

Assembly Bill No. 2321

CHAPTER 1007

An act to amend Sections 900.2, 912.4, 912.8, 913, 915, 935.6, 940.2, 946.6, 948, 955.4, 965, 965.2, 965.6, and 965.65 of, and to add Sections 900.3, 912.7, 935.8, 940.3, 948.1, and 955.9 to, the Government Code, relating to public entity liability.

[Approved by Governor September 27, 2002. Filed with Secretary of State September 27, 2002.]

LEGISLATIVE COUNSEL'S DIGEST

AB 2321, Hertzberg. Tort Claims Act: judiciary.

The existing Tort Claims Act provides for the liability and immunity of a governmental entity for its acts or omissions that cause harm to persons. Existing law provides that any claim for money or damages against the state is required to be presented to the State Board of Control within a specified period of time. Other provisions of existing law have renamed the State Board of Control, the Victim Compensation and Government Claims Board.

This bill would require, instead, in the case of a claim against a judicial branch entity, as defined, or a judge of one of those entities, that the Judicial Council act on the claim in accordance with the procedure that the Judicial Council would provide by rule of court. The bill would specify certain means of presentation and service of a claim against a judicial branch entity or one of its judges. The bill would authorize the Judicial Council to settle, adjust, or compromise any pending action arising out of the activities of a judicial branch entity or judge thereof, and to authorize the Controller to draw a warrant for payment of any final judgment or settlement based on claims arising out of the activities of a judicial branch entity. The bill would also require the Administrative Director of the Courts to report to the Judicial Council concerning any action the administrative office of the courts takes or proposes to take to prevent the future occurrence of circumstances similar to those upon which the claim was based.

This bill would also amend the references to the State Board of Control in the Tort Claims Act to instead refer to the Victim Compensation and Government Claims Board.



The people of the State of California do enact as follows:

SECTION 1. Section 900.2 of the Government Code is amended to read:

900.2. “Board” means:

(a) In the case of a local public entity, the governing body of the local public entity.

(b) In the case of the state, except as provided by subdivision (c), the Victim Compensation and Government Claims Board.

(c) In the case of a judicial branch entity or judge of one of those entities, the Judicial Council.

SEC. 2. Section 900.3 is added to the Government Code, to read:

900.3. A “judicial branch entity” is a public entity and means any superior court, court of appeals, the Supreme Court, the Judicial Council, or the Administrative Office of the Courts.

SEC. 3. Section 912.4 of the Government Code is amended to read:

912.4. (a) The board shall act on a claim in the manner provided in Section 912.6, 912.7, or 912.8 within 45 days after the claim has been presented. If a claim is amended, the board shall act on the amended claim within 45 days after the amended claim is presented.

(b) The claimant and the board may extend the period within which the board is required to act on the claim by written agreement made either:

(1) Before the expiration of the period.

(2) After the expiration of the period if an action based on the claim has not been commenced and is not yet barred by the period of limitations provided in Section 945.6.

(c) If the board fails or refuses to act on a claim within the time prescribed by this section, the claim shall be deemed to have been rejected by the board on the last day of the period within which the board was required to act upon the claim. If the period within which the board is required to act is extended by agreement pursuant to this section, the last day of the period within which the board is required to act shall be the last day of the period specified in the agreement.

SEC. 4. Section 912.7 is added to the Government Code, to read:

912.7. The Judicial Council shall act on a claim against a judicial branch entity or judge of one of those entities in accordance with the procedure that the Judicial Council provides by rule of court. The Judicial Council may authorize any committee of the Judicial Council or employee of the Administrative Office of the Courts to perform the functions of the Judicial Council under this part.

SEC. 5. Section 912.8 of the Government Code is amended to read:



912.8. (a) Except as provided in Section 912.7, in the case of claims against the state, the board shall act on claims in accordance with that procedure as the board, by rule, may prescribe. It may hear evidence for and against the claims and, with the approval of the Governor, report to the Legislature those facts and recommendations concerning the claims as it deems proper. In making recommendations, the board may state and use any official or personal knowledge which any member may have regarding any claim. The board may authorize any employee of the state to perform the functions of the board under this part as are prescribed by the board.

SEC. 6. Section 913 of the Government Code is amended to read:

913. (a) Written notice of the action taken under Section 912.6, 912.7, or 912.8 or the inaction which is deemed rejection under Section 912.4 shall be given in the manner prescribed by Section 915.4. The notice may be in substantially the following form:

“Notice is hereby given that the claim which you presented to the (insert title of board or officer) on (indicate date) was (indicate whether rejected, allowed, allowed in the amount of \$____ and rejected as to the balance, rejected by operation of law, or other appropriate language, whichever is applicable) on (indicate date of action or rejection by operation of law).”

(b) If the claim is rejected in whole or in part, the notice required by subdivision (a) shall include a warning in substantially the following form:

“WARNING

“Subject to certain exceptions, you have only six (6) months from the date this notice was personally delivered or deposited in the mail to file a court action on this claim. See Government Code Section 945.6.

“You may seek the advice of an attorney of your choice in connection with this matter. If you desire to consult an attorney, you should do so immediately.”

SEC. 7. Section 915 of the Government Code is amended to read:

915. (a) A claim, any amendment thereto, or an application to the public entity for leave to present a late claim shall be presented to a local public entity by either of the following means:

- (1) Delivering it to the clerk, secretary or auditor thereof.
- (2) Mailing it to the clerk, secretary, auditor, or to the governing body at its principal office.



(b) Except as provided in subdivision (c), a claim, any amendment thereto, or an application for leave to file a late claim shall be presented to the state by either of the following means:

(1) Delivering it to an office of the Victim Compensation and Government Claims Board.

(2) Mailing it to the Victim Compensation and Government Claims Board at its principal office.

(c) A claim, any amendment thereto, or an application for leave to file a late claim shall be presented to a judicial branch entity in accordance with the following means:

(1) Delivering or mailing it to the court executive officer, if against a superior court or a judge, court executive officer, or trial court employee, as defined in Section 811.9, of that court.

(2) Delivering or mailing it to the clerk/administrator of the court of appeals, if against a court of appeals or a judge of that court.

(3) Delivering or mailing it to the Clerk of the Supreme Court, if against the Supreme Court or a judge of that court.

(4) Delivering or mailing it to the Secretariat of the Judicial Council, if against the Judicial Council or the Administrative Office of the Courts.

(d) A claim, amendment or application shall be deemed to have been presented in compliance with this section even though it is not delivered or mailed as provided in this section if it is actually received by the clerk, secretary, auditor or board of the local public entity, is actually received at an office of the Victim Compensation and Government Claims Board, or, if against a judicial branch entity or judge, it is actually received by the court executive officer, court clerk/administrator, court clerk, or secretariat of the judicial branch entity, within the time prescribed for presentation thereof.

(e) A claim, amendment or application shall be deemed to have been presented in compliance with this section to a public agency as defined in Section 53050 if it is delivered or mailed within the time prescribed for presentation thereof in conformity with the information contained in the statement in the Roster of Public Agencies pertaining to that public agency which is on file at the time the claim, amendment or application is delivered or mailed. As used in this subdivision, "statement in the Roster of Public Agencies" means the statement or amended statement in the Roster of Public Agencies in the office of the Secretary of State or in the office of the county clerk of any county in which the statement or amended statement is on file.

SEC. 8. Section 935.6 of the Government Code is amended to read:

935.6. (a) The Victim Compensation and Government Claims Board may authorize any state agency to settle and pay claims filed pursuant to subdivision (c) of Section 905.2 if the settlement does not



exceed one thousand dollars (\$1,000) or that lesser amount as the board may determine, or to reject the claim and provide the notice required by Section 913. The board may require state agencies that it so authorizes to report annually to the board concerning the claims resolved pursuant to this section.

(b) As used in this section, “state agency” means any office, officer, department, division, bureau, board, commission, or agency of the state, claims against which are paid by warrants drawn by the Controller, but does not mean any judicial branch entity, as defined in Section 900.3, or any judge thereof.

SEC. 9. Section 935.8 is added to the Government Code, to read:

935.8. The Judicial Council may adjust and pay any claim arising out of the activities of a judicial branch entity or judge thereof. The Judicial Council may adopt rules of court authorizing any committee of the Judicial Council or employee of the Administrative Office of the Courts to perform the functions of the Judicial Council under this section.

SEC. 10. Section 940.2 of the Government Code is amended to read:

940.2. “Board” means:

(a) In the case of a local public entity, the governing body of the local public entity.

(b) In the case of the state, except as provided by subdivision (c), the Victim Compensation and Government Claims Board.

(c) In the case of a judicial branch entity or a judge thereof, the Judicial Council.

SEC. 11. Section 940.3 is added to the Government Code, to read:

940.3. A “judicial branch entity” is a public entity and means any superior court, court of appeals, the Supreme Court, the Judicial Council, or the Administrative Office of the Courts.

SEC. 12. Section 946.6 of the Government Code is amended to read:

946.6. (a) If an application for leave to present a claim is denied or deemed to be denied pursuant to Section 911.6, a petition may be made to the court for an order relieving the petitioner from Section 945.4. 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. If the petition is filed in a court which is not a proper court for the determination of the matter, the court, on motion of any party, shall transfer the proceeding to a proper court. If an action on the cause of action to which the claim relates would be a limited civil case, a proceeding pursuant to this section is a limited civil case.

(b) The petition shall show each of the following:

(1) That application was made to the board under Section 911.4 and was denied or deemed denied.



(2) The reason for failure to present the claim within the time limit specified in Section 911.2.

(3) The information required by Section 910.

The petition shall be filed within six months after the application to the board is denied or deemed to be denied pursuant to Section 911.6.

(c) The court shall relieve the petitioner from the requirements of Section 945.4 if the court finds that the application to the board under Section 911.4 was made within a reasonable time not to exceed that specified in subdivision (b) of Section 911.4 and was denied or deemed denied pursuant to Section 911.6 and that one or more of the following is applicable:

(1) 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 requirements of Section 945.4.

(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 that disability failed to present a claim during that time.

(4) 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.

(d) A copy of the petition and a written notice of the time and place of hearing shall be served before the hearing as prescribed by subdivision (b) of Section 1005 of the Code of Civil Procedure on (1) the clerk or secretary or board of the local public entity, if the respondent is a local public entity, or (2) the Attorney General, if the respondent is the state. If the petition involves a claim arising out of alleged actions or inactions of the Department of Transportation, service of the petition and notice of the hearing shall be made on the Attorney General or the Director of Transportation. Service on the Attorney General may be accomplished at any of the Attorney General's offices in Los Angeles, Sacramento, San Diego, or San Francisco. Service on the Director of Transportation may be accomplished only at the Department of Transportation's headquarters office in Sacramento. If the petition involves a claim arising out of alleged actions or inactions of a judicial branch entity, service of the petition and notice of the hearing shall be made in accordance with the following:

(1) If the petition involves a claim arising out of alleged actions or inactions of a superior court or a judge, court executive officer, or trial



court employee, as defined in Section 811.9, of the court, service shall be made on the court executive officer.

(2) If the petition involves a claim arising out of alleged actions or inactions of a court of appeals or a judge thereof, service shall be made on the Clerk/Administrator of the court of appeals.

(3) If the petition involves a claim arising out of alleged actions or inactions of the Supreme Court or a judge thereof, service shall be made on the Clerk of the Supreme Court.

(4) If the petition involves a claim arising out of alleged actions or inactions of the Judicial Council or the Administrative Office of the Courts, service shall be made on the secretariat of the Judicial Council.

(e) The court shall make an independent determination upon the petition. The determination shall be made upon the basis of the petition, any affidavits in support of or in opposition to the petition, and any additional evidence received at the hearing on the petition.

(f) If the court makes an order relieving the petitioner from Section 945.4, suit on the cause of action to which the claim relates shall be filed with the court within 30 days thereafter.

SEC. 13. Section 948 of the Government Code is amended to read:

948. (a) The head of the state agency concerned, upon recommendation of the Attorney General or other attorney authorized to represent the state, may settle, adjust, or compromise any pending action where the Director of Finance certifies that a sufficient appropriation for the payment of claims exists. Claims arising out of the activities of the State Department of Transportation may be paid if either the Director of Transportation or the Director of Finance certifies that a sufficient appropriation for the payment of the claim exists.

(b) If no funds or insufficient funds for the payment exist, the head of the state agency concerned, upon recommendation of the Attorney General or other attorney authorized to represent the state, may settle, adjust or compromise any pending action with the approval of the Department of Finance.

(c) As used in this section, “state agency” means any office, officer, department, division, bureau, board, commission or agency of the state claims against which are paid by warrants drawn by the Controller, but does not mean any “judicial branch entity” as defined in Section 940.3 or any judge thereof.

SEC. 14. Section 948.1 is added to the Government Code, to read:

948.1. The Judicial Council may settle, adjust, or compromise any pending action arising out of the activities of a judicial branch entity or judge thereof. The Judicial Council may adopt rules of court authorizing any committee of the Judicial Council or employee of the



Administrative Office of the Courts to perform the functions of the Judicial Council under this section.

SEC. 15. Section 955.4 of the Government Code is amended to read: 955.4. Except as provided in Sections 811.9, 955.6, 955.8, and 955.9:

(a) Service of summons in all actions on claims against the state shall be made on the Attorney General.

(b) The Attorney General shall defend all actions on claims against the state.

SEC. 16. Section 955.9 is added to the Government Code, to read: 955.9. In actions on claims against a judicial branch entity, service of summons shall be made on:

(a) The court executive officer, in actions on claims against a superior court or a judge thereof.

(b) The Clerk/Administrator of the Court of Appeal, in actions on claims against a court of appeals or a judge thereof.

(c) The Clerk of the Supreme Court, in actions on claims against the Supreme Court or a judge thereof.

(d) The Secretariat of the Judicial Council, in actions on claims against the Judicial Council or the Administrative Office of the Courts.

SEC. 17. Section 965 of the Government Code is amended to read:

965. (a) Upon the allowance by the Victim Compensation and Government Claims Board of all or part of a claim for which the Director of Finance certifies that a sufficient appropriation for the payment of the claim exists, and the execution and presentation of documents the board may require which discharge the state of all liability under the claim, the board shall designate the fund from which the claim is to be paid and the state agency concerned shall pay the claim from that fund. If there is no sufficient appropriation for the payment available, the board shall report to the Legislature in accordance with Section 912.8. Claims arising out of the activities of the State Department of Transportation may be paid if either the Director of Transportation or the Director of Finance certifies that a sufficient appropriation for the payment of the claim exists.

(b) Notwithstanding subdivision (a), if there is no sufficient appropriation for the payment of claims, settlements, or judgments against the state arising from an action in which the state is represented by the Attorney General, the Attorney General shall report the claims, settlements, and judgments to the Chairperson of either the Senate Committee on Appropriations or the Assembly Committee on Budget, who shall cause to be introduced legislation appropriating funds for the payment of the claims, settlements, or judgments.



(c) Notwithstanding subdivision (a) or (b), claims, settlements, or judgments arising out of the activities of a judicial branch entity, as defined by Sections 900.3 and 940.3, or a judge thereof may be paid if the Judicial Council authorizes payment and the Administrative Director of the Courts certifies that sufficient funds for that payment exist from funds allocated to settlement, adjustment, and compromise of actions and claims. If sufficient funds for payment of settlements or judgments do not exist, the Administrative Director of the Courts shall report the settlements and judgments to the Chairperson of either the Senate Committee on Appropriations or the Assembly Committee on Budget, who shall cause to be introduced legislation appropriating funds for the payment of the settlements or judgments. If sufficient funds for payment of claims do not exist, the Administrative Director of the Courts shall report the claims to the Victim Compensation and Government Claims Board, which shall have 90 days to object to payment. The Administrative Director of the Courts shall confer with the chairperson of the Victim Compensation and Government Claims Board regarding any objection received during the 90-day period. If the Victim Compensation and Government Claims Board withdraws the objection, or if no objection was received, the Administrative Director of the Courts shall report the claims to the Chairperson of either the Senate Committee on Appropriations or the Assembly Committee on the Budget, who shall cause to be introduced legislation appropriating funds for the payment of the claims. The Judicial Council may authorize any committee of the Judicial Council or any employee of the Administrative Office of the Courts to perform the functions of the Judicial Council under this section. The Administrative Director of the Courts may designate an executive staff member of the Administrative Office of the Courts to perform the functions of the Administrative Director of the Courts under this section.

SEC. 18. Section 965.2 of the Government Code is amended to read:

965.2. (a) The Controller shall draw a warrant for the payment of any final judgment or settlement against the state whenever the Director of Finance certifies that a sufficient appropriation for the payment of the judgment or settlement exists. Claims upon those judgments and settlements are exempt from Section 925.6. Claims arising out of the activities of the State Department of Transportation may be paid if either the Director of Transportation or the Director of Finance certifies that a sufficient appropriation for the payment of the claim exists.

(b) Notwithstanding subdivision (a), the Controller shall draw a warrant for the payment of any final judgment or settlement based on claims arising out of the activities of a judicial branch entity, as defined by Sections 900.3 and 940.3, or a judge thereof, whenever the



Administrative Director of the Courts certifies that sufficient funds for that payment exist from funds allocated to settlement, adjustment, and compromise of actions and claims. Claims upon those judgments and settlements are exempt from Section 925.6. Claims arising out of the activities of a judicial branch entity, as defined by Sections 900.3 and 940.3, or a judge thereof, may be paid if the Administrative Director of the Courts certifies that sufficient funds for the payment exist from funds allocated to settlement, adjustment, and compromise of actions and claims. The Administrative Director of the Courts may designate an executive staff member of the Administrative Office of the Courts to perform the certification of funds pursuant to this section.

SEC. 19. Section 965.6 of the Government Code is amended to read:

965.6. Notwithstanding any other provision of law, neither the state nor a judicial branch entity, nor any officers or employees thereof, may be required by any court in any proceeding to pay or offset a tort liability claim, settlement, or judgment for which the state or judicial branch entity is liable, unless one of the following conditions exists:

(a) The Legislature has authorized the payment or offset of the specific tort liability claim, settlement, or judgment.

(b) The Director of Finance, or the Director of Transportation for claims arising out of the activities of the Department of Transportation, has certified that a sufficient appropriation for the payment of the claim, settlement, or judgment or to provide for that offset exists. This subdivision does not apply to claims arising out of the activities of a judicial branch entity or a judge thereof.

(c) In the case of claims arising out of the activities of a judicial branch entity, as defined in Sections 900.3 and 940.3, or a judge thereof, the Administrative Director of the Courts has certified that sufficient funds for payment of the claim, settlement, or judgment, or to provide for that offset, exist from funds allocated to settlement, adjustment, and compromise of pending actions and claims. The Administrative Director of the Courts may designate an executive staff member of the Administrative Office of the Courts to perform the certification of funds pursuant to this section.

SEC. 20. Section 965.65 of the Government Code is amended to read:

965.65. (a) If a request is made for certification of availability of funds, approval of a settlement, or inclusion of a claim in a claims bill pursuant to Section 948, 965, or 965.2 for a claim in excess of thirty-five thousand dollars (\$35,000) against the state which arose from the activities of any state agency or employee, the agency shall report to the Director of Finance concerning any action it has taken or proposes to take to prevent the future occurrence of circumstances similar to those



upon which the claim was based, including any imposition of disciplinary action.

(b) This section does not apply to a judicial branch entity, as defined in Sections 900.3 and 940.3, or claims arising out of the activities of a judicial branch entity or a judge or employee thereof. However, in the case of the categories of claims and settlements described in subdivision (a) arising out of activities of a judicial branch entity or a judge, court executive officer, or employee thereof, the Administrative Director of the Courts shall report to the Judicial Council concerning any action the Administrative Office of the Courts has taken or proposes to take to prevent the future occurrence of circumstances similar to those upon which the claim was based, including any imposition of disciplinary action.

