

SENATE JUDICIARY COMMITTEE
Senator Thomas Umberg, Chair
2021-2022 Regular Session

SB 501 (Wieckowski)
Version: February 25, 2021
Hearing Date: March 23, 2021
Fiscal: Yes
Urgency: No
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SUBJECT

Claims against public entities

DIGEST

This bill extends the conditions under which certain injured parties who are minors or who are physically or mentally incapacitated are entitled to have their applications to file untimely claims against public entities granted.

EXECUTIVE SUMMARY

The California Tort Claims Act ("the Act"), or Government Claims Act, governs claims filed against a public entity. Where a public entity can be held liable pursuant to statute for certain injuries, an injured party must present a claim to the public entity within six months of the accrual of the action. If this deadline is missed, a claimant is permitted to file an application to submit an untimely claim within one year of the accrual of the action.

Such applications are required to be granted by the public entity under certain conditions. This includes where the person who sustained the injury, damage, or loss was a minor or was physically or mentally incapacitated during the entire six months following the accrual of the cause of action within which a timely claim was to be filed.

In order to avoid potentially unjust situations, this bill provides that where a person is a minor or incapacitated during any of the six-month period, the person's application to file an untimely claim must be granted if it is presented within six months of the person no longer being a minor or incapacitated, or a year after the claim accrues, whichever occurs first.

This bill is author sponsored. It is supported by Consumer Attorneys of California. There is no known opposition.

PROPOSED CHANGES TO THE LAW

Existing law:

- 1) Establishes the California Tort Claims Act, or Government Claims Act, which governs claims filed against a public entity. (Gov. Code § 810 et seq.) “Public entity” includes the state, the Regents of the University of California, the Trustees of the California State University and the California State University, a county, city, district, public authority, public agency, and any other political subdivision or public corporation in the State. (Gov. Code § 811.2.)
- 2) Provides that except as otherwise provided by statute, a public entity is not liable for an injury, whether such injury arises out of an act or omission of the public entity or a public employee or any other person. (Gov. Code § 815(a).) A public entity is liable for injury proximately caused by an act or omission of an employee of the public entity within the scope of the employee’s employment if the act or omission would, apart from this section, have given rise to a cause of action against that employee or his personal representative. (Gov. Code § 815.2(a).)
- 3) Requires a claim relating to a cause of action against a public entity for death or for injury to person or to personal property or growing crops to be presented not later than six months after the accrual of the cause of action. (Gov. Code § 911.2.)
- 4) Provides that the date of the accrual of a cause of action to which a claim relates is the date upon which the cause of action would be deemed to have accrued within the meaning of the statute of limitations which would be applicable thereto if there were no requirement that a claim be presented to and be acted upon by the public entity before an action could be commenced thereon. (Gov. Code § 901.)
- 5) Allows a claimant to make a written application to the public entity for leave to present an untimely claim. The application must be presented to the public entity within a reasonable time not to exceed one year after the accrual of the cause of action and shall state the reason for the delay in presenting the claim. In computing the one-year period, the following shall apply:
 - a. the time during which the person who sustained the alleged injury, damage, or loss as a minor shall be counted, but the time during which the claimant is mentally incapacitated and does not have a guardian or conservator of the claimant’s person shall not be counted; and
 - b. the time shall not be counted during which the person is detained or adjudged to be a dependent child of the juvenile court, as specified. (Gov. Code § 911.4.)

- 6) Requires the board to grant or deny the application within 45 days after it is presented to the board. The claimant and the board may extend the period within which the board is required to act on the application by written agreement. The board is required to grant the application where one or more of the following is applicable:
 - a. the failure to present the claim was through mistake, inadvertence, surprise or excusable neglect and the public entity was not prejudiced in its defense of the claim by the failure to present the claim within the time specified;
 - b. the person who sustained the alleged injury, damage or loss was a minor during all of the time specified in Section 911.2 for the presentation of the claim;
 - c. the person who sustained the alleged injury, damage or loss was physically or mentally incapacitated during all of the time specified in Section 911.2 for the presentation of the claim and by reason of such disability failed to present a claim during such time;
 - d. the person who sustained the alleged injury, damage or loss died before the expiration of the time specified in Section 911.2 for the presentation of the claim. (Gov. Code § 911.6.)
- 7) Defines “board” as:
 - a. in the case of a local public entity, the governing body of the local public entity;
 - b. in the case of the state, the Department of General Services;
 - c. in the case of a judicial branch entity or judge of one of those entities, the Judicial Council; or in the case of the California State University, the Trustees of the California State University. (Gov. Code § 900.2.)

This bill:

- 1) Requires an application to file an untimely claim against a public entity to be granted where the person who sustained the alleged injury, damage, or loss was a minor during any of the time specified in Section 911.2 for the presentation of the claim, provided the application is presented within six months of the person turning 18 years of age or a year after the claim accrues, whichever occurs first.
- 2) Requires an application to file an untimely claim against a public entity to be granted where the person who sustained the alleged injury, damage, or loss was physically or mentally incapacitated during any of the time specified in Section 911.2 for the presentation of the claim and by reason of that disability failed to present a claim during that time, provided the application is presented within six months of the person no longer being physically or mentally incapacitated, or a year after the claim accrues, whichever occurs first.

COMMENTS

1. Claims against a public entity

A public entity is not liable for an injury, whether such injury arises out of an act or omission of the public entity or a public employee or any other person, except as otherwise provided by statute. (Gov. Code § 815.) However, the Government Code specifically provides that a “public entity is liable for injury proximately caused by an act or omission of an employee of the public entity within the scope of his employment” if the conduct would have otherwise given rise to a cause of action against that employee. (Gov. Code § 815.2.)

The Act generally governs these claims brought against public entities. (Gov. Code § 815 et seq.) Where a party is injured by a public entity, including state and local entities, the Act provides a detailed process by which the person must present the claim to the public entity before being entitled to file suit against the public entity. In addition to any time limitations placed by other statutes on such claims, the Act requires that a claim that is brought against a public entity relating to a cause of action for death or for injury to a person be presented in writing to the public entity not later than six months after accrual of the cause or causes of action. (Gov. Code § 911.2.)

However, the Act allows for a person to file a written application to submit an untimely claim against the public entity. (Gov. Code § 911.4.) The application requesting leave to file a late claim must still be submitted “within a reasonable time not to exceed one year after the accrual of the cause of action.” This one-year period is subject to various exceptions whereby the time is tolled.

Once an application is filed, the public entity must grant or deny the application within 45 days. (Gov. Code § 911.6.) The public entity is required to grant the application under certain circumstances. Relevant here, the public entity is forced to provide leave to file a claim where the person was a minor during all of the time “specified in Section 911.2 for the presentation of the claim.” The same applies where the person was physically or mentally incapacitated “during all of the time specified in Section 911.2 for the presentation of the claim and by reason of such disability failed to present a claim during such time.”

Essentially, these provisions allow for an untimely claim as a matter of course only when the person was physically or mentally incapacitated or a minor the entire six months after the accrual of the cause of action against the public entity. If the person is no longer incapacitated or turns 18, one day short of the six month, they are unable to benefit from this provision granting relief. In order to mitigate against arguably unjust situations such as this, the bill provides that where the person is a minor at least one day during that six-month period, they are entitled to the automatic granting of an application for leave to file an untimely claim. The same applies where a person is

incapacitated for any period during those six months, and because of it, was unable to file a timely claim.

Given the various exceptions for minors and those incapacitated already built into the Act, these changes are arguably keeping with the principles of the Act and provide a minor extension of time for the relevant injured parties to assert their claims. These changes are cabined by clauses that require these applications to still be presented within six months of the person turning 18 or within six months of the person no longer being physically or mentally incapacitated, or a year after the claim accrues, whichever occurs first. Therefore, the longest period for which such provisions can be triggered is still within one year of the accrual of the cause of action, which is the time in which Section 911.4 provides for submitting an application to file an untimely claim.

However, one concern arises for those persons who are minors or are physically or mentally incapacitated and who qualify for tolling the one-year deadline by which an application shall be made for leave to present a claim pursuant to Section 911.4(c). The bill now places an outer deadline of eligibility for automatic grant of applications in Section 911.6(b)(2) and (3) to “a year after the claim accrues.” Therefore, some individuals that would currently be eligible under Section 911.4(c) and Section 911.6(b)(2) or (3), would no longer be eligible for the latter where the tolling provided by the former took the actual lapse of time since accrual of the cause of action over one year. To avoid such consequences, the author has agreed to the following amendment, which simply reinserts the existing provisions of Section 911.6(b)(2) and (3) into the bill:

Amendment:

Insert the following paragraphs below Section 911.6(b)(1):

(2) The person who sustained the alleged injury, damage or loss was a minor during all of the time specified in Section 911.2 for the presentation of the claim.

(3) The person who sustained the alleged injury, damage or loss was physically or mentally incapacitated during all of the time specified in Section 911.2 for the presentation of the claim and by reason of such disability failed to present a claim during such time.

2. Stated intent of the bill

According to the author:

When someone has a claim against a government entity or their employees, they can file a claim within six months from when an injury occurred. If they are a minor or are physically or mentally incapacitated during those six months they had to file they are given an extension that

allows them to file up to a year from the date of injury. However, when the person was a minor or incapacitated for only part of the six months there is no extension at all. If they turned 18 one day before the six months expired, the person would have to file it by the next day.

This bill creates an extension to the deadline to file a claim if the claimant was a minor or incapacitated for less than six months after the incident. If they were a minor for three months after the event, the deadline to file is extended by three months. If it is one day under six months, it is extended by six months minus one day. This will ensure that fewer people run out the clock on their claims by giving more people a solid six months to file once they turn 18 or regain their capacity.

The Consumer Attorneys of California write in support:

SB 501 creates an extension to the deadline to file a claim if the claimant was a minor or incapacitated for less than six months after the incident. This will ensure that fewer people run out the clock on their claims by giving more people a solid six months to file once they turn 18 or regain their capacity.

SUPPORT

Consumer Attorneys of California

OPPOSITION

None known

RELATED LEGISLATION

Pending Legislation: AB 1455 (Wicks, 2021) extends the time within which a claim seeking to recover damages arising out of a sexual assault by a law enforcement officer who has been convicted of any crime of sexual assault, when the crime of sexual assault occurred while the officer was on duty, in uniform, or armed, can be commenced. The extension revives claims that would otherwise be barred because the applicable statute of limitations, the deadline for the presentation of the claim, or any other applicable time limit has expired. The bill is currently in the Assembly Judiciary Committee.

Prior Legislation:

AB 3092 (Wicks, Ch. 246, Stats. 2020) revives claims seeking to recover damages arising out of a sexual assault or other inappropriate contact, communication, or activity of a sexual nature by a physician while employed by a medical clinic owned and operated

by the University of California at Los Angeles (UCLA), or a physician who held active privileges at a hospital owned and operated by UCLA, at the time that the sexual assault or other inappropriate contact, communication, or activity of a sexual nature occurred, between January 1, 1983, and January 1, 2019, that would otherwise be barred before January 1, 2021, solely because the applicable statute of limitations has or had expired.

AB 218 (Gonzalez, Ch. 861, Stats. 2019) extends the time for commencement of actions for childhood sexual assault to 40 years of age or five years from discovery of the injury; provides enhanced damages for a cover up, as defined, of the assault; and provides a three-year window in which expired claims are revived.

SB 1053 (Beall, Ch. 153, Stats. 2018) provides that the claims presentation procedures prescribed by Section 935 of the Government Code do not apply to claims of childhood sexual abuse made as pursuant to Section 340.1 of the Code of Civil Procedure.
