2	<i>October 1, 2019, and applicable to any claim filed on or after said date</i>	4-158
Sec. 3	<i>October 1, 2019, and applicable to any claim filed on or after said date</i>	4-159
Sec. 4	<i>October 1, 2019, and applicable to any claim filed on or after said date</i>	4-160
Sec. 5	<i>October 1, 2019</i>	4-142b

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:** None**Municipal Impact:** None**Explanation**

The bill makes changes to the laws governing claims against the state, it: (1) increases the Claims Commissioner's threshold for settling claims from twenty thousand dollars to fifty thousand dollars, (2) permits the Claims Commissioner to hold hearings on liability only, (3) permits certain medical malpractice claims to be initiated in state court instead of the Office of the Claims Commissioner, and (4) gives the Claims Commissioner authority to delegate certain decision making authority to a magistrate. These changes do not result in a fiscal impact.

The Out Years**State Impact:** None**Municipal Impact:** None

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)