

2394

2009-2010 Regular Sessions

I N S E N A T E

February 19, 2009

Introduced by Sens. DeFRANCISCO, VOLKER -- read twice and ordered printed, and when printed to be committed to the Committee on Cities

AN ACT to amend the general municipal law, in relation to establishing criteria for notice of claim to be filed and served when done by electronic means in a city having a population of over one million

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 Section 1. Paragraph (a) of subdivision 3 of section 50-e of the
2 general municipal law, as amended by chapter 745 of the laws of 1976, is
3 amended and a new paragraph (e) is added to read as follows:
4 (a) The notice shall be served on the public corporation against which
5 the claim is made by delivering a copy thereof personally, or by registered
6 or certified mail, to the person designated by law as one to whom
7 a summons in an action in the supreme court issued against such corporation
8 may be delivered, or to an attorney regularly engaged in representing
9 such public corporation OR, IN A CITY WITH A POPULATION OF OVER
10 ONE MILLION, BY ELECTRONIC MEANS IN A FORM AND MANNER PRESCRIBED BY SUCH
11 CITY.
12 (E) IF THE NOTICE IS SERVED BY ELECTRONIC MEANS, AS DEFINED IN PARAGRAPH
13 TWO OF SUBDIVISION (F) OF RULE TWENTY-ONE HUNDRED THREE OF THE
14 CIVIL PRACTICE LAW AND RULES, IT SHALL CONTAIN THE INFORMATION REQUIRED
15 UNDER THE PROVISIONS OF SUBDIVISION TWO OF THIS SECTION. IN ADDITION,
16 SUCH NOTICE SHALL CONTAIN THE FOLLOWING DECLARATION: "I CERTIFY THAT ALL
17 INFORMATION CONTAINED IN THIS NOTICE IS TRUE AND CORRECT TO THE BEST OF
18 MY KNOWLEDGE AND BELIEF. I UNDERSTAND THAT THE WILLFUL MAKING OF ANY
19 FALSE STATEMENT OF MATERIAL FACT HEREIN WILL SUBJECT ME TO CRIMINAL
20 PENALTIES AND CIVIL LIABILITIES." SERVICE OF THE NOTICE SHALL BE
21 COMPLETE UPON SUCCESSFUL TRANSMISSION OF THE NOTICE AS INDICATED BY AN
22 ELECTRONIC RECEIPT PROVIDED BY SUCH CITY, WHICH SHALL TRANSMIT AN ELECTRONIC
23 RECEIPT NUMBER TO THE CLAIMANT FORTHWITH.

EXPLANATION--Matter in *ITALICS* (underscored) is new; matter in brackets [] is old law to be omitted.

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1 S 2. Subdivision 5 of section 50-e of the general municipal law, as
2 amended by chapter 745 of the laws of 1976, is amended to read as
3 follows:

4 5. Application for leave to serve a late notice.

5 Upon application, the court, in its discretion, may extend the time to
6 serve a notice of claim specified in paragraph (a) of subdivision one OF
7 THIS SECTION. The extension shall not exceed the time limited for the
8 commencement of an action by the claimant against the public corpo-
9 ration. In determining whether to grant the extension, the court shall
10 consider, in particular, whether the public corporation or its attorney
11 or its insurance carrier acquired actual knowledge of the essential
12 facts constituting the claim within the time specified in subdivision
13 one OF THIS SECTION or within a reasonable time thereafter. The court
14 shall also consider all other relevant facts and circumstances, includ-
15 ing: whether the claimant was an infant, or mentally or physically inca-
16 pacitated, or died before the time limited for service of the notice of
17 claim; whether the claimant failed to serve a timely notice of claim by
18 reason of his justifiable reliance upon settlement representations made
19 by an authorized representative of the public corporation or its insur-
20 ance carrier; whether the claimant in serving a notice of claim made an
21 excusable error concerning the identity of the public corporation
22 against which the claim should be asserted; IF SERVICE OF THE NOTICE OF
23 CLAIM IS ATTEMPTED BY ELECTRONIC MEANS PURSUANT TO PARAGRAPH (E) OF
24 SUBDIVISION THREE OF THIS SECTION, WHETHER THE DELAY IN SERVING THE
25 NOTICE OF CLAIM WAS BASED UPON THE FAILURE OF THE COMPUTER SYSTEM OF THE
26 CITY OR THE CLAIMANT OR THE ATTORNEY REPRESENTING THE CLAIMANT; THAT
27 SUCH CLAIMANT OR ATTORNEY, AS THE CASE MAY BE, SUBMITTED EVIDENCE OR
28 PROOF AS IS REASONABLE SHOWING THAT (I) THE SUBMISSION OF THE CLAIM WAS
29 ATTEMPTED TO BE ELECTRONICALLY MADE IN A TIMELY MANNER AND WOULD HAVE
30 BEEN COMPLETED BUT FOR THE FAILURE OF THE COMPUTER SYSTEM UTILIZED BY
31 THE SENDER OR RECIPIENT, AND (II) THAT UPON BECOMING AWARE OF BOTH THE
32 FAILURE OF SUCH SYSTEM AND THE FAILURE OF THE CITY TO RECEIVE SUCH
33 SUBMISSION, THE CLAIMANT OR ATTORNEY HAD INSUFFICIENT TIME TO MAKE SUCH
34 CLAIM WITHIN THE PERMITTED TIME PERIOD IN A MANNER AS OTHERWISE
35 PRESCRIBED BY LAW; and whether the delay in serving the notice of claim
36 substantially prejudiced the public corporation in maintaining its
37 defense on the merits.

38 An application for leave to serve a late notice shall not be denied on
39 the ground that it was made after commencement of an action against the
40 public corporation.

41 S 3. This act shall take effect on the one hundred eightieth day after
42 it shall have become a law.