
OLR Bill Analysis

sHB 6506

AN ACT CONCERNING THE PROCEDURES OF THE OFFICE OF THE CLAIMS COMMISSIONER.

SUMMARY

This bill makes various changes in the laws concerning claims presented to the claims commissioner exclusively seeking permission to sue the state (rather than seeking payment through the claims process).

It allows the claims commissioner, without holding a hearing, to grant that permission based on the claim notice or supporting evidence if the attorney or claimant files a motion and an affidavit attesting to the claim's validity. It also specifies the types of opposition that the state may file.

For claims filed by January 1, 2019, the bill generally deems permission to sue granted if the claim remains pending as of a certain date (ranging from the bill's passage to December 31, 2021). It also generally deems this permission granted for claims that remain pending for at least two years as of July 1, 2022, or later if the attorney or pro se claimant files an affidavit attesting to the claim's validity.

For claims where permission to sue is deemed granted, the bill (1) specifies certain allowable defenses for the state and (2) prohibits these cases from being cited as precedent in future cases. The bill also requires the court, in some situations, to impose sanctions if the attorney or claimant did not file the affidavit in good faith.

Among other things, the bill makes corresponding changes to a reporting requirement and the time frame for claimants to file suit.

The bill makes a minor change in the law governing medical malpractice claims. It also makes other minor, technical, and

conforming changes.

EFFECTIVE DATE: Upon passage

CLAIMS EXCLUSIVELY SEEKING PERMISSION TO SUE

Granting Permission to Sue Without a Hearing

Under current law, if a claimant exclusively seeks permission to sue the state, the claims commissioner may hold a hearing on the sole issue of the state's liability, and the state can assert the lack of damages as an affirmative defense. The bill instead allows her to grant this permission without a hearing, based solely on the claim notice, any supporting evidence submitted, or both if the claimant or attorney files the motion and affidavit described below. The bill specifically allows these claimants to submit supporting evidence (such as records, documents, reports, affidavits, or memoranda).

Under the bill, the commissioner may grant this authorization when the attorney or pro se claimant files (1) a motion for approval to assert a claim without a hearing and (2) an affidavit attesting to the claim's validity. The attorney and client, or pro se claimant as applicable, must sign and file the affidavit, which must attest to the following in the following form: "I have made a reasonable inquiry, as permitted by the circumstances, which has given rise to a good faith belief that grounds exist for a suit against the state. Such inquiry includes, (provide a brief description of the inquiry made)."

For claims exclusively seeking permission to sue, the bill limits the types of opposition that the attorney general or state agency may file. It only allows opposition based on jurisdictional grounds or prosecutorial, judicial, quasi-judicial, or legislative immunity.

Permission to Sue Deemed Granted

For claims exclusively requesting permission to sue the state, the bill deems permission to have been granted by the commissioner if the claim remains pending for a certain period, depending on when it was filed.

For these claims filed on or before January 1, 2019, the bill deems

permission to have been granted if the claim remains pending as of the dates shown in the table below. This authorization does not apply if there is an uncontested dispositive motion pending (e.g., a motion to dismiss).

Dates by Which Pending Claims Filed through January 1, 2019, Exclusively Seeking Permission to Sue Are Deemed Granted

<i>Claim Filing Time Frame</i>	<i>Date Authorization to Sue is Granted if Claim Still Pending</i>
On or before January 1, 2016	Bill's passage
January 2, 2016, through January 1, 2017	October 1, 2021
January 2, 2017, through January 1, 2019	December 31, 2021

The bill also grants permission for claims exclusively requesting permission to sue that remain pending for at least 24 months as of July 1, 2022. This permission is deemed granted when the attorney or pro se claimant files an affidavit attesting to the claim's validity as specified above.

Similarly, on and after July 1, 2022, the bill generally grants permission for claims exclusively seeking permission to sue that remain pending for 24 months, upon the filing of the described affidavit. But this authorization does not apply if the parties stipulated to an extension of time for the commissioner to dispose of the claim.

In any of the above situations where permission to sue is deemed granted, the bill specifies certain defenses that the state can raise in the subsequent court case. The bill provides that while the state waives sovereign immunity, the state may raise prosecutorial, judicial, quasi-judicial, or legislative immunity or any jurisdictional defense that it otherwise could have asserted at the claims commissioner's office. The bill further provides that (1) these defenses do not implicate the court's subject matter jurisdiction (i.e., the court's authority to hear the case)

and (2) these cases cannot be cited as precedent in future cases.

Additionally, if any claim exclusively seeks permission to sue and the state does not contest it, the bill grants that permission when the parties file a stipulation with the claims commissioner, signed by the attorney general, authorizing permission to sue.

Under the bill, in any of the above situations, evidence that permission to sue was deemed granted is not admissible as evidence of the state's liability. Existing law similarly provides this as to evidence of the commissioner granting authorization to sue.

Sanctions for Affidavits Not Made in Good Faith

Under the bill, for any claims requiring an affidavit attesting to their validity as noted above, the judge in the subsequent court case must impose sanctions on the attorney and claimant or on the pro se claimant if certain criteria are met. This applies if the judge determines, after discovery is completed, that (1) the affidavit was not made in good faith; (2) no justiciable issue was presented against the state; and (3) the state cooperated in good faith by providing informal discovery. The judge must do so upon the state's motion or upon his or her own initiative.

The bill requires the judge to impose an appropriate sanction, which may include an order to pay the state its reasonable expenses due to the filing of the lawsuit. The bill also allows the court to submit the matter to the appropriate authority for disciplinary review of the attorney who submitted the affidavit.

Reporting Requirement (§ 3)

Existing law requires the claims commissioner to report to the legislature within five days after it convenes each regular session on all claims not disposed of within two years after they were filed, except claims where the parties have agreed to an extension. The bill extends this requirement to also include claims filed by January 1, 2019, for which permission to sue is deemed granted (see the table above).

MEDICAL MALPRACTICE CLAIMS

For medical malpractice claims, current law requires the claims commissioner to grant authorization to sue when the claimant files the good faith certificate required for medical malpractice lawsuits. The bill instead specifies that for these claims, authorization to sue is deemed granted upon the filing of the good faith certificate.

Existing law also authorizes claimants, in cases of alleged medical malpractice, to directly sue the state without first filing a claim with the commissioner.

COMMITTEE ACTION

Judiciary Committee

Joint Favorable Substitute

Yea 37 Nay 1 (04/08/2021)