



General Assembly

February Session, 2012

Amendment

LCO No. 3591

SB0024303591SR0

Offered by:
SEN. SUZIO, 13th Dist.

To: Senate Bill No. 243

File No. 331

Cal. No. 263

"AN ACT CONCERNING CERTIFICATES OF MERIT."

1 Strike everything after the enacting clause and substitute the
2 following in lieu thereof:

3 "Section 1. Section 52-190a of the general statutes is repealed and the
4 following is substituted in lieu thereof (*Effective October 1, 2012, and*
5 *applicable to actions filed on or after said date*):

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

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

51 motion or other paper, including a reasonable attorney's fee. The court
52 may also submit the matter to the appropriate authority for
53 disciplinary review of the attorney if the claimant's attorney or the
54 apportionment complainant's attorney submitted the certificate.

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

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

64 (d) Not later than ninety days after a civil action or apportionment
65 complaint is filed in court, a claimant or the claimant's attorney, and
66 any apportionment complainant or the apportionment complainant's
67 attorney, shall file in court a written and signed opinion of a physician
68 licensed pursuant to chapter 370, or licensed in another state that has
69 similar or greater requirements for licensure as a physician, stating that
70 the physician has reviewed each written opinion filed pursuant to
71 subsection (a) of this section and stating that there appears to be
72 evidence that the medical negligence of each named defendant caused
73 the injury or death complained of and includes a detailed description
74 of the manner in which the medical negligence caused the injury or
75 death. The claimant shall give notice of such written opinion to each
76 party's attorney or, if the party is not represented by an attorney, to the
77 party himself or herself. If the written opinion required by this
78 subsection is not timely filed, the court shall, upon written motion,
79 dismiss the action.

80 Sec. 2. Section 52-195 of the general statutes is repealed and the
81 following is substituted in lieu thereof (*Effective October 1, 2012, and*
82 *applicable to actions filed on or after said date*):

83 (a) If the plaintiff does not, within the time allowed for acceptance
84 of the offer of compromise and before the commencement of the trial,
85 file the plaintiff's notice of acceptance, the offer shall be deemed to be
86 withdrawn and shall not be given in evidence.

87 (b) Unless the plaintiff recovers more than the sum specified in the
88 offer of compromise, with interest from its date, the plaintiff shall
89 recover no costs accruing [after the plaintiff received notice] of the
90 filing of such offer, but shall pay the defendant's costs accruing [after
91 the plaintiff received notice] from the date the civil action was filed
92 with the court if the offer of compromise was filed not later than
93 eighteen months from the filing of such civil action. If such offer was
94 filed later than eighteen months from the date of filing of the civil
95 action, the plaintiff shall pay costs accruing from the date the offer of
96 compromise was filed. Such costs [may] shall include all reasonable
97 attorney's fees [in an amount not to exceed three hundred fifty dollars]
98 incurred by the defendant or the defendant's liability insurer with
99 respect to the action.

100 (c) This section shall not be interpreted to abrogate the contractual
101 rights of any party concerning the recovery of attorney's fees in
102 accordance with the provisions of any written contract between the
103 parties to the action. The provisions of this section shall not apply to
104 cases in which nominal damages have been assessed upon a hearing
105 after a default or after a demurrer has been overruled.

106 Sec. 3. (NEW) (*Effective October 1, 2012, and applicable to actions filed*
107 *on or after said date*) (a) Except as provided in this section, in any action
108 in which costs may be taxed to the plaintiff, no mesne process shall be
109 issued until the recognizance of a third party for costs has been taken,
110 unless the authority signing the writ certifies on the writ that such
111 person has personal knowledge as to the financial responsibility of the
112 plaintiff and deems it sufficient.

113 (b) No recognizance shall be required of a pro se complainant in a
114 summary process action.

115 (c) In an action in which a plaintiff has not accepted a defendant's
116 offer of compromise filed in accordance with section 52-193 of the
117 general statutes, the court shall, upon written motion, order the
118 plaintiff to file the recognizance of a third party affirming that such
119 party shall be financially responsible for all costs that may be awarded
120 pursuant to section 52-195 of the general statutes, as amended by this
121 act, unless the judicial authority determines that the financial
122 responsibility of the plaintiff is sufficient. An attorney may enter into a
123 recognizance upon a writ which such attorney signs.

124 Sec. 4. Section 51-243 of the general statutes is repealed and the
125 following is substituted in lieu thereof (*Effective October 1, 2012, and*
126 *applicable to actions filed on or after said date*):

127 (a) In any civil action to be tried to the jury in the Superior Court, if
128 it appears to the court that the trial is likely to be protracted, the court
129 may, in its discretion, direct that, after a jury has been selected, two or
130 more additional jurors shall be added to the jury panel, to be known as
131 "alternate jurors". Alternate jurors shall have the same qualifications
132 and be selected and subject to examination and challenge in the same
133 manner and to the same extent as the jurors constituting the regular
134 panel. In any case when the court directs the selection of alternate
135 jurors, each party may peremptorily challenge four jurors. Where the
136 court determines a unity of interest exists, several plaintiffs or several
137 defendants may be considered as a single party for the purpose of
138 making challenges, or the court may allow additional peremptory
139 challenges and permit them to be exercised separately or jointly. For
140 the purposes of this subsection, a "unity of interest" means that the
141 interests of the several plaintiffs or of the several defendants are
142 substantially similar. A unity of interest shall be found to exist among
143 parties who are represented by the same attorney or law firm. In
144 addition, there shall be a presumption that a unity of interest exists
145 among parties where no cross claims or apportionment complaints
146 have been filed against one another. In all civil actions, the total
147 number of peremptory challenges allowed to the plaintiff or plaintiffs
148 shall not exceed twice the number of peremptory challenges allowed to

149 the defendant or defendants, and the total number of peremptory
150 challenges allowed to the defendant or defendants shall not exceed
151 twice the number of peremptory challenges allowed to the plaintiff or
152 plaintiffs.

153 (b) Alternate jurors shall be sworn separately from those
154 constituting the regular panel, and the oaths to be administered shall
155 be as provided in section 1-25.

156 (c) Alternate jurors shall attend at all times upon trial of the action.
157 They shall be seated when the case is on trial with or near the jurors
158 constituting the regular panel, with equal opportunity to see and hear
159 all matters adduced in the trial.

160 [(d) If, at any time, any juror shall, for any reason, become unable to
161 further perform his duty, the court may excuse him. If any juror is so
162 excused or dies, the court may order that an alternate juror who is
163 designated by lot to be drawn by the clerk, shall become a part of the
164 regular panel and the trial shall then proceed as though the alternate
165 juror had been a member of the regular panel from the time when the
166 trial was begun.

167 (e) A juror selected to serve as an alternate shall not be segregated
168 from the regular panel except when the case is given to the regular
169 panel for deliberation at which time he shall be dismissed from further
170 service on the case.]

171 (d) If, at any time and for any reason, a juror becomes unable to
172 further perform the duty of a juror, the court may excuse such juror
173 and, if any juror is so excused or has died, the court may order that an
174 alternate juror who is designated by lot to be drawn by the clerk shall
175 become a part of the regular panel and the trial or deliberation shall
176 proceed with appropriate instructions from the court as though such
177 alternate juror had been a member of the regular panel from the time
178 when the trial or deliberation began. If the alternate juror becomes a
179 member of the regular panel after deliberations begin, the jury shall be
180 instructed by the court that deliberations by the jury shall begin anew.

181 A juror who has been designated to serve as an alternate shall not be
 182 segregated from the regular panel except when the case is given to the
 183 regular panel for deliberation at which time such alternate juror may
 184 be dismissed from further service on said case or may remain in
 185 service under the direction of the court.

186 Sec. 5. Section 52-205 of the general statutes is repealed and the
 187 following is substituted in lieu thereof (*Effective October 1, 2012, and*
 188 *applicable to actions filed on or after said date*):

189 (a) In all cases, whether entered upon the docket as jury cases or
 190 court cases, the court may order that one or more of the issues joined
 191 be tried before the others.

192 (b) In any civil action to recover damages resulting from personal
 193 injury or wrongful death that is to be tried to a jury, any party may file
 194 a written motion requesting that the court order the trial bifurcated
 195 into two separate phases consisting of a liability phase and a damages
 196 phase. The court shall grant the motion, unless the court determines
 197 that the risk of prejudice to the party requesting bifurcation is
 198 substantially outweighed by the benefit of a single phase trial."

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>October 1, 2012, and applicable to actions filed on or after said date</i>	52-190a
Sec. 2	<i>October 1, 2012, and applicable to actions filed on or after said date</i>	52-195
Sec. 3	<i>October 1, 2012, and applicable to actions filed on or after said date</i>	New section
Sec. 4	<i>October 1, 2012, and applicable to actions filed on or after said date</i>	51-243

Sec. 5	<i>October 1, 2012, and applicable to actions filed on or after said date</i>	52-205
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