



House of Representatives

General Assembly

File No. 72

February Session, 2014

House Bill No. 5338

House of Representatives, March 24, 2014

The Committee on Judiciary reported through REP. FOX, G. of the 146th Dist., Chairperson of the Committee on the part of the House, that the bill ought to pass.

AN ACT CONCERNING THE ADMISSIBILITY OF RECORDS AND REPORTS OF CERTAIN EXPERT WITNESSES AS BUSINESS ENTRIES.

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

1 Section 1. Section 52-174 of the general statutes is repealed and the
2 following is substituted in lieu thereof (*Effective October 1, 2014, and*
3 *applicable to all actions pending on or filed on or after said date*):

4 (a) In all actions for the recovery of damages for personal injuries or
5 death, (1) if a physician, [licensed under chapter 370, dentist licensed
6 under chapter 379] dentist, chiropractor, [licensed under chapter 372,]
7 natureopath, [licensed under chapter 373,] physical therapist, [licensed
8 under chapter 376,] podiatrist, [licensed under chapter 375,]
9 psychologist, [licensed under chapter 383,] social worker, mental
10 health professional, emergency medical technician, [certified under
11 chapter 368d,] optometrist, [licensed under chapter 380,] physician
12 assistant, [licensed under chapter 370,] advanced practice registered
13 nurse, [licensed under chapter 378,] professional engineer [licensed

14 under chapter 391] or land surveyor [licensed under chapter 391] has
15 died prior to the trial of the action, or (2) if such physician, dentist,
16 chiropractor, natureopath, physical therapist, podiatrist, psychologist,
17 social worker, mental health professional, emergency medical
18 technician, optometrist, physician assistant, advanced practice
19 registered nurse, professional engineer or land surveyor is physically
20 or mentally disabled at the time of the trial of the action to such an
21 extent that such person is no longer actively engaged in the practice of
22 the profession, the party desiring to offer into evidence the written
23 records and reports of the physician, dentist, chiropractor,
24 natureopath, physical therapist, podiatrist, psychologist, social worker,
25 mental health professional, emergency medical technician, optometrist,
26 physician assistant or advanced practice registered nurse concerning
27 the patient who suffered the injuries or death, or the reports and scale
28 drawings of the professional engineer or land surveyor concerning
29 matters relevant to the circumstances under which the injuries or death
30 was sustained shall apply to the court in which the action is pending
31 for permission to introduce the evidence. Notice of the application
32 shall be served on the adverse party in the same manner as any other
33 pleading. The court to which the application is made shall determine
34 whether the person is disabled to the extent that the person cannot
35 testify in person in the action. Upon the court finding that the person is
36 so disabled, the matters shall be admissible in evidence as a business
37 entry in accordance with the provisions of section 52-180 when offered
38 by any party in the trial of the action.

39 (b) In all actions for the recovery of damages for personal injuries or
40 death, pending on October 1, 1977, or brought thereafter, and in all
41 court proceedings in family relations matters, as defined in section
42 46b-1, or in the Family Support Magistrate Division, pending on
43 October 1, 1998, or brought thereafter, and in all other civil actions
44 pending on October 1, 2001, or brought thereafter, any party offering
45 in evidence a signed report and bill for treatment of any treating
46 physician or physician assistant, [licensed under chapter 370,] dentist,
47 [licensed under chapter 379,] chiropractor, [licensed under chapter
48 372,] natureopath, [licensed under chapter 373,] physical therapist,

49 [licensed under chapter 376,] podiatrist, [licensed under chapter 375,]
50 psychologist, [licensed under chapter 383,] social worker, mental
51 health professional, an emergency medical technician, [certified under
52 chapter 368d,] optometrist [licensed under chapter 380] or advanced
53 practice registered nurse, [licensed under chapter 378,] may have the
54 report and bill admitted into evidence as a business entry and it shall
55 be presumed that the signature on the report is that of such treating
56 physician, physician assistant, dentist, chiropractor, natureopath,
57 physical therapist, podiatrist, psychologist, social worker, mental
58 health professional, emergency medical technician, optometrist or
59 advanced practice registered nurse and that the report and bill were
60 made in the ordinary course of business. The use of any such report or
61 bill in lieu of the testimony of such treating physician, physician
62 assistant, dentist, chiropractor, natureopath, physical therapist,
63 podiatrist, psychologist, social worker, mental health professional,
64 emergency medical technician, optometrist or advanced practice
65 registered nurse shall not give rise to any adverse inference concerning
66 the testimony or lack of testimony of such treating physician,
67 physician assistant, dentist, chiropractor, natureopath, physical
68 therapist, podiatrist, psychologist, social worker, mental health
69 professional, emergency medical technician, optometrist or advanced
70 practice registered nurse. In any action to which this subsection
71 applies, the total amount of any bill generated by such physician,
72 physician assistant, dentist, chiropractor, natureopath, physical
73 therapist, podiatrist, psychologist, social worker, mental health
74 professional, emergency medical technician, optometrist or advanced
75 practice registered nurse shall be admissible in evidence on the issue of
76 the cost of reasonable and necessary medical care. The calculation of
77 the total amount of the bill shall not be reduced because such
78 physician, physician assistant, dentist, chiropractor, natureopath,
79 physical therapist, podiatrist, psychologist, social worker, mental
80 health professional, emergency medical technician, optometrist or
81 advanced practice registered nurse accepts less than the total amount
82 of the bill or because an insurer pays less than the total amount of the
83 bill.

84 (c) This section shall not be construed as prohibiting either party or
85 the court from calling the treating physician, dentist, chiropractor,
86 natureopath, physical therapist, podiatrist, psychologist, social worker,
87 mental health professional, emergency medical technician, optometrist,
88 physician assistant or advanced practice registered nurse as a witness
89 for purposes that include, but are not limited to, providing testimony
90 on the reasonableness of a bill for treatment generated by such
91 physician, dentist, chiropractor, natureopath, physical therapist,
92 podiatrist, psychologist, social worker, mental health professional,
93 emergency medical technician, optometrist, physician assistant or
94 advanced practice registered nurse.

95 Sec. 2. Subsection (b) of section 52-225a of the general statutes is
96 repealed and the following is substituted in lieu thereof (*Effective*
97 *October 1, 2014, and applicable to all actions pending on or filed on or after*
98 *said date*):

99 (b) Upon a finding of liability and an awarding of damages by the
100 trier of fact and before the court enters judgment, the court shall
101 receive evidence from the claimant and other appropriate persons
102 concerning the total amount of collateral sources which have been paid
103 for the benefit of the claimant as of the date the court enters judgment.
104 For purposes of this subsection, evidence that a physician or physician
105 assistant₂ [licensed under chapter 370,] dentist₂ [licensed under chapter
106 379,] chiropractor₂ [licensed under chapter 372,] natureopath₂ [licensed
107 under chapter 373,] physical therapist₂ [licensed under chapter 376,]
108 podiatrist₂ [licensed under chapter 375,] psychologist₂ [licensed under
109 chapter 383,] social worker, mental health professional, an emergency
110 medical technician₂ [certified under chapter 368d,] optometrist₂
111 [licensed under chapter 380,] or advanced practice registered nurse₂
112 [licensed under chapter 378,] accepted an amount less than the total
113 amount of any bill generated by such physician, physician assistant,
114 dentist, chiropractor, natureopath, physical therapist, podiatrist,
115 psychologist, social worker, mental health professional, emergency
116 medical technician, optometrist or advanced practice registered nurse,
117 or evidence that an insurer paid less than the total amount of any bill

118 generated by such physician, physician assistant, dentist, chiropractor,
119 natureopath, physical therapist, podiatrist, psychologist, social worker,
120 mental health professional, emergency medical technician, optometrist
121 or advanced practice registered nurse, shall be admissible as evidence
122 of the total amount of collateral sources which have been paid for the
123 benefit of the claimant as of the date the court enters judgment.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>October 1, 2014, and applicable to all actions pending on or filed on or after said date</i>	52-174
Sec. 2	<i>October 1, 2014, and applicable to all actions pending on or filed on or after said date</i>	52-225a(b)

JUD *Joint Favorable*

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

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

The bill, which makes changes to rules regarding the admission of out-of-state records from physicians and various other professionals for civil cases, does not result in a fiscal impact.

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

OLR Bill Analysis**HB 5338*****AN ACT CONCERNING THE ADMISSIBILITY OF RECORDS AND REPORTS OF CERTAIN EXPERT WITNESSES AS BUSINESS ENTRIES.*****SUMMARY:**

This bill applies the same rules in civil cases concerning the admissibility of records or reports of out-of-state physicians and various other professionals as currently apply to such in-state professionals. It does so by eliminating the requirement that, for the rules to apply, these professionals be licensed or certified in Connecticut. The bill also applies the same rules to social workers and “mental health professionals” (undefined by the bill).

Under existing law, the rules apply to physicians, dentists, chiropractors, naturopaths, physical therapists, podiatrists, psychologists, emergency medical technicians, optometrists, physician assistants, and advanced practice registered nurses. As noted below, certain provisions also apply to professional engineers and land surveyors.

Generally, the rules allow:

1. the provider’s signed reports and bills to be introduced as business entry evidence in civil cases without calling the person to testify;
2. the records and reports of such providers, professional engineers, and land surveyors to be admitted as business entry evidence in personal injury cases if the professional (a) died before trial or (b) is physically or mentally disabled and thus, no longer practicing; and

3. for purposes of the collateral source rule, the admission of evidence that (a) the provider accepted an amount less than his or her total bill or (b) an insurer paid less than the total bill.

The collateral source rule generally requires courts to reduce economic damage awards by the amount the claimant received from health insurance or other collateral sources.

EFFECTIVE DATE: October 1, 2014, and applicable to all actions pending or filed on or after that date.

BACKGROUND

Business Entry Evidence

By law, when a health care provider's signed reports and bills are introduced as business entry evidence without calling the provider to testify, it is presumed that the signature on the report is the provider's and that the report and bill were made in the ordinary course of business. The use of such evidence must not give rise to an adverse inference concerning the provider's testimony or lack thereof.

The total amount of the provider's bill is admissible evidence of the cost of reasonable and necessary medical care. The calculation of the total amount of the bill must not be reduced because (1) the provider accepts less than the total bill or (2) an insurer pays less than that amount.

Either party or the court may call the treating provider as a witness, including to testify on the reasonableness of his or her bill for treatment.

COMMITTEE ACTION

Judiciary Committee

Joint Favorable

Yea 39 Nay 3 (03/10/2014)