



House of Representatives

File No. 872

General Assembly

January Session, 2019

(Reprint of File No. 785)

Substitute House Bill No. 7343
As Amended by House Amendment
Schedule "A"

Approved by the Legislative Commissioner
May 10, 2019

**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 Section 4-151a of the general statutes is repealed and the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 Section 4-158 of the general statutes is repealed and the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] thirty-five thousand dollars, (3)
16 recommend to the General Assembly payment of a just claim in an
17 amount exceeding [twenty] thirty-five thousand dollars, or (4)
18 authorize a claimant to sue the state, as provided in section 4-160, as
19 amended by this act.

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

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

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

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

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

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

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

72 (b) The General Assembly shall:

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

76 (A) Confirm the decision; or

77 (B) Vacate the decision and, in lieu thereof, (i) order the payment of
78 the claim in a specified amount, or (ii) authorize the claimant to sue the
79 state;

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

84 (A) Confirm the decision;

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

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

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

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

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

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

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

104 (c) The General Assembly may grant the claimant permission to sue

105 the state under the provisions of this section when the General
106 Assembly deems it just and equitable and believes the claim to present
107 an issue of law or fact under which the state, were it a private person,
108 could be liable.

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

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

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

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

132 (b) In any claim alleging malpractice against the state, a state
133 hospital or against a physician, surgeon, dentist, podiatrist,
134 chiropractor or other licensed health care provider employed by the
135 state, the attorney or party filing the claim may submit a certificate of
136 good faith to the Office of the Claims Commissioner in accordance

137 with section 52-190a. If such a certificate is submitted, the Claims
138 Commissioner shall authorize suit against the state on such claim. In
139 lieu of filing a notice of claim pursuant to section 4-147, a claimant may
140 commence a medical malpractice action against the state prior to the
141 expiration of the limitation period set forth in section 4-148 and
142 authorization for such action against the state shall be deemed granted.
143 Any such action shall be limited to medical malpractice claims only
144 and any such action shall be deemed a suit otherwise authorized by
145 law in accordance with subsection (a) of section 4-142.

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

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

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

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

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

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

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

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

195 (k) Not later than five days after the convening of each regular
196 session, the Attorney General shall report to the joint standing
197 committee of the General Assembly having cognizance of matters
198 relating to the judiciary on the status and disposition of all actions
199 authorized pursuant to this section or section 4-159, as amended by
200 this act, or brought against the state under any other provision of law

201 and in which the interests of the state are represented by the Attorney
202 General. The report shall include: (1) The number of such actions
203 pending in state and federal court, categorized by the alleged ground
204 for the action, (2) the number of new actions brought in the preceding
205 year in state and federal court, categorized by the alleged ground for
206 the action, (3) the number of actions disposed of in the preceding year,
207 categorized by the ground for the action that was disposed of and
208 whether the action was disposed of by settlement or litigation to final
209 judgment, and the amount paid for actions within the respective
210 categories, and (4) such other information as may be requested, from
211 time to time, by the joint standing committee of the General Assembly
212 having cognizance of matters relating to the judiciary. The report shall
213 identify each action disposed of by payment of an amount exceeding
214 one hundred thousand dollars.

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

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

235 matters pursuant to the provisions of this chapter. Such rules may
236 include limitations on the types of matters that may be heard and
237 decided by a magistrate and may provide for the issuance of a
238 recommendation by a magistrate concerning the final disposition of a
239 claim that is subject to review and approval by the Claims
240 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

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 thirty-five 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.

House "A" increases the Claims Commissioner's threshold for settling claims from twenty thousand dollars to thirty-five thousand dollars, which will not result in a fiscal impact.

The Out Years

State Impact: None

Municipal Impact: None

OLR Bill Analysis**sHB 7343 (as amended by House "A")*****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 \$35,000, the maximum claim that the claims commissioner may award directly without needing legislative approval.

It allows a claimant to seek legislative review if he or she filed a claim exceeding \$50,000 and the claims commissioner dismisses the claim or orders a payment of \$35,000 or less. Under current law, these thresholds are \$20,000.

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.

*House Amendment "A" changes the underlying bill's increase to the maximum claim that the commissioner may award directly, setting the maximum amount at \$35,000 rather than at \$50,000.

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 DIRECT 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 \$35,000, with one exception related to a claimant's request for legislative review. Under the bill, a claimant can seek legislative review only if he or she filed a claim exceeding \$50,000 and the claims commissioner dismisses the claim or orders a payment of \$35,000 or less.

The bill 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)