



Senate

General Assembly

File No. 515

January Session, 2007

Senate Bill No. 1384

Senate, April 17, 2007

The Committee on Judiciary reported through SEN. MCDONALD of the 27th Dist., Chairperson of the Committee on the part of the Senate, that the bill ought to pass.

AN ACT CONCERNING THE TOLLING OF THE STATUTE OF LIMITATIONS IN WRONGFUL DEATH CASES.

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

1 Section 1. Section 52-190a of the general statutes is repealed and the
2 following is substituted in lieu thereof (*Effective October 1, 2007*):

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

15 for an action against each named defendant or for an apportionment
16 complaint against each named apportionment defendant. To show the
17 existence of such good faith, the claimant or the claimant's attorney,
18 and any apportionment complainant or the apportionment
19 complainant's attorney, shall obtain a written and signed opinion of a
20 similar health care provider, as defined in section 52-184c, which
21 similar health care provider shall be selected pursuant to the
22 provisions of said section, that there appears to be evidence of medical
23 negligence and includes a detailed basis for the formation of such
24 opinion. Such written opinion shall not be subject to discovery by any
25 party except for questioning the validity of the certificate. The claimant
26 or the claimant's attorney, and any apportionment complainant or
27 apportionment complainant's attorney, shall retain the original written
28 opinion and shall attach a copy of such written opinion, with the name
29 and signature of the similar health care provider expunged, to such
30 certificate. The similar health care provider who provides such written
31 opinion shall not, without a showing of malice, be personally liable for
32 any damages to the defendant health care provider by reason of
33 having provided such written opinion. In addition to such written
34 opinion, the court may consider other factors with regard to the
35 existence of good faith. If the court determines, after the completion of
36 discovery, that such certificate was not made in good faith and that no
37 justiciable issue was presented against a health care provider that fully
38 cooperated in providing informal discovery, the court upon motion or
39 upon its own initiative shall impose upon the person who signed such
40 certificate or a represented party, or both, an appropriate sanction
41 which may include an order to pay to the other party or parties the
42 amount of the reasonable expenses incurred because of the filing of the
43 pleading, motion or other paper, including a reasonable attorney's fee.
44 The court may also submit the matter to the appropriate authority for
45 disciplinary review of the attorney if the claimant's attorney or the
46 apportionment complainant's attorney submitted the certificate.

47 (b) Upon petition to the clerk of the court where the civil action will
48 be filed to recover damages resulting from personal injury or wrongful
49 death, an automatic ninety-day extension of the statute of limitations

50 shall be granted to allow the reasonable inquiry required by subsection
51 (a) of this section. This period shall be in addition to other tolling
52 periods.

53 (c) The failure to obtain and file the written opinion required by
54 subsection (a) of this section shall be grounds for the dismissal of the
55 action.

This act shall take effect as follows and shall amend the following sections:		
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Section 1	<i>October 1, 2007</i>	52-190a
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JUD *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 chamber thereof for any purpose:

OFA Fiscal Note***State Impact:*** None***Municipal Impact:*** None***Explanation***

The bill clarifies existing law. There is no related fiscal impact.

The Out Years***State Impact:*** None***Municipal Impact:*** None

OLR Bill Analysis**SB 1384*****AN ACT CONCERNING THE TOLLING OF THE STATUTE OF LIMITATIONS IN WRONGFUL DEATH CASES.*****SUMMARY:**

This bill specifies that the automatic 90-day extension for filing a medical malpractice lawsuit applies to lawsuits where the alleged victim died as a result of the alleged malpractice. By law, the extension is granted to allow the petitioner to make a reasonable inquiry to determine whether there are grounds for a good faith belief that medical malpractice has occurred.

EFFECTIVE DATE: October 1, 2007

BACKGROUND***Related Cases***

In at least three cases, defendants challenged on constitutional and statutory construction grounds whether the 90-day extension provision that applies to medical malpractice injury claims also apply to a medical malpractice wrongful death claim. In each case, the court has ruled that this 90-day extension applies to wrongful death cases and that no constitutional violations occurred (*Plourde v. Hartford Hospital*, 40 Conn. L. Rptr. 807 (2006); *Desmini v. Bristol Hospital, Inc.*, Docket No. CV 05 4003250 (January 12, 2006, Domnarski, J.); and *Sneath v. Roche*, Docket No. CV 98 0585453 (March 2, 2004, Hessessey, J.T.R.)). Because these are Superior Court rulings, as opposed to an Appellate Court or Supreme Court ruling, they do not set binding precedent for other cases.

COMMITTEE ACTION

Judiciary Committee

Joint Favorable

Yea 39 Nay 0 (04/02/2007)