

Senate, March 9, 1998. The Committee on Judiciary reported through SEN. WILLIAMS, 29th DIST., Chairman of the Committee on the part of the Senate, that the substitute bill ought to pass.

AN ACT CONCERNING THE CASELOAD OF THE CLAIMS COMMISSIONER.

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

1 Section 1. Section 4-160 of the general
2 statutes is repealed and the following is
3 substituted in lieu thereof:

4 (a) When the Claims Commissioner deems it
5 just and equitable, he may authorize suit against
6 the state on any claim which, in his opinion,
7 presents an issue of law or fact under which the
8 state, were it a private person, could be liable.

9 (b) IN ANY CLAIM ALLEGING MALPRACTICE AGAINST
10 THE STATE, A STATE HOSPITAL OR A SANITORIUM OR
11 AGAINST A PHYSICIAN, SURGEON, DENTIST, PODIATRIST,
12 CHIROPRACTOR OR OTHER LICENSED HEALTH CARE
13 PROVIDER EMPLOYED BY THE STATE, THE ATTORNEY OR
14 PARTY FILING THE CLAIM MAY SUBMIT A CERTIFICATE OF
15 GOOD FAITH TO THE CLAIMS COMMISSIONER IN
16 ACCORDANCE WITH SECTION 52-190a. IF SUCH A
17 CERTIFICATE IS SUBMITTED, THE CLAIMS COMMISSIONER
18 SHALL AUTHORIZE SUIT AGAINST THE STATE ON SUCH
19 CLAIM.

20 [(b)] (c) In each action authorized by the
21 Claims Commissioner pursuant to subsection (a) OR
22 (b) of this section or by the General Assembly

23 pursuant to section 4-159, the claimant shall
24 allege such authorization and the date on which it
25 was granted. The state waives its immunity from
26 liability and from suit in each such action and
27 waives all defenses which might arise from the
28 eleemosynary or governmental nature of the
29 activity complained of. The rights and liability
30 of the state in each such action shall be
31 coextensive with and shall equal the rights and
32 liability of private persons in like
33 circumstances.

34 [(c)] (d) No such action shall be brought but
35 within one year from the date such authorization
36 to sue is granted. With respect to any claim
37 pending before the Claims Commissioner on October
38 1, 1992, or presented to the Claims Commissioner
39 on or after said date for which authorization to
40 sue is granted, any statute of limitation
41 applicable to such action shall be tolled until
42 the date such authorization to sue is granted.
43 Action shall be brought against the state as party
44 defendant in the judicial district in which the
45 claimant resides or, if the claimant is not a
46 resident of this state, in the judicial district
47 of Hartford-New Britain or in the judicial
48 district in which the claim arose.

49 [(d)] (e) Civil process directed against the
50 state shall be served as provided by section
51 52-64.

52 [(e)] (f) Issues arising in such actions
53 shall be tried to the court without a jury.

54 [(f)] (g) The laws and rules of practice
55 governing disclosures in civil actions shall apply
56 against state agencies and state officers and
57 employees possessing books, papers, records,
58 documents or information pertinent to the issues
59 involved in any such action.

60 [(g)] (h) The Attorney General, with the
61 consent of the court, may compromise or settle any
62 such action. The terms of every such compromise or
63 settlement shall be expressed in a judgment of the
64 court.

65 [(h)] (i) Costs may be allowed against the
66 state as the court deems just, consistent with the
67 provisions of chapter 901.

68 [(i)] (j) The clerk of the court in which
69 judgment is entered against the state shall
70 forward a certified copy of such judgment to the

71 Comptroller. The Attorney General shall certify to
72 the Comptroller when the time allowed by law for
73 proceeding subsequent to final judgment has
74 expired and he shall designate the state agency
75 involved in the action. Upon receipt of such
76 judgment and certification the Comptroller shall
77 make payment as follows: Amounts directed by law
78 to be paid from a special fund shall be paid from
79 such special fund; amounts awarded upon
80 contractual claims for goods or services furnished
81 or for property leased shall be paid from the
82 appropriation of the agency which received such
83 goods or services or occupied such property; all
84 other amounts shall be paid from such
85 appropriation as the General Assembly may have
86 made for the payment of claims.

87 [(j)] (k) Within five days after the
88 convening of each regular session, the Attorney
89 General shall report to the General Assembly on
90 the status and disposition of all actions
91 authorized pursuant to this section or section
92 4-159.

93 Sec. 2. Subsection (a) of section 3-125a of
94 the general statutes is repealed and the following
95 is substituted in lieu thereof:

96 (a) Notwithstanding the provisions of
97 subsection [(g)] (h) of section 4-160, AS AMENDED
98 BY SECTION 1 OF THIS ACT, the Attorney General
99 shall not enter into any agreement or stipulation
100 in connection with a lawsuit to which the state is
101 a party that contains any provision which requires
102 an expenditure from the General Fund budget in an
103 amount in excess of two million five hundred
104 thousand dollars over the term of the agreement or
105 stipulation, unless the General Assembly, by
106 resolution, accepts the terms of such provision.
107 The General Assembly may reject such provision by
108 a three-fifths vote of each house. Such provision
109 shall be deemed approved if the General Assembly
110 fails to vote to approve or reject such provision
111 within thirty days of the date of submittal
112 pursuant to subsection (b) of this section.

113 JUD COMMITTEE VOTE: YEA 33 NAY 0 JFS

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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 sSB 213

STATE IMPACT	Workload Adjustment, Potential Cost, see explanation below
MUNICIPAL IMPACT	None
STATE AGENCY(S)	Office of the Claims Commissioner, Office of the Attorney General, UCONN Health Center

EXPLANATION OF ESTIMATES:

STATE IMPACT: Passage of the bill limits the discretion of the Claims Commissioner in medical malpractice cases if certain conditions are met. This is anticipated to decrease the number of such cases disposed of by the Claims Commissioner and increase the number tried in the courts. While this may result in increased administrative efficiency for the Office of the Claims Commissioner, it is not anticipated to have any impact on that agency's budget.

The Office of the Attorney General (AG) represents the State in most non UCONN Health Center medical malpractice cases. To the extent that this bill results in an increase in medical malpractice cases, the AG's workload will be increased.

In medical malpractice cases related to the UCONN Health Center, the AG coordinates outside legal counsel. Any increase in the time associated with UCONN cases would result in increased legal fees being charged to UCONN Health Center.

Given that the level of increase in medical malpractice cases associated with this bill is uncertain, any

increase in cost to the AG and UCONN Health Center cannot be determined at this time. It should be noted that the State is self-insured for medical malpractice.

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OLR BILL ANALYSIS

sSB 213

AN ACT CONCERNING THE CASELOAD OF THE CLAIMS COMMISSIONER

SUMMARY: This bill requires the claims commissioner to authorize a lawsuit against the state for any medical malpractice claims against the state; a state hospital or sanitorium; or a state-employed physician, surgeon, dentist, podiatrist, chiropractor, or other licensed health care providers under the following condition. The commissioner must do so if the attorney or the person filing the claim submits the certificate of good faith that is currently required in medical malpractice lawsuits and an affidavit supporting the certificate from a licensed similar health care provider.

Current law allows the commissioner to authorize a suit on any claim against the state if he believes that it presents an issue of law or fact under which the state could be liable if it were a private person.

EFFECTIVE DATE: October 1, 1998

BACKGROUND

Certificate of Good Faith

A malpractice lawsuit cannot be filed in court unless the attorney or party filing it has made a reasonable inquiry to determine that there are grounds for a good faith belief that negligence has occurred. The complaint initiating the lawsuit or the first pleading in such a suit must contain a certificate that a reasonable inquiry caused a good faith belief that grounds exist for it (CGS Sec. 52-190a).

Good faith can be shown by a written opinion from a "similar health care provider" that there appears to be evidence of medical negligence. The court can also

consider additional factors in determining good faith.

The court must sanction the person who signed the certificate if it concludes that: (1) the suit was not filed in good faith, (2) there was no real and substantial controversy appropriate to present to the court, and (3) the defendant fully cooperated in providing informal discovery. The sanction can include paying the defendant's reasonable expenses, including attorney's fees. The court can also submit the matter to the appropriate attorney grievance committee.

Similar Health Care Providers

For nonspecialists, similar health care providers are those who are (1) licensed in Connecticut or another state with the same or greater qualifications and (2) trained and experienced in the same discipline or school of practice and whose training and experience results from the active practice or teaching of medicine within the five years before the incident giving rise to the lawsuit.

For specialists, or those claiming to be specialists, similar health care providers are those who are (1) trained and experienced in the same specialty and (2) certified by the appropriate American specialty board (CGS Sec. 52-184c).

Medical Malpractice Cases

In order to win a medical malpractice case, the claimant must prove by a preponderance of the evidence that the health care provider's alleged actions represented a breach of the prevailing professional standard of care for that provider. The prevailing professional standard of care for a given health care provider is that level of care, skill, and treatment which, in light of all relevant surrounding circumstances, is recognized as acceptable and appropriate by reasonably prudent similar health care providers (CGS Sec. 52-184e).

COMMITTEE ACTION

Judiciary Committee

Joint Favorable Substitute

Yea 33 Nay 0