



General Assembly

Amendment

January Session, 2009

LCO No. 9320

SB0109109320SDO

Offered by:
SEN. MCDONALD, 27th Dist.

To: Subst. Senate Bill No. 1091 File No. 698 Cal. No. 498

**"AN ACT CONCERNING COMPLAINTS PENDING IN THE
DEPARTMENT OF PUBLIC HEALTH AGAINST PHYSICIANS AND
OTHER HEALTH CARE PROVIDERS."**

1 After the last section, add the following and renumber sections and
2 internal references accordingly:

3 "Sec. 501. (NEW) (*Effective from passage*) (a) There shall be mandatory
4 mediation for all civil actions brought to recover damages resulting
5 from personal injury or wrongful death, whether in tort or in contract,
6 in which it is alleged that such injury or death resulted from the
7 negligence of a health care provider. Each such civil action for which a
8 valid certificate has been filed pursuant to section 52-190a of the
9 general statutes shall be referred to mandatory mediation pursuant to
10 subsection (b) of this section, unless the civil action is referred to
11 another alternative dispute resolution program agreed to by the
12 parties. Mandatory mediation under this section shall be conducted for
13 the purpose of achieving a prompt settlement or resolution of the civil
14 action. For the purposes of this section, "health care provider" means a
15 provider, as defined in subsection (b) of section 20-7b of the general

16 statutes, an institution, as defined in section 19a-490 of the general
17 statutes, or any other health care provider described in subsection (a)
18 of section 52-184b of the general statutes.

19 (b) Prior to the close of pleadings in such civil action, the presiding
20 judge of the civil session of the court of the judicial district in which
21 the action is pending shall refer the action to mandatory mediation or
22 any other alternative dispute resolution program agreed to by the
23 parties. The duration of the referral shall not exceed one hundred
24 twenty days unless the court, for good cause shown, extends the
25 duration of the referral. The court shall stay the time periods within
26 which all further pleadings, motions, requests, discovery and other
27 procedures must be filed or undertaken, including, but not limited to,
28 filings under section 52-192a of the general statutes, except with
29 respect to any apportionment complaint under section 52-102b of the
30 general statutes.

31 (c) Mediation under this section shall begin as soon as practicable,
32 but not later than twenty business days after the date the action is
33 referred under subsection (b) of this section. The first mediation
34 session shall be conducted by the presiding judge or, at the discretion
35 of the presiding judge, a different judge of the superior court or a
36 senior judge or judge trial referee. At the first mediation session, the
37 judge conducting the mediation session shall determine whether the
38 action can be resolved at such mediation session, or, if the action
39 cannot be resolved at that mediation session, whether the parties agree
40 to participate in further mediation. If the action is not resolved at the
41 first mediation session and the parties do not agree to further
42 mediation, mandatory mediation under this section shall end. If the
43 action is not resolved at the first mediation session and the parties
44 agree to further mediation, the presiding judge of such civil session
45 shall refer the action for mediation before an attorney who has
46 experience as an attorney related to such civil actions and who has
47 been a member of the bar of the state of Connecticut for at least five
48 years. Upon such referral, mediation shall begin as soon as practicable,
49 but not later than twenty business days after the referral. Fifty per cent

50 of the cost of such mediation shall be paid by the plaintiffs, and fifty
51 per cent of the cost of such mediation shall be apportioned among all
52 defendants who are parties to the mediation.

53 (d) Each party to such action, and a representative of each insurer
54 that may be liable to pay a claim on behalf of a defendant pursuant to
55 such action, shall appear in person at each mediation session, unless
56 participation by telephone or electronic means is permitted by the
57 judge or mediator.

58 (e) If such mediation does not settle or conclude the civil action, and
59 if all parties in attendance at such mediation agree, the mediator and
60 all such parties may file a stipulation with the court setting forth any
61 matter or conclusion that the parties and the mediator believe may be
62 useful or relevant to narrow the issues, expedite discovery or assist the
63 parties in preparing the civil action for trial.

64 (f) The judges of the Superior Court may adopt such rules as they
65 deem necessary for the conduct of mediation pursuant to this section.
66 Such rules shall be adopted in accordance with section 51-14 of the
67 general statutes."