



General Assembly

February Session, 2012

Raised Bill No. 243

LCO No. 1185

01185_____JUD

Referred to Committee on Judiciary

Introduced by:
(JUD)

AN ACT CONCERNING CERTIFICATES OF MERIT.

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

1 Section 1. Section 52-190a of the general statutes is repealed and the
2 following is substituted in lieu thereof (*Effective from passage and*
3 *applicable to causes of action pending on or accruing on or after said date*):

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

17 complaint against each named apportionment defendant. To show the
18 existence of such good faith, the claimant or the claimant's attorney,
19 and any apportionment complainant or the apportionment
20 complainant's attorney, shall obtain a written and signed opinion of a
21 [similar] qualified health care provider, as defined in [section 52-184c,
22 which similar health care provider shall be selected pursuant to the
23 provisions of said section] subsection (d) of this section, that there
24 appears to be evidence of medical negligence and which includes a
25 detailed [basis for the formation of such opinion] statement that
26 identifies one or more breaches of the prevailing professional standard
27 of care.

28 (2) Such written opinion shall not be subject to discovery by any
29 party except for questioning the validity of the certificate. The claimant
30 or the claimant's attorney, and any apportionment complainant or
31 apportionment complainant's attorney, shall retain the original written
32 opinion and shall attach a copy of such written opinion, with the name
33 and signature of the [similar] qualified health care provider expunged,
34 to such certificate. The [similar] qualified health care provider who
35 provides such written opinion shall not, without a showing of malice,
36 be personally liable for any damages to the defendant health care
37 provider by reason of having provided such written opinion.

38 (3) In addition to such written opinion, the court may consider other
39 factors with regard to the existence of good faith.

40 (4) If the court determines, after the completion of discovery, that
41 such certificate was not made in good faith and that no justiciable issue
42 was presented against a health care provider that fully cooperated in
43 providing informal discovery, the court upon motion or upon its own
44 initiative shall impose upon the person who signed such certificate or a
45 represented party, or both, an appropriate sanction which may include
46 an order to pay to the other party or parties the amount of the
47 reasonable expenses incurred because of the filing of the pleading,
48 motion or other paper, including a reasonable attorney's fee. The court

49 may also submit the matter to the appropriate authority for
50 disciplinary review of the attorney if the claimant's attorney or the
51 apportionment complainant's attorney submitted the certificate.

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

58 (c) The failure to obtain and file the written opinion required by
59 subsection (a) of this section shall be grounds for the dismissal of the
60 action, except that no such action may be dismissed for the failure to
61 obtain and file such written opinion, unless the claimant has failed to
62 attach a copy of such written opinion to such certificate pursuant to
63 subdivision (2) of subsection (a) of this section, or has failed to remedy
64 such failure within sixty days after being ordered to do so by the court.

65 (d) For the purposes of this section, "qualified health care provider"
66 means a similar health care provider, as defined in subsection (b) or (c)
67 of section 52-184c, or any other health care provider who may testify as
68 an expert pursuant to subsection (d) of section 52-184c.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>from passage and applicable to causes of action pending on or accruing on or after said date</i>	52-190a

Statement of Purpose:

To revise provisions concerning certificates of merit in medical malpractice actions.

[Proposed deletions are enclosed in brackets. Proposed additions are indicated by underline, except that when the entire text of a bill or resolution or a section of a bill or resolution is new, it is not underlined.]