



MEMORANDUM IN SUPPORT
Torts, Insurance and Compensation Law Section

TICL # 1

April 30, 2026

S.9792

By: Senator Sepulveda

A. 8047 - B

By: M of A Rajkumar

Assembly Committee: Passed the
Assembly

Senate Committee: Judiciary

Effective Date: 90th day following
passage

AN ACT to amend the court of claims act to allow amendment of claims.

LAW AND SECTIONS REFERRED TO: Court of Claims §11(b)

THE TORTS, INSURANCE AND COMPENSATION LAW SECTION
SUPPORTS THIS LEGISLATION

This bill was introduced following the 2024 veto of similar legislation, in order to address the issues raised in the Veto Memorandum.

Under current law, there is no provision to amend a claim against the state. If the claim fails to include the specificity required by Court of Claims §11(b), the case is subject to a motion to dismiss by the state. Such motion to dismiss is not subject to any time limit and may even occur following discovery. A claimant who discovers that the claim was incorrect or not complete is left with the sole remedy of making application for the service of a new claim and is then subject to the rules on late notice of claim. *See, Constable v. State of New York*, 172 A.D.3d 681 (2d Dept. 2019).

The 2024 legislation sought to allow amendment, but it had no time limits or requirement of a sufficient reason for such amendment. This legislation addresses both of these concerns. The first provision, adding §11(b)(ii)(A), provides that the claimant may amend without leave of court, within 20 days of service of the claim, prior to the time in which the state must respond, or within 20 days of responsive pleading or motion, so long as the amendment is made within the statute of limitations specified in CPLR Article for the cause of action, had the defendant been a party other than the State [Hereinafter “Article 2 SOL”].

The second provision, adding §11(b)(ii)(B), provides that the claimant may make application to amend within Article 2 SOL, or within 40 days of a motion to dismiss based upon lack of required pleading requirements, whichever is later. Such application must be accompanied by a copy of the proposed amended claim. The application is to be determined by the court based upon the reasonableness of the excuse for the lack of pleading requirements, whether the state had notice, the state's opportunity to investigate and extreme prejudice to the state.

The third provision, adding §11(b)(iii), addresses claims that are made prior to the effective date of the proposed legislation. Such claims may be amended without court leave within the time limits of §11(b)(ii)(A), if the claim was made within 40 days of the effective date. If the claim is older, application to the court may be made within one year of the effective date, or within Article 2 SOL, whichever is later. The application, which must include the proposed amended claim, will then be determined by the court, using the same standards as set forth in §11(b)(ii)(B).

The fourth provision, adding §11(b)(iv), allows the amendment of the intent to file a claim, in the case where the intent to file a claim is made after the effective date, at any time within the time to serve the notice of intention pursuant to §10.

The fifth provision, for claims made after the effective date, requires the state to make any motion to dismiss based upon the pleading requirements before the service of the responsive pleading. Such defense is waived unless raised in a timely motion or within the responsive pleading.

The final provision for claims made before the effective date, requires the state to make any motion to dismiss based upon the pleading requirements to be made within 120 days of the filing of the note of issue, or where no note of issue is required, more than 30 days before trial.

These additional provisions set meaningful time limits and standards for the amendment of the claim and satisfactorily address the Governor's concerns as set forth in her Veto Memorandum (Veto 40, UCS-66, 2024).

For these reasons the New York State Bar Association's Section on Torts, Insurance and Compensation Law **SUPPORTS** this legislation.