



General Assembly

February Session, 2004

Raised Bill No. 5669

LCO No. 2550

02550_____JUD

Referred to Committee on Judiciary

Introduced by:
(JUD)

AN ACT CONCERNING PROCEDURES IN MEDICAL MALPRACTICE ACTIONS.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Section 52-190a of the general statutes, as amended by
2 section 14 of public act 03-202, is repealed and the following is
3 substituted in lieu thereof (*Effective from passage and applicable to actions*
4 *filed on or after said date*):

5 (a) No civil action or apportionment complaint shall be filed to
6 recover damages resulting from personal injury or wrongful death
7 occurring on or after October 1, 1987, whether in tort or in contract, in
8 which it is alleged that such injury or death resulted from the
9 negligence of a health care provider, unless the attorney or party filing
10 the action or apportionment complaint has made a reasonable inquiry
11 as permitted by the circumstances to determine that there are grounds
12 for a good faith belief that there has been negligence in the care or
13 treatment of the claimant. The complaint, [or] initial pleading or
14 apportionment complaint shall contain a certificate of the attorney or
15 party filing the action or apportionment complaint that such
16 reasonable inquiry gave rise to a good faith belief that grounds exist

17 for an action against each named defendant or for an apportionment
18 complaint against each named apportionment defendant. [For the
19 purposes of this section, such good faith may be shown to exist if the
20 claimant or his attorney has received a written opinion, which shall not
21 be subject to discovery by any party except for questioning the validity
22 of the certificate,] To show the existence of such good faith, the
23 claimant or such claimant's attorney, and any apportionment
24 complainant or such apportionment complainant's attorney, shall
25 obtain a written and signed opinion of a similar health care provider,
26 as defined in section 52-184c, which similar health care provider shall
27 be selected pursuant to the provisions of said section, that there
28 appears to be evidence of medical negligence and includes a detailed
29 basis for the formation of such opinion. Such written opinion shall not
30 be the subject to discovery by any party except for questioning the
31 validity of the certificate. The claimant or such claimant's attorney, and
32 any apportionment complainant or such apportionment complainant's
33 attorney, shall retain the original written opinion and shall attach a
34 copy of such written opinion, with the name and signature of the
35 similar health care provider expunged, to such certificate. In addition
36 to such written opinion, the court may consider other factors with
37 regard to the existence of good faith. If the court determines, after the
38 completion of discovery, that such certificate was not made in good
39 faith and that no justiciable issue was presented against a health care
40 provider that fully cooperated in providing informal discovery, the
41 court upon motion or upon its own initiative shall impose upon the
42 person who signed such certificate or a represented party, or both, an
43 appropriate sanction which may include an order to pay to the other
44 party or parties the amount of the reasonable expenses incurred
45 because of the filing of the pleading, motion or other paper, including
46 a reasonable attorney's fee. The court may also submit the matter to the
47 appropriate authority for disciplinary review of the attorney if the
48 claimant's attorney or apportionment complainant's attorney
49 submitted the certificate.

50 (b) If a claimant in a civil action asserts a claim against an

51 apportionment defendant pursuant to subsection (d) of section 52-
52 102b, the requirement under subsection (a) of this section that the
53 attorney or party filing the action make a reasonable inquiry and
54 submit a certificate of good faith shall be satisfied by the submission of
55 a certificate of good faith by the apportionment complainant pursuant
56 to subsection (a) of this section.

57 [(b)] (c) Upon petition to the clerk of the court where the action will
58 be filed, an automatic ninety-day extension of the statute of limitations
59 shall be granted to allow the reasonable inquiry required by subsection
60 (a) of this section. This period shall be in addition to other tolling
61 periods.

62 Sec. 2. Section 52-192a of the general statutes is repealed and the
63 following is substituted in lieu thereof (*Effective from passage*):

64 (a) After commencement of any civil action based upon contract or
65 seeking the recovery of money damages, whether or not other relief is
66 sought, the plaintiff may, not later than thirty days before trial, file
67 with the clerk of the court a written "offer of judgment" signed by the
68 plaintiff or the plaintiff's attorney, directed to the defendant or the
69 defendant's attorney, offering to settle the claim underlying the action
70 and to stipulate to a judgment for a sum certain. The plaintiff shall give
71 notice of the offer of settlement to the defendant's attorney or, if the
72 defendant is not represented by an attorney, to the defendant himself
73 or herself. Within sixty days after being notified of the filing of the
74 "offer of judgment" or within any extension or extensions thereof, not
75 to exceed a total of one hundred twenty additional days, granted by
76 the court for good cause shown, and prior to the rendering of a verdict
77 by the jury or an award by the court, the defendant or the defendant's
78 attorney may file with the clerk of the court a written "acceptance of
79 offer of judgment" agreeing to a stipulation for judgment as contained
80 in plaintiff's "offer of judgment". Upon such filing, the clerk shall enter
81 judgment immediately on the stipulation. If the "offer of judgment" is
82 not accepted within [sixty days] the sixty-day period or any extension

83 thereof, and prior to the rendering of a verdict by the jury or an award
84 by the court, the "offer of judgment" shall be considered rejected and
85 not subject to acceptance unless refiled. Any such "offer of judgment"
86 and any "acceptance of offer of judgment" shall be included by the
87 clerk in the record of the case.

88 (b) After trial the court shall examine the record to determine
89 whether the plaintiff made an "offer of judgment" which the defendant
90 failed to accept. If the court ascertains from the record that the plaintiff
91 has recovered an amount equal to or greater than the sum certain
92 stated in the plaintiff's "offer of judgment", the court shall add to the
93 amount so recovered twelve per cent annual interest on said amount,
94 [computed from the date such offer was filed in actions commenced
95 before October 1, 1981. In those actions commenced on or after October
96 1, 1981, the] with respect to an offer of judgment filed prior to the
97 effective date of this section, and interest at an annual rate of four
98 percentage points above the weekly average five-year constant
99 maturity yield of United States Treasury securities, as published by the
100 Board of Governors of the Federal Reserve System, for the calendar
101 week preceding the beginning of each year for which interest is owed,
102 with respect to an offer of judgment filed on or after the effective date
103 of this section. The interest shall be computed from the date the
104 complaint in the civil action was filed with the court if the "offer of
105 judgment" was filed not later than eighteen months from the filing of
106 such complaint. If such offer was filed later than eighteen months from
107 the date of filing of the complaint, the interest shall be computed from
108 the date the "offer of judgment" was filed. The court may award
109 reasonable attorney's fees in an amount not to exceed three hundred
110 fifty dollars, and shall render judgment accordingly. This section shall
111 not be interpreted to abrogate the contractual rights of any party
112 concerning the recovery of attorney's fees in accordance with the
113 provisions of any written contract between the parties to the action.

114 Sec. 3. Section 52-251c of the general statutes is repealed and the
115 following is substituted in lieu thereof (*Effective from passage*):

116 (a) In any claim or civil action to recover damages resulting from
117 personal injury, wrongful death or damage to property occurring on or
118 after October 1, 1987, the attorney and the claimant may provide by
119 contract, which contract shall comply with all applicable provisions of
120 the rules of professional conduct governing attorneys adopted by the
121 judges of the Superior Court, that the fee for the attorney shall be paid
122 contingent upon, and as a percentage of: (1) Damages awarded and
123 received by the claimant; or (2) settlement amount pursuant to a
124 settlement agreement.

125 (b) In any such contingency fee arrangement such fee shall be the
126 exclusive method for payment of the attorney by the claimant and
127 shall not exceed an amount equal to a percentage of the damages
128 awarded and received by the claimant or of the settlement amount
129 received by the claimant as follows: (1) Thirty-three and one-third per
130 cent of the first three hundred thousand dollars; (2) twenty-five per
131 cent of the next three hundred thousand dollars; (3) twenty per cent of
132 the next three hundred thousand dollars; (4) fifteen per cent of the next
133 three hundred thousand dollars; and (5) ten per cent of any amount
134 which exceeds one million two hundred thousand dollars.

135 (c) Whenever a claimant in a medical malpractice case enters into a
136 contingency fee arrangement with an attorney which provides for a fee
137 that would exceed the percentage limitations set forth in subsection (b)
138 of this section, such arrangement shall not be valid unless the
139 claimant's attorney files an application with the court for approval of
140 such arrangement and the court, after a hearing, grants such
141 application. The claimant's attorney shall attach to such application a
142 copy of such fee arrangement and the proposed unsigned writ,
143 summons and complaint in the case. The court shall grant such
144 application if it finds that the case is sufficiently complex, unique or
145 different from other medical malpractice cases so as to warrant a
146 deviation from such percentage limitations. At such hearing, the
147 claimant's attorney shall have the burden of showing that such
148 deviation is warranted. If the court does not grant such application, it

149 shall advise the claimant of the claimant's right to seek representation
150 by another attorney willing to abide by the percentage limitations set
151 forth in subsection (b) of this section. The filing of such application
152 shall toll the applicable statute of limitations for a period of ninety
153 days.

154 [(c)] (d) For the purposes of this section, "damages awarded and
155 received" means in a civil action in which final judgment is entered,
156 that amount of the judgment or amended judgment entered by the
157 court that is received by the claimant [, except that in a civil action
158 brought pursuant to section 38a-368 such amount shall be reduced by
159 any basic reparations benefits paid to the claimant pursuant to section
160 38a-365;] after deduction for any disbursements or costs incurred by
161 the attorney in connection with the prosecution or settlement of the
162 civil action, other than ordinary office overhead and expense, for
163 which the claimant is liable; and "settlement amount received" means
164 in a claim or civil action in which no final judgment is entered, the
165 amount received by the claimant pursuant to a settlement agreement [,
166 except that in a claim or civil action brought pursuant to section 38a-
167 368 such amount shall be reduced by any basic reparations benefits
168 paid to the claimant pursuant to section 38a-365; and "fee" shall not
169 include disbursements or costs incurred in connection with the
170 prosecution or settlement of the claim or civil action, other than
171 ordinary office overhead and expense] after deduction for any
172 disbursements or costs incurred by the attorney in connection with the
173 prosecution or settlement of the claim or civil action, other than
174 ordinary office overhead and expense, for which the claimant is liable.

175 Sec. 4. (NEW) (*Effective from passage*) In any civil action to recover
176 damages resulting from personal injury or wrongful death, whether in
177 tort or in contract, in which it is alleged that such injury or death
178 resulted from the negligence of a health care provider, as defined in
179 section 52-184b of the general statutes, either party may file a motion
180 requesting that the trial of such action be bifurcated. If the court grants
181 such motion, it shall first conduct a proceeding limited solely to the

182 issue of the alleged negligence of such provider and, if such negligence
183 is found by the trier of fact, it shall then conduct a proceeding limited
184 solely to the issue of the amount of damages, if any, to be recovered by
185 the plaintiff for such injury or death.

186 Sec. 5. Section 38a-32 of the general statutes is repealed and the
187 following is substituted in lieu thereof (*Effective from passage*):

188 There is established within the Insurance Department the "Medical
189 Malpractice Screening Panel" which shall consist of members whose
190 names shall be supplied by [the Connecticut State Medical Society]
191 professional societies or associations that represent health care
192 providers in this state and the Connecticut Bar Association. This panel
193 may be added to whenever the need arises by requesting further
194 names from [either the Connecticut State Medical Society or the
195 Connecticut Bar Association] any such society or association. Members
196 of the panel shall serve without compensation. The Insurance
197 Commissioner may designate [a member of his] an employee of the
198 department to administer the operation of and maintain the records for
199 such screening panel.

200 Sec. 6. Section 38a-33 of the general statutes is repealed and the
201 following is substituted in lieu thereof (*Effective from passage*):

202 (a) Unless all parties to a claim for medical malpractice agree to
203 resolve such claim by a civil action, no civil action shall be filed with
204 respect to such claim until the proposed complaint in such action is
205 filed with the Insurance Commissioner and a hearing panel has made
206 and recorded a finding as to liability or dismissed the claim pursuant
207 to sections 38a-32 to 38a-36, inclusive, as amended by this act.

208 (b) The claimant shall personally deliver or cause to be delivered, or
209 send, by registered or certified mail, return receipt requested, the
210 proposed complaint to the Insurance Commissioner. Not later than ten
211 days after receipt of such proposed complaint, the commissioner shall
212 send by registered or certified mail, return receipt requested, a copy of

213 such proposed complaint to each health care provider named as a
214 defendant at such provider's last-known place of residence or business.
215 The filing of a proposed complaint with the Insurance Commissioner
216 shall toll the applicable statute of limitations until sixty days after the
217 date the claimant receives a copy of the hearing panel's finding
218 pursuant to section 38a-36, as amended by this act, or the hearing
219 panel's decision dismissing the claim.

220 (c) Whenever [all parties to a claim for malpractice agree, they may
221 request the Insurance Commissioner or his designee to] a proposed
222 complaint is filed with the Insurance Commissioner pursuant to
223 subsection (b) of this section, the commissioner or the commissioner's
224 designee shall, not later than thirty days after such filing, select a
225 hearing panel composed of [two physicians] two health care providers
226 and one attorney from the Malpractice Screening Panel established
227 under section 38a-32, as amended by this act. None of the members of
228 the hearing panel, insofar as possible, shall be from the same
229 community of practice of either the [physician] health care provider
230 involved or the attorneys for the parties. [At least one of the
231 physicians] One health care provider member shall be from the same
232 profession or specialty as the [physician] health care provider against
233 whom such claim is filed and the other health care provider member
234 shall be from a hospital, outpatient surgical facility or outpatient clinic.
235 The attorney shall have experience in the trial of personal injury cases.
236 [The attorney so designated shall act as chairman.] Upon the filing of
237 such proposed complaint, the Insurance Commissioner shall notify the
238 Chief Court Administrator and the Chief Court Administrator shall,
239 not later than thirty days after such notice, select a judge trial referee to
240 be a member of the hearing panel and serve as chairperson of the
241 hearing panel. Whenever deemed necessary due to the nature of the
242 claim or the parties, the chairperson may select an additional member
243 or members for the hearing panel from the Medical Malpractice
244 Screening Panel established under section 38a-32, as amended by this
245 act.

246 (d) For the purposes of this section, "health care provider" means
247 any person, corporation, facility or institution licensed by this state to
248 provide health care or professional services, or an officer, employee or
249 agent thereof acting in the course and scope of his or her employment.

250 Sec. 7. Section 38a-34 of the general statutes is repealed and the
251 following is substituted in lieu thereof (*Effective from passage*):

252 The hearing panel so selected shall decide when and at what place it
253 will hold its hearings. A transcript of the proceedings may be taken at
254 the discretion of either or both parties and the expense of the same
255 shall be borne by the party ordering the same or desiring a copy
256 thereof. The original of [said] the transcript and all pertinent records of
257 [said] the panel shall be maintained by the Insurance Commissioner.

258 Sec. 8. Section 38a-35 of the general statutes is repealed and the
259 following is substituted in lieu thereof (*Effective from passage*):

260 (a) All proceedings, records, findings and deliberations of a hearing
261 panel shall be confidential and shall not be used in any other
262 proceedings, or otherwise publicized, except as provided in section
263 19a-17b and sections 38a-32 to 38a-36, inclusive, [nor] as amended by
264 this act, or disclosed by any party, witness, counsel, panel member or
265 other person, on penalty of being found in contempt of court.

266 (b) No person who provides testimony or information to a hearing
267 panel on any matter submitted to it shall, without a showing of malice,
268 be personally liable for any damages resulting from such testimony or
269 information.

270 (c) The manner in which a hearing panel and each member thereof
271 deliberates, decides and votes on any matter submitted to it, including
272 whether its final decision is unanimous or otherwise, shall not be
273 disclosed or made public by any person, except as provided in [said
274 sections] section 19a-17b and sections 38a-32 to 38a-36, inclusive, as
275 amended by this act.

276 Sec. 9. Section 38a-36 of the general statutes is repealed and the
 277 following is substituted in lieu thereof (*Effective from passage*):

278 At the conclusion of its hearing and deliberation, the hearing panel
 279 shall make a finding as to liability only signed by all members and
 280 record the same with the Insurance Commissioner who shall forward a
 281 copy of the same to the parties. The finding, if unanimous, shall be
 282 admissible in evidence at any subsequent trial of the issues. The trier,
 283 whether court or jury, shall determine what if any weight should be
 284 afforded [said] the finding. The finding shall speak for itself and no
 285 member of the panel shall be subject to subpoena or required to testify
 286 regarding the same. Any explanation of the finding [or] of the panel
 287 shall be at the discretion of the trial judge.

This act shall take effect as follows:	
Section 1	<i>from passage and applicable to actions filed on or after said date</i>
Sec. 2	<i>from passage</i>
Sec. 3	<i>from passage</i>
Sec. 4	<i>from passage</i>
Sec. 5	<i>from passage</i>
Sec. 6	<i>from passage</i>
Sec. 7	<i>from passage</i>
Sec. 8	<i>from passage</i>
Sec. 9	<i>from passage</i>

Statement of Purpose:

To revise provisions concerning the filing of good faith certificates, the filing of offers of judgment, the waiver of the limitation on attorney contingency fees, the conduct of medical malpractice trials and the pretrial review of cases by medical malpractice screening panels.

[Proposed deletions are enclosed in brackets. Proposed additions are indicated by underline, except that when the entire text of a bill or resolution or a section of a bill or resolution is new, it is not underlined.]