



# House of Representatives

**File No. 567**

General Assembly

February Session, 2006

**(Reprint of File No. 18)**

House Bill No. 5371  
As Amended by House Amendment  
Schedule "A"

Approved by the Legislative Commissioner  
April 19, 2006

***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2 statutes is repealed and the following is substituted in lieu thereof  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 that is delivered, issued for delivery or renewed in this  
6 state on or after October 1, 1978, shall contain (1) a provision for the  
7 purchase of prior acts coverage, and (2) a contractual right of the  
8 insured to purchase at any time during the policy period and not later  
9 than thirty days after termination of such policy period equivalent  
10 coverage for all claims occurring during an insured policy period  
11 regardless of when made.

12 (b) Each professional liability insurance policy issued on a claims-  
13 made basis that is delivered, issued for delivery or renewed in this  
14 state on or after October 1, [2005] 2006, to a physician or surgeon,

15 hospital, advanced practice registered nurse or physician assistant  
 16 shall provide [prior acts coverage and] unlimited extended reporting  
 17 period coverage without additional charge to the insured if, while the  
 18 insured is covered under the policy, [(1) the insured dies, becomes  
 19 permanently disabled and unable to carry out his or her practice, or  
 20 retires permanently from practice, or (2)] the insurer discontinues  
 21 offering such policy in this state [for any reason] as a result of a  
 22 voluntary withdrawal from this state and the insured [(A) is over the  
 23 age of fifty-five, and (B)] (1) is sixty years of age or older, or (2) has  
 24 been insured by the insurer for the [seven] five consecutive years  
 25 immediately preceding the discontinuance. [Prior acts coverage and  
 26 unlimited] Unlimited extended reporting period coverage under this  
 27 subsection shall be enforceable against an insurer that discontinues  
 28 offering such policy in this state, [for any reason prior to the insured's  
 29 death, disability or retirement,] provided the insured is covered under  
 30 the policy on the date [the] such insurer discontinues offering the  
 31 policy. The insurer shall provide such [coverage upon death, disability  
 32 or retirement in the same manner as if the insurer continued offering  
 33 such policy in this state] unlimited extended reporting period coverage  
 34 with equivalent terms and conditions and with an aggregate liability  
 35 limit at least equal to the aggregate liability limit specified in the  
 36 policy.

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

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:

---

**OFA Fiscal Note**

**State Impact:** None

**Municipal Impact:** None

**Explanation**

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

House "A" eliminates the requirements that professional liability insurance policies issued on a claims-made basis provide prior acts coverage without an additional charge to insureds. This has no fiscal impact.

**The Out Years**

**State Impact:** None

**Municipal Impact:** None

---

**OLR Bill Analysis****HB 5371 (as amended by House "A")\*****AN ACT CONCERNING EXTENDED REPORTING PERIOD  
COVERAGE UNDER MEDICAL MALPRACTICE INSURANCE  
POLICIES.****SUMMARY:**

This bill eliminates the requirement that professional liability insurance policies issued on a claims-made basis provide prior acts coverage without additional charge to insureds under certain circumstances. It also changes the circumstances under which such policies must provide unlimited extended reporting period coverage without additional charge to insureds. (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.)

The bill makes coverage for unlimited extended reporting period coverage enforceable against an insurer that stops offering such policies in Connecticut, instead of against one that stops offering such policies for any reason before an insured's death, disability, or retirement. It requires the insurer to provide such coverage with equivalent terms and conditions and with an aggregate liability limit at least equal to the one specified in the policy.

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.

\*House Amendment "A" eliminates the requirement that professional liability insurance policies issued on a claims-made basis provide prior acts coverage without additional charge to insureds and changes the circumstances under which such policies must provide

unlimited extended reporting period coverage without charge. The underlying bill required the policies to provide such coverage if the insured had been covered for five consecutive years, with no reference to his age.

EFFECTIVE DATE: October 1, 2006

### **UNLIMITED EXTENDED REPORTING PERIOD COVERAGE**

The bill requires professional liability insurance policies issued on a claims-made basis to provide extended reporting period coverage at no additional charge if, while an insured is covered under the policy, (1) the insurer stops offering policies in Connecticut because of a voluntary withdrawal from the state and (2) the insured is over the age of 60 or has been insured by the insurer for the five consecutive years immediately preceding the discontinuance. Under current law, the coverage must be provided when (1) the insurer stops offering such policy in Connecticut for any reason and the insured is over the age of 55 and has been insured by the insurer for the seven consecutive years immediately preceding the discontinuance or (2) the insured dies, becomes permanently disabled and unable to carry out his practice or retires permanently from practice. (By eliminating the requirement concerning disability and retirement, the bill conforms to a current Insurance Department regulation (see Related Regulation in BACKGROUND).

### **BACKGROUND**

#### ***Related Laws***

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 (CGS § 38a-394).

Anyone required by law to have a medical malpractice insurance

policy who has a claims-made policy does not lose the right to unlimited additional extended reporting period coverage after permanently retiring from practice if he only provides free professional services at a tax-exempt clinic (CGS § 20-11b).

### ***Related Regulation***

Under an Insurance Department regulation that applies to all claims-made policies for professional liability, unlimited additional extended reporting period coverage must be provided without additional cost to the insured if, while covered by a claims-made professional liability policy, the insured dies or becomes permanently disabled and unable to carry out his practice. It also applies if the insured retires permanently from practice:

1. at or over age 65 having been insured with the same insurer on a claims-made basis for at least the five consecutive years immediately preceding retirement or
2. at or over age 62 having and has been insured with the same insurer on a claims-made basis for at least the 10 consecutive years immediately preceding retirement (Conn. Agencies Reg. § 38a-327-3(e)).

Regarding professional liability insurance, “additional extended reporting period coverage” means coverage for the period specified in the policy during which claims first made after termination of coverage for injury or damage that occurs on or after the retroactive date, if any, but before the policy term expires (Conn. Agencies Reg. § 38a-327-1(f)(2)).

If a policy has no aggregate liability limit, the insurer must offer additional extended reporting period coverage without an aggregate liability limit. If a policy contains an aggregate liability limit, the insurer must offer additional extended reporting period coverage with a limit at least equal to that specified in the policy (Conn. Agencies Reg. § 38a-327-3(f)).

**COMMITTEE ACTION**

Insurance and Real Estate Committee

Joint Favorable

Yea 19 Nay 0 (03/07/2006)