



General Assembly

**Substitute Bill No. 6487**

January Session, 2011

\* \_\_\_\_\_HB06487JUD\_\_\_033111\_\_\_\_\_\*

**AN ACT CONCERNING CERTIFICATES OF MERIT.**

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

1 Section 1. Section 52-184c of the general statutes is repealed and the  
2 following is substituted in lieu thereof (*Effective from passage*):

3 (a) In any civil action to recover damages resulting from personal  
4 injury or wrongful death occurring on or after October 1, 1987, in  
5 which it is alleged that such injury or death resulted from the  
6 negligence of a health care provider, as defined in section 52-184b, the  
7 claimant shall have the burden of proving by the preponderance of the  
8 evidence that the alleged actions of the health care provider  
9 represented a breach of the prevailing professional standard of care for  
10 that health care provider. The prevailing professional standard of care  
11 for a given health care provider shall be that level of care, skill and  
12 treatment which, in light of all relevant surrounding circumstances, is  
13 recognized as acceptable and appropriate by reasonably prudent  
14 similar health care providers.

15 (b) If the defendant health care provider is not certified by the  
16 appropriate American board as being a specialist, is not trained and  
17 experienced in a medical specialty, or does not hold himself out as a  
18 specialist, a "similar health care provider" is one who: (1) Is licensed by  
19 the appropriate regulatory agency of this state or another state  
20 requiring the same or greater qualifications; and (2) is trained and

21 experienced in the same discipline or school of practice and such  
22 training and experience shall be as a result of the active involvement in  
23 the practice or teaching of medicine within the five-year period before  
24 the incident giving rise to the claim.

25 (c) If the defendant health care provider is certified by the  
26 appropriate American board as a specialist, is trained and experienced  
27 in a medical specialty, or holds himself out as a specialist, a "similar  
28 health care provider" is one who: (1) Is trained and experienced in the  
29 same specialty; and (2) is certified by the appropriate American board  
30 in the same specialty; provided if the defendant health care provider is  
31 providing treatment or diagnosis for a condition which is not within  
32 his specialty, a specialist trained in the treatment or diagnosis for that  
33 condition shall be considered a "similar health care provider".

34 (d) [Any health care provider may testify as an expert in any action  
35 if he: (1) Is a "similar health care provider" pursuant to subsection (b)  
36 or (c) of this section; or (2) is not a similar health care provider  
37 pursuant to subsection (b) or (c) of this section but,] In addition to a  
38 similar health care provider described in subsection (b) or (c) of this  
39 section, a "similar health care provider" is one who, to the satisfaction  
40 of the court, possesses sufficient training, experience and knowledge as  
41 a result of practice or teaching in a related field of medicine, so as to be  
42 able to provide [such] expert testimony as to the prevailing  
43 professional standard of care in a given field of medicine. Such  
44 training, experience or knowledge shall be as a result of the active  
45 involvement in the practice or teaching of medicine within the five-  
46 year period before the incident giving rise to the claim.

47 Sec. 2. Section 52-190a of the general statutes is repealed and the  
48 following is substituted in lieu thereof (*Effective from passage*):

49 (a) (1) No civil action or apportionment complaint shall be filed to  
50 recover damages resulting from personal injury or wrongful death  
51 occurring on or after October 1, 1987, whether in tort or in contract, in  
52 which it is alleged that such injury or death resulted from the

53 negligence of a health care provider, unless the attorney or party filing  
54 the action or apportionment complaint has made a reasonable inquiry  
55 as permitted by the circumstances to determine that there are grounds  
56 for a good faith belief that there has been negligence in the care or  
57 treatment of the claimant. The complaint, initial pleading or  
58 apportionment complaint shall contain a certificate of the attorney or  
59 party filing the action or apportionment complaint that such  
60 reasonable inquiry gave rise to a good faith belief that grounds exist  
61 for an action against each named defendant or for an apportionment  
62 complaint against each named apportionment defendant. To show the  
63 existence of such good faith, the claimant or the claimant's attorney,  
64 and any apportionment complainant or the apportionment  
65 complainant's attorney, shall obtain a written and signed opinion of a  
66 similar health care provider, as defined in [section 52-184c, which  
67 similar health care provider shall be selected pursuant to the  
68 provisions of said section] subsection (d) of this section, that there  
69 appears to be evidence of medical negligence and [includes a detailed  
70 basis for the formation of such opinion] which states one or more  
71 specific breaches of the prevailing professional standard of care. Such  
72 written opinion shall not be required in any action against a health  
73 care provider for assault, lack of informed consent or ordinary  
74 negligence unrelated to the rendering of care or treatment.

75 (2) Such written opinion shall not be subject to discovery by any  
76 party except for questioning the validity of the certificate. The claimant  
77 or the claimant's attorney, and any apportionment complainant or  
78 apportionment complainant's attorney, shall retain the original written  
79 opinion and shall attach a copy of such written opinion, with the name  
80 and signature of the similar health care provider expunged, to such  
81 certificate. The similar health care provider who provides such written  
82 opinion shall not, without a showing of malice, be personally liable for  
83 any damages to the defendant health care provider by reason of  
84 having provided such written opinion.

85 (3) Any consideration of such written opinion shall be based on the  
86 copy of the written opinion that is attached to the certificate. In

87 addition to such written opinion, the court may consider other factors  
88 with regard to the existence of good faith. Such written opinion shall  
89 not be used to limit the allegations in the complaint against any named  
90 defendant or limit the testimony of expert witnesses.

91 (4) If the court determines, after the completion of discovery, that  
92 such certificate was not made in good faith and that no justiciable issue  
93 was presented against a health care provider that fully cooperated in  
94 providing informal discovery, the court upon motion or upon its own  
95 initiative shall impose upon the person who signed such certificate or a  
96 represented party, or both, an appropriate sanction which may include  
97 an order to pay to the other party or parties the amount of the  
98 reasonable expenses incurred because of the filing of the pleading,  
99 motion or other paper, including a reasonable attorney's fee. The court  
100 may also submit the matter to the appropriate authority for  
101 disciplinary review of the attorney if the claimant's attorney or the  
102 apportionment complainant's attorney submitted the certificate.

103 (b) Upon petition to the clerk of the court where the civil action will  
104 be filed to recover damages resulting from personal injury or wrongful  
105 death, an automatic ninety-day extension of the statute of limitations  
106 shall be granted to allow the reasonable inquiry required by subsection  
107 (a) of this section. This period shall be in addition to other tolling  
108 periods.

109 (c) The failure to obtain and file the written opinion required by  
110 subsection (a) of this section shall be grounds for the dismissal of the  
111 action, except that no such action may be dismissed for failure to  
112 obtain and file such written opinion unless the claimant has failed to  
113 remedy such failure within sixty days after being ordered to do so by  
114 the court.

115 (d) For the purposes of this section, "similar health care provider"  
116 means: (1) A similar health care provider, as defined in subsection (b),  
117 (c) or (d) of section 52-184c, as amended by this act, who is selected  
118 pursuant to the provisions of said subsections, or (2) a health care

119 provider who would be qualified to testify regarding the prevailing  
120 professional standard of care with respect to any defendant that is a  
121 corporation or business entity, including, but not limited to, a hospital,  
122 as defined in section 19a-490, nursing home, as defined in section 19a-  
123 490, or health care center, as defined in section 38a-175, or any other  
124 corporation or business entity that employs health care providers from  
125 different practice specialties.

This act shall take effect as follows and shall amend the following sections:

Section 1	<i>from passage</i>	52-184c
Sec. 2	<i>from passage</i>	52-190a

**JUD**      *Joint Favorable Subst.*