



# House of Representatives

General Assembly

**File No. 18**

February Session, 2006

House Bill No. 5371

*House of Representatives, March 15, 2006*

The Committee on Insurance and Real Estate reported through REP. O'CONNOR of the 35th Dist., Chairperson of the Committee on the part of the House, that the bill ought to pass.

***AN ACT CONCERNING EXTENDED REPORTING PERIOD  
COVERAGE UNDER MEDICAL MALPRACTICE INSURANCE  
POLICIES.***

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

1 Section 1. Section 38a-394 of the 2006 supplement to the general  
2 statutes is repealed and the following is substituted in lieu thereof  
3 (*Effective October 1, 2006*):

4 (a) Each professional liability insurance policy issued on a claims-  
5 made basis delivered, issued for delivery or renewed in this state on or  
6 after October 1, 1978, shall contain (1) a provision for the purchase of  
7 prior acts coverage, and (2) a contractual right of the insured to  
8 purchase at any time during the policy period and not later than thirty  
9 days after termination of such policy period equivalent coverage for all  
10 claims occurring during an insured policy period regardless of when  
11 made.

12 (b) Each professional liability insurance policy issued on a claims-

13 made basis delivered, issued for delivery or renewed in this state on or  
 14 after October 1, [2005] 2006, to a physician or surgeon, hospital,  
 15 advanced practice registered nurse or physician assistant shall provide  
 16 prior acts coverage consistent with any contractually agreed upon  
 17 retroactive date and unlimited extended reporting period coverage  
 18 without additional charge to the insured if, while the insured is  
 19 covered under the policy, (1) the insured dies, becomes permanently  
 20 disabled and unable to carry out his or her practice, or retires  
 21 permanently from practice, or (2) the insurer discontinues offering  
 22 such policy in this state for any reason and the insured [(A) is over the  
 23 age of fifty-five, and (B)] has been insured by the insurer for the  
 24 [seven] five consecutive years immediately preceding the  
 25 discontinuance. Prior acts coverage and unlimited extended reporting  
 26 period coverage under this subsection shall be enforceable against an  
 27 insurer that discontinues offering such policy in this state for any  
 28 reason prior to the insured's death, disability or retirement, provided  
 29 the insured is covered under the policy on the date the insurer  
 30 discontinues offering the policy. The insurer shall provide such  
 31 coverage upon death, disability or retirement in the same manner as if  
 32 the insurer continued offering such policy in this state.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>October 1, 2006</i>	38a-394

**INS**      *Joint Favorable*

The following fiscal impact statement and bill analysis are prepared for the benefit of members of the General Assembly, solely for the purpose of information, summarization, and explanation, and do not represent the intent of the General Assembly or either House thereof for any purpose:

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***OFA Fiscal Note***

***State Impact:*** None

***Municipal Impact:*** None

***Explanation***

The bill makes various changes to prior acts and extended reporting coverage that a professional liability insurer must provide under certain circumstances.

***The Out Years***

There is no fiscal impact in the out years.

**OLR Bill Analysis  
HB 5371****AN ACT CONCERNING EXTENDED REPORTING PERIOD  
COVERAGE UNDER MEDICAL MALPRACTICE INSURANCE  
POLICIES.****SUMMARY:**

This bill permits insurers and insureds to agree in a contract to a prior acts coverage start date ("retroactive date") for a professional liability insurance policy issued on a claims-made basis. (A claims-made policy covers a claim made during the policy period regardless of when the incident on which the claim is based actually occurred.) Current law is silent as to how far back prior acts coverage must be provided for claims occurring before the policy effective date.

It also requires an insurer that stops issuing policies in Connecticut to provide an insured with prior acts and extended reporting coverage at no additional charge if the insured has been covered by the insurer for the five consecutive calendar years immediately preceding the discontinuance, instead of if the insured is over age 55 and has been insured by the insurer for the preceding seven calendar years. Under current law and unchanged by the bill, an insurer must also provide the coverage at no charge if the insured dies, becomes permanently disabled and unable to carry out his practice, or retires permanently from practice.

The bill applies to policies delivered, issued for delivery, or renewed in Connecticut on or after October 1, 2006 to a physician or surgeon, advanced practice registered nurse, physician assistant, or hospital.

EFFECTIVE DATE: October 1, 2006

**BACKGROUND*****Retroactive Date***

Connecticut regulations define "retroactive date" as a date concurrent with the policy's effective date (or with the effective date of coverage for a new operation or location added to the policy) or a specified date prior to the policy's effective date agreed upon by the

insurer and insured in the policy. If no retroactive date is specified in the policy, coverage is provided for injury or damage occurring prior to the inception of the policy (Conn. Agencies Reg. § 38a-327-3(e)).

**Related Law**

Connecticut law requires that every professional liability insurance policy issued on a claims-made basis contain (1) a provision for the purchase of coverage for prior acts and (2) a contractual right of the insured to purchase at any time during the policy period or within 30 days after it, equivalent coverage for all claims occurring during an insured policy period regardless of when the claims were made.

**COMMITTEE ACTION**

Insurance and Real Estate Committee

Joint Favorable

Yea 19 Nay 0 (03/07/2006)