File No. 161

House Bill No. 5547

House of Representatives, March 26, 1998. The Committee on Judiciary reported through REP. LAWLOR, 99th DIST., Chairman of the Committee on the part of the House, that the 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:

1 Section 52-592 of the general statutes is
2 repealed and the following is substituted in lieu
3 thereof:
4 (a) If any action, commenced within the time
5 limited by law, has failed one or more times to be
6 tried on its merits because of insufficient
7 service or return of the writ due to unavoidable
8 accident or the default or neglect of the officer
9 to whom it was committed, or because the action
10 has been dismissed for want of jurisdiction, or
11 the action has been otherwise avoided or defeated
12 by the death of a party or for any matter of form;
13 or if, in any such action after a verdict for the
14 plaintiff, the judgment has been set aside, or if
15 a judgment of nonsuit has been rendered or a
16 judgment for the plaintiff reversed, the
17 plaintiff, or, if the plaintiff is dead and the
18 action by law survives, his executor or
19 administrator, may commence a new action, except
20 as provided in subsection (b) of this section, for
21 the same cause at any time within one year after

22 the determination of the original action or after
23 the reversal of the judgment.
24 (b) When any action has been brought against
25 an executor or administrator or continued against
26 an executor or administrator after the death of
27 the defendant and has failed for any of the causes
28 listed in subsection (a) of this section, the
29 plaintiff, or his executor or administrator in
30 case a cause of action survives, may commence a
31 new action within six months after the
32 determination of the original action.
33 (c) If an appeal is had from any such
34 judgment to the Supreme Court or Appellate Court,
35 the time the case is pending upon appeal shall be
36 excluded in computing the time as above limited.
37 (d) The provisions of this section shall
38 apply to any defendant who files a cross complaint
39 in any action, and to any action between the same
40 parties or the legal representatives of either of
41 them for the same cause of action or subject of
42 action brought to any court in this state, either
43 before dismissal of the original action and its
44 affirmance or within one year after the dismissal
45 and affirmance, and to any action brought to the
46 United States circuit or district court for the
47 district of Connecticut which has been dismissed
48 without trial upon its merits or because of lack
49 of jurisdiction in such court. If such action is
50 within the jurisdiction of any state court, the
51 time for bringing the action to the state court
52 shall commence from the date of dismissal in the
53 United States court, or, if an appeal or writ of
54 error has been taken from the dismissal, from the
55 final determination of the appeal or writ of
56 error.
57 (e) THE PROVISIONS OF THIS SECTION SHALL
58 APPLY TO ANY CLAIM AGAINST THE STATE FOR WHICH A
59 NOTICE OF CLAIM HAS BEEN PROPERLY AND TIMELY FILED
60 WITH THE CLERK OF THE OFFICE OF THE CLAIMS
61 COMMISSIONER IN ACCORDANCE WITH SECTIONS 4-147 AND
62 4-148 AND WHICH THEREAFTER HAS BEEN DISMISSED BY
63 THE CLAIMS COMMISSIONER PURSUANT TO SECTION 4-142.

64 JUD COMMITTEE VOTE: YEA 35 NAY 0 JF

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"THE FOLLOWING FISCAL IMPACT STATEMENT AND BILL ANALYSIS ARE PREPARED FOR THE BENEFIT OF 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 HOUSE THEREOF FOR ANY PURPOSE."

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FISCAL IMPACT STATEMENT - BILL NUMBER HB 5547

STATE IMPACT	Potential Cost, see explanation below
MUNICIPAL IMPACT	None
STATE AGENCY(S)	Office of the Claims Commissioner, State Comptroller (Adjudicated Claims Account)

EXPLANATION OF ESTIMATES:

STATE IMPACT: The bill would allow someone whose case was erroneously filled with the Claims Commissioner to file a lawsuit against the state even if the statute of limitation has expired. This would result in a potential cost to the State from any lawsuit that previously would have been dismissed due to the statute of limitations. Judgements against the State are paid from the adjudicated claims account administered by the State Comptroller and funded through the resources of the General Fund.

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OLR BILL ANALYSIS

HB 5547

AN ACT CONCERNING THE ACCIDENTAL FAILURE OF SUIT STATUTE

SUMMARY: The bill allows someone who is otherwise authorized to sue the state to file a lawsuit against the state even if the statute of limitation has expired. But he must file it within one year after the

claims commissioner dismissed the claim he had previously filed because (1) a lawsuit or administrative hearing procedure is authorized by law or (2) the claim is for the periodic payment of disability, pension, retirement or other employment benefits, the refund of taxes, or a request by a political subdivision for the payment of grants in lieu of taxes.

EFFECTIVE DATE: October 1, 1998

BACKGROUND

Related Case

The Supreme Court recently held that a notice of claim filed with the Office of the Claims Commissioner does not constitute an action under the accidental failure of suit statute (Capers v. Lee, 239 Conn. 265 (1996)). This statute authorizes a lawsuit to be filed within one year after an action was dismissed by the court because it lacked jurisdiction, there was a problem with service, or for other specified reasons, even though the statute of limitation for filing the lawsuit expired.

In this case a wrongful death claim was filed with the claims commissioner. The commissioner dismissed it four years later ruling that a statute authorized the claimant to file suit; thus the commissioner lacked jurisdiction to hear the claim. The person's lawsuit was subsequently dismissed by the court because it was not filed within the applicable statute of limitation.

COMMITTEE ACTION

Judiciary Committee

Joint Favorable Report
Yea 35 Nay 0