

Date of Hearing: June 22, 2021

ASSEMBLY COMMITTEE ON JUDICIARY
Mark Stone, Chair
SB 501 (Wieckowski) – As Amended May 20, 2021

PROPOSED CONSENT

SENATE VOTE: 39-0

SUBJECT: CLAIMS AGAINST PUBLIC ENTITIES

KEY ISSUE: IN ORDER TO BETTER PROTECT CHILDREN AND INCAPACITATED ADULTS, SHOULD THE SIX-MONTH PERIOD TO FILE A CLAIM AGAINST A PUBLIC ENTITY UNDER THE GOVERNMENT TORT CLAIMS ACT BE EXTENDED FOR UP TO SIX ADDITIONAL MONTHS IF THE INJURED PARTY WAS A CHILD OR INCAPACITATED DURING ANY OF THE ORIGINAL SIX-MONTH PERIOD?

SYNOPSIS

The Government Claims Act (Act), also called the California Tort Claims Act, governs claims filed against public entities. (Government Code Section 810 et seq.) Before a public entity can be held liable for damages to property or persons or other injuries, the 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 or 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 within a year after the claim accrues, whichever occurs first.

This bill is sponsored by the Conference of California Bar Associations. It is supported by the Consumer Attorneys of California. There is no known opposition.

SUMMARY: 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. Specifically, **this bill:**

- 1) Requires that an application to file an untimely claim against a public entity be granted where the person who sustained the alleged injury, damage, or loss was a minor during any of the time specified 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 be granted where the person who sustained the alleged injury, damage, or loss was physically or mentally incapacitated during any of the time specified 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.

- 3) Makes conforming changes to allow claims under 1) and 2) to be filed in court if the application is denied or deemed to be denied by the public entity.

EXISTING LAW:

- 1) Establishes the Government Claims Act (Act) which governs claims filed against public entities. Defines “public entities” broadly to include 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. (Government Code Sections 810 *et seq.*, 811.2. Unless stated otherwise, all further statutory references are to the Government Code.)
- 2) Except as otherwise provided by statute, provides that 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. 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 provision, have given rise to a cause of action against that employee or their personal representative. (Sections 815, 815.2.)
- 3) Provides, under the Act, that a claim relating to a cause of action for death or injury to a person or to personal property or growing crops against a public entity must be presented in writing, as specified, to the public entity not later than six months after the accrual of the cause of action. Provides that a claim for all other causes of action must be presented within one year of the accrual of the cause of action. Provides that the date of accrual of a cause of action is the date upon which the cause of action would be deemed to have accrued within the meaning of the applicable statute of limitations if no claim presentation were required before a court action could be commenced. (Sections 901, 911.2, 915.)
- 4) Allows a claimant to make a written application to the public entity for leave to present an untimely claim. Requires that the application be presented to the public entity within a reasonable time not to exceed one year after the accrual of the cause of action and state the reason for the delay in presenting the claim. Provides that in computing the one-year period, the following applies:
 - a) The time during which the person who sustained the alleged injury, damage, or loss as a minor is counted, but the time during which the claimant is mentally incapacitated and does not have a guardian or conservator of the claimant’s person is not counted; and
 - b) The time is not counted during which the person is detained or adjudged to be a dependent child of the juvenile court, as provided. (Section 911.4.)
- 5) Requires a government board, as defined in 6), below, to grant or deny the application for a claim against a government entity within 45 days after it is presented to the board. Allows the claimant and the board, by written agreement, to extend the period by which the board is required to act on the application. Requires the board 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 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 for the presentation of the claim and by reason of such disability failed to present a claim during such time; and
 - d) The person who sustained the alleged injury, damage or loss died before the expiration of the time specified for the presentation of the claim. (Section 911.6.)
- 6) 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; and
 - c) In the case of a judicial branch entity or judge of one of those entities, the Judicial Council; or
 - d) In the case of the California State University, the Trustees of the California State University. (Section 900.2.)
- 7) Allows the government board to allow or reject a claim presented under 3), above, as provided. (Section 912.6.)
- 8) Provides that no suit for money or damages may be brought against a public entity on a cause of action for which a claim is required to be presented under 3), above, until a written claim has been presented to the public entity and has been acted on by the entity’s board or has been deemed rejected by the board, as provided. (Section 945.4.)
- 9) Provides that if an application for leave to present a claim is denied or deemed to be denied, a petition may be made to the court for an order relieving the petitioner from 8) above. The proper court for filing the petition is a superior court that would be a proper court for the trial of an action on the cause of action to which the claim relates. Requires the court to relieve the petitioner from the requirements of 8), above, if the court finds that the application to the board was made within a reasonable time, as provided, and was denied or deemed denied as provided and that one or more of the following is applicable:
- a) The failure to present the claim was through mistake, inadvertence, surprise, or excusable neglect unless the public entity establishes that it would be prejudiced in the defense of the claim if the court relieves the petitioner from the requirement.
 - b) The person who sustained the alleged injury, damage, or loss was a minor during *all* of the time specified 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 for the presentation of the claim and by reason of that disability failed to present a claim during that time.
- d) The person who sustained the alleged injury, damage, or loss died before the expiration of the time specified for the presentation of the claim. (Section 946.6.)

FISCAL EFFECT: As currently in print this bill is keyed fiscal.

COMMENTS: The Government Claims Act (Act), also called the California Tort Claims Act, governs claims filed against public entities. (Government Code Section 810 *et seq.*) Before a public entity can be held liable for damages to property or persons or other injuries, the 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 or within which a timely claim was to be filed.

In order to avoid potentially unjust situations, for example if the person was a minor during all but one day of the period in which to a timely claim must be filed, 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 within one year after the claim accrues, whichever occurs first.

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.

Claims can be made against a public entity under California's Government Claims Act. 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. (Section 815.) That is basically the general statement of sovereign immunity. However, as acknowledged by the general rule, there are exceptions. For example, California 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 their employment if the conduct would have otherwise given rise to a cause of action against that employee. (Section 815.2.)

California's Government Claims Act generally governs the process for bringing claims against public entities. 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. This allows the public entity to try and settle the claim, or properly defend itself, or even quickly correct unsafe conditions. In addition to any time limitations on these claims imposed by other statutes, the Act requires that a claim brought against a public entity relating to a cause of action for death or injury to a person or property be presented in writing to the public entity no later than six months after accrual of the cause of action or, from other causes of action, within one year. (Section 911.2.)

However, the Act allows for a person to file a written application to submit an untimely claim against the public entity. (Section 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. (Section 911.6.) The public entity is required to grant the application under certain circumstances. Relevant here, the public entity is required to provide leave to file a claim where the person was a minor during *all* of the time for the presentation of the claim. The same applies where the person was physically or mentally incapacitated during *all* of the time 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 for 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 months, they are unable to benefit from this provision granting relief from timely filing a claim.

This bill expands existing law slightly to avoid injustice for those injured as minors or when incapacitated. This bill builds on the exceptions for minors already provided by the Act, by providing that where the person is a minor for 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. These changes should protect against unjust results, such as a person who was a minor or was incapacitated for all but one day during the six-month period. These changes are narrowly tailored because they still require that any application 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.

This bill makes conforming changes to require that the court in which the cause of action is brought relieves the petitioner of meeting the six-month requirement to present the claim to the public entity if the petitioner was a minor or was physically or mentally incapacitated during any of the six-month time period for presenting the claim and presented the claim within six months

of turning 18, or no longer being incapacitated, or a year after the claim accrued, whichever occurs first. This ensures that the claims can still be brought to a court to be resolved if brought within the extended timeframe.

ARGUMENTS IN SUPPORT: The Consumer Attorneys of California writes 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.

The Conference of California Bar Associations, the bill's sponsor, adds that the bill "accommodates the reality that many claimants lose their chance to seek recovery because they were not a child or incapacitated long enough to get an extension to file, while keeping intact the maximum extension of six months."

REGISTERED SUPPORT / OPPOSITION:

Support

California Conference of Bar Associations (sponsor)
Consumer Attorneys of California

Opposition

None on file

Analysis Prepared by: Leora Gershenzon / JUD. / (916) 319-2334