

Legislative History for Connecticut Act

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Bill Number: 593	
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Committee: Judiciary: 3831-3832, 3902, 3906-3911, 4050-4055	15

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CONNECTICUT
GEN. ASSEMBLY
SENATE

PROCEEDINGS

2006

VOL. 49
PART 4
971-1309

jmk
Senate

001178

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April 18, 2006

An immediate roll call has been ordered in the Senate. Will all Senators please return to the Chamber.

An immediate roll call has been ordered in the Senate. Will all Senators please return to the Chamber.

THE CHAIR:

Have all Members voted? Senator Fonfara. Senator Prague. All Members have voted. Machine is closed. Clerk will announce the result.

THE CLERK:

Motion is on passage of House Bill 5801.

Total number voting, 34; necessary for adoption, 18. Those voting "yea", 34; those voting "nay", 0. Those absent and not voting, 2.

THE CHAIR [SENATOR GAFFEY OF THE 13TH IN THE CHAIR]:

The bill is passed. Mr. Clerk.

THE CLERK:

Calendar Page 13, Calendar 334, File 451, Substitute for Senate Bill 593, An Act Concerning the Applicability of Offers of Judgment, Favorable Report of the Committee on Judiciary. Clerk is in possession of an amendment.

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THE CHAIR:

Senator McDonald.

SEN. MCDONALD:

Thank you, Mr. President. Mr. President, I move acceptance of the Joint Committee's Favorable Report and passage of the bill.

THE CHAIR:

On acceptance and passage, Senator McDonald.

SEN. MCDONALD:

Thank you, Mr. President. Mr. President, I'm certain nobody in the Circle can forget that last year we had an opportunity to address some of the issues associated with medical malpractice reforms.

And one of the elements of that package of reforms was to eliminate what we traditionally call the Offer of Judgment Statute and replace it with an Offer of Compromise Statute.

The distinction really is that in an Offer of Judgment situation, the plaintiff offers to the defendant an opportunity to accept a judgment against him or herself for a certain sum of money, and if the defendant wishes to accept that offer, a judgment does in fact enter against the defendant.

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April 18, 2006

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It was our opinion at that time that the system would probably be more conducive to having people settle their claims if it was not a judgment, but, rather, an Offer of Compromise. And if accepted, the case would actually be withdrawn, and the defendant wouldn't have a judgment of record in the system.

That bill was effective on October 1, 2005, and I thought it was, frankly, very clear that the Offer of Compromise system would apply to causes of action that accrue on or after October 1, 2005.

Unfortunately, there apparently is some confusion in the trial court level on that issue, and this bill is intended to clarify what should have already been apparent, and that is that offers of judgment apply to cases that accrued before October 1, 2005, and the offers of compromise revisions would apply to all causes of action that accrue on or after October 1, 2005.

And, Mr. President, I believe that the Clerk has in his possession an amendment, LCO 4122. I ask that it be called and I be granted leave to summarize.

THE CHAIR:

Mr. Clerk.

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THE CLERK:

LCO 4122, which will be designated as Senate
Amendment Schedule "A". It is offered by Senator
McDonald of the 27th District.

THE CHAIR:

Senator McDonald.

SEN. MCDONALD:

Thank you, Mr. President. I move adoption of the
amendment.

THE CHAIR:

On the adoption of the amendment, will you
remark? Senator McDonald.

SEN. MCDONALD:

Mr. President, this amendment is an additional
clarifying amendment to the medical malpractice reform
bill that we took up last year.

Members of the Circle may recall Senator
Roraback's very helpful suggestion that it might
actually be the case that if a healthcare provider
could offer an apology to a victim of malpractice,
that that apology goes a long way to stem the problems
and, perhaps, the dispute that might exist between a
healthcare provider and his or her patient.

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The healthcare provider provisions, however, did not make clear, apparently, that it would also apply to a healthcare institution or a facility operated by the State of Connecticut.

So whether it was the UConn Medical Center or some other facility where healthcare was being provided, if there was a situation where somebody in one of those institutions wanted to apologize or offer their sympathies to a patient, they would not fall within the scope of this provision.

So the amendment makes clear that such facilities would be part of the definition of a healthcare provider.

THE CHAIR:

Thank you, Senator McDonald. Will you remark further? Will you remark further? If not, we'll try your minds. All those in favor, indicate by saying "aye".

SENATE ASSEMBLY:

Aye.

THE CHAIR:

Opposed? Ayes have it. The amendment passes.
Will you remark further? Senator Kissel.

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SEN. KISSEL:

Thank you very much, Mr. President. Just a quick question through you to the proponent.

THE CHAIR:

Please proceed.

SEN. KISSEL:

This probably is going to sound odd because the intent of the bill is laudatory in that we want to correct something that we thought wasn't broken in the first place, but my question, I don't have the file before me, but in the interest of making a nice, clean record and making sure that there's no further possible mischief that could occur, when is the effective date of this proposal?

And my concern is that if it's not effective until going out, there might be some poor, little case out there in the meantime that just doesn't get saved by this sort of reach-back clarification, through you, Mr. President.

THE CHAIR:

Senator McDonald, care to respond?

SEN. MCDONALD:

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Thank you, Mr. President, and I appreciate the question from Senator Kissel. Perhaps it was even a question I should have addressed in my preliminary comments, and I thank him for it.

Obviously, this amendment is effective from passage, but it is intended to clarify existing statutes, which were passed last session, and, therefore, if this bill passes, it would apply to any cause of action that accrued before October 1, 2005, whether that case is pending in the judicial system right now or not, but it would apply to anything in the pipeline.

THE CHAIR:

Senator Kissel.

SEN. KISSEL:

Thank you very much. It's my belief that if there's anything out there just sort of hanging on the cusp, that they can tread water for a couple of weeks until this bill gets signed by the Governor, and, therefore, all those possible problems will be remedied.

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And I strongly support the measure and complement the Chair for bringing it forward. Thank you very much, Mr. President.

THE CHAIR:

Thank you, Sir. Would you remark further on the bill as amended? Senator McKinney.

SEN. MCKINNEY:

Thank you, Mr. President. I do not object to the bill, but I do have a question, and it's exciting how we went from discussing protecting Paul Newman's rights to offers of judgment, and the room is empty. That's a big surprise.

As I understand it then, when we talk about any action that accrues, that means if someone, for example, was injured prior to October 1, 2005, that is the accrual of their action.

I guess what I'm concerned about is we have some civil cases that could be brought that could have as much as, I believe, a 25-year Statute of Limitations. Contract cases are probably six years. Medical malpractice is two years.

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But we have some cases, some things we've had with alleged molestation of people happening. I thought those had very lengthy Statute of Limitations.

I guess my question is does that mean if something had occurred prior to October 1, 2005, and was brought in court years from now, they would be working under the old Offer of Judgment?

And other than the changes to the interest rate, are there any technical filings or other things, by changing from the offer of judgement to Offer of Compromise, that may confuse attorneys down the road and cause some kind of jeopardy to their cases, or to the offer of judgement, or offer of settlement, through you?

THE CHAIR:

Thank you. Senator McDonald?

SEN. MCDONALD:

Thank you, Mr. President. Through you, Mr. President, well, I guess, let me take the second part first, I guess the fact that attorneys are often confused is why we need judges in the State of Connecticut because when you get two lawyers in a room, anything can become confusing.

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That comment aside, there's nothing that I'm aware of right now, in addition to the bill before us, that would be impacted by this, other than, as I mentioned, the fact that there would be an acceptance of the Offer of Compromise and a withdrawal of the case, rather than a judgment in the case.

And as you point out, Senator McKinney, there's also a lowering of the interest rate that would apply in such situations. With respect to the first part of the question, it is not unusual at all for there to be a factual dispute about when a cause of action accrues.

Sometimes there are continuing courses of conduct or other types of action that create a question of fact for a trial court to determine when a cause of action accrues.

But whatever the outcome of that inquiry might be in a courtroom, this bill would make clear that if a court found, or if the allegations proved, that the cause of action accrued prior to October 1, 2005, the Offer of Judgment Statute would apply under the old rules, and if it accrued on or after October 1, 2005, the Offer of Compromise Legislation would control.

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THE CHAIR:

Senator McKinney.

SEN. MCKINNEY:

Thank you, Mr. President. I appreciate the answer. I guess, in terms of understanding what we changed, I got a little concerned because, as I understand it, the new Offer of Compromise gives a plaintiff more time, I think 60 days, to accept, versus the old Offer of Judgment, which was 10.

And my fear was that at some point in the future, someone may forget that if they brought an action a couple years from now, even though it was for something that accrued prior to October 1, 2005, they may think that they have 60 days to accept, and not 10, which may lead to a malpractice suit.

And I hope that's not the case. I think Senator McDonald has assured me that the Bar will understand how this works, and those mistakes are not likely to happen. Thank you, Mr. President.

THE CHAIR:

Thank you, Senator. Will you remark on the bill as amended? Will you remark further? Senator Handley.

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SEN. HANDLEY:

Thank you, Mr. President. I wanted to point out that in recent legislation in Colorado, I think it's Colorado, the concept in this bill has been expanded to include all kinds of potential civil disputes so that if you apologize or express regret in an automobile accident, that is not considered any longer in that state to be a statement that would be used as an example of guilt or responsibility.

And I think it's something that we might want to think about in our next session, Mr. Chair of the Judiciary Committee.

THE CHAIR:

Thank you, Madam. Will you remark further? Will you remark further? If not, will the Clerk please call the pendency of a roll call vote. The machine will be open

THE CLERK:

An immediate roll call has been ordered in the
Senate. Will all Senators please return to the
Chamber.

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An immediate roll call has been ordered in the
Senate. Will all Senators please return to the
Chamber.

THE CHAIR:

Have all the Members voted? Have all the Members
voted? Seeing so, the machine will be locked. The
Clerk will please call the tally.

THE CLERK:

Motion is on passage of Senate Bill 593 as
amended.

Total number voting, 34; necessary for adoption,
18. Those voting "yea", 34; those voting "nay", 0.
Those absent and not voting, 2.

THE CHAIR:

The bill as amended passes. Mr. Clerk.

THE CLERK:

Calendar Page 14, Calendar 348, File 492,
Substitute for Senate Bill 366, An Act Concerning
Grandparent Notification When a Child is Removed From
the Home, Favorable Report of Committees on Children,
Human Services, and Judiciary. Clerk is in possession
of an amendment.

THE CHAIR:

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If all the Members have voted, the machine will be locked, and the Clerk will take a tally. The Clerk please announce the tally.

CLERK:

Senate Bill Number 422, as amended by Senate Amendment Schedule "A", in concurrence with the Senate.

Total Number Voting	143
Necessary for Passage	72
Those voting Yea	143
Those voting Nay	0
Those absent and not voting	8

SPEAKER AMANN:

The Bill passes as amended. The Clerk please call Calendar Number 404.

CLERK:

On Page 14, Calendar Number 404, Substitute for Senate Bill Number 593, AN ACT CONCERNING THE APPLICABILITY OF OFFERS OF JUDGMENT, Favorable Report of the Committee on Judiciary.

SPEAKER AMANN:

Representative Spallone.

REP. SPALLONE: (36th)

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Thank you, Mr. Speaker. Mr. Speaker, I move acceptance of the Joint Committee's Favorable Report and passage of the Bill in concurrence with the Senate.

SPEAKER AMANN:

Question is on the Joint Committee's Favorable Report, acceptance of the Joint Committee's Favorable Report and passage of the Bill. Will you remark, Sir?

REP. SPALLONE: (36th)

Thank you, Mr. Speaker. As mentioned, this is a Bill that was approved by the Senate and sent to us for consideration.

And as you can see, Mr. Speaker, it's only a four-line Bill. It makes a very technical change to our statute concerning what are called offers of compromise, formally known as offers of judgment.

The Chamber might recall that in passing a medical malpractice reform bill, we made some substantive changes to the offer of judgment statute, as then called in order to make the process more fair and equitable to all of the parties involved.

And in doing so, according at least to some practitioners and decisions of the judges of the

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Superior Court, it was unclear what would happen to cases that accrue prior to October 1st, 2005.

The underlying Bill simply clarifies that the new changes to the offer of compromise statute do apply to any cause of action accruing prior to October 1st, 2005.

Additionally, Mr. Speaker, the Senate approved an Amendment. The Amendment is LCO Number 4122. It's in the possession of the Clerk. It has previously been designated as Senate "A". I ask that the Clerk call the Amendment, and I be permitted to summarize.

SPEAKER AMANN:

Thank you, Sir. Would the Clerk please call LCO Number 4122, which will be designated Senate Amendment Schedule "A".

CLERK:

LCO Number 4122, Senate "A", offered by Senator McDonald.

SPEAKER AMANN:

Representative seeks leave of the Chamber to summarize the Amendment. Is there objection on summarization? Is there objection? Hearing none, you

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may proceed with summarization, Representative Spallone.

REP. SPALLONE: (36th)

Thank you, Mr. Speaker. Briefly, to summarize this Bill, it clarifies General Statutes 42-184d to include, as healthcare providers, the State of Connecticut, I'll describe this in further detail momentarily, but for now, I move adoption.

SPEAKER AMANN:

The question before the Chamber is adoption of House, excuse me, Senate Amendment Schedule "A". Will you remark on the Amendment, Sir?

REP. SPALLONE: (36th)

Yes. Thank you, Mr. Speaker. General Statute 52-184d is a new section of the General Statutes that was part of the medical malpractice bill last year.

And it provided that an apology is made by a healthcare provider relative to an unanticipated outcome of medical services, medical care that such apology would not be admissible as evidence against the healthcare provider that was providing the apology.

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And this was, as I mentioned, part of an omnibus bill last year concerning medical malpractice reforms. Mr. Speaker, all the Amendment does is clarify the statute by adding that a healthcare facility or institution operated by the state is also covered.

This properly clarifies the Bill. It's a good Amendment. And I urge my colleagues to support it. Thank you, Mr. Speaker.

SPEAKER AMANN:

Thank you, Sir. Care to remark further on the Amendment? Representative Fahrbach. Representative Belden. Representative Belden.

REP. BELDEN: (113th)

Thank you, Mr. Speaker. Through you, to the proponent of the Amendment, just in my own mind, the clarification in the Amendment, does that in any way change any of the ability to sue or file a claim against the State of Connecticut, through you, Mr. Speaker?

SPEAKER AMANN:

Representative Spallone.

REP. SPALLONE: (36th)

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Through you, Mr. Speaker, to Representative
Belden, no.

SPEAKER AMANN:

Representative Belden.

REP. BELDEN: (113th)

I thank the gentleman for his clarification. I
just wanted that on the record. Thank you.

SPEAKER AMANN:

Thank you, Sir. Care to remark further on the
Amendment before us? If not, let me try your minds.
All in favor, please signify by saying Aye.

REPRESENTATIVES:

Aye.

SPEAKER AMANN:

All opposed, Nay. Ayes have it. The Amendment
is adopted. Will you remark further on the Bill as
amended? Representative Farr.

REP. FARR: (19th)

Mr. Speaker, through you, Mr. Speaker, to the
proponent of the Bill, just for legislative intent,
the Bill talks about any action accruing prior to
October 1, 2005.

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I am assuming, by the word, accruing, that that would be the date, not the date of the discovery of the malpractice, but the date the malpractice allegedly occurred on. Through you, Mr. Speaker, to Representative Spallone, is that correct?

SPEAKER AMANN:

Representative Spallone.

REP. SPALLONE: (36th)

Thank you, Mr. Speaker. Through you, to Representative Farr, accruing generally means that the matter is ripe to proceed with, meaning that your right to proceed is complete.

So I don't know if that answers your question completely, but the statute does not specifically mention that it's the date complained of, through you, Mr. Speaker.

SPEAKER AMANN:

Representative Farr.

REP. FARR: (19th)

Yes. I guess for legislative intent, what we're saying is that even though you don't discover the malpractice, if you can show that it occurred, you go back to the date that you were alleged, the allegation

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is that it actually occurred, and that would be the date accruing. Thank you.

SPEAKER AMANN:

Representative Spallone. Care to remark further on the Bill as amended? Care to remark further?

Representative Ward.

REP. WARD: (86th)

Thank you, Mr. Speaker. If I may, a question or two to the proponent of the Bill.

SPEAKER AMANN:

Please frame your question, Sir.

REP. WARD: (86th)

Through you, Mr. Speaker, as I recall the medical malpractice reform of, I believe, a year ago, the lowering of the rate of interest on offers of judgment was supposed to help in saving money for malpractice insurers and thereby to doctors.

Am I correct that this Amendment says, for causes of actions that accrued prior to '05, the higher rate of interest in the prior offer of acceptance law is still the rate of interest for those cases? Is that correct, through you, Mr. Speaker?

SPEAKER AMANN:

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Representative Spallone.

REP. SPALLONE: (36th)

Mr. Speaker, just a moment, please, if I could.
I'm prepared, Mr. Speaker.

SPEAKER AMANN:

Representative Spallone.

REP. SPALLONE: (36th)

Thank you, Mr. Speaker. Through you, to the
distinguished Minority Leader, the answer is yes.

SPEAKER AMANN:

Representative Ward.

REP. WARD: (86th)

Through you, Mr. Speaker, there were some
estimates of savings from last year's bill in terms of
malpractice carriers.

Given that most of those policies are claims-made
policies, so that you're only providing coverage at
the time that the claim is made, doesn't this
undermine some of the savings from that bill from a
year ago, through you, Mr. Speaker?

SPEAKER AMANN:

Representative Spallone.

REP. SPALLONE: (36th)

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Through you, Mr. Speaker, to Representative Ward, I do not know the effect on the savings that it would have.

SPEAKER AMANN:

Representative Ward.

REP. WARD: (86th)

Thank you, Mr. Speaker. I find that troubling. When we passed a bill a year ago, many thought that that would help to at least contain increases in medical malpractice premiums, and that one of the reforms of that was to lower the rate of interest that was paid, if you make an offer of judgment, and it's not accepted, and then eventually, the plaintiff wins the case, the defendant, the insurance company, the doctor, the hospital, whichever pays, had to pay a high rate of interest, I think 12%.

Certainly, with interest rates what they are today, that's probably the best return you could get on your money is an offer of judgment return. So we changed the law to 8%, effective October 1, '05.

What we're now doing is sort of going backwards and saying, what we intended was not just for, and I think the correct interpretation of that would have

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been that if an offer of judgment was made, but you hadn't won your case yet, so you weren't given your interest, the judge should calculate the interest at the lower rate.

I just want to make sure everybody in the Assembly now knows if the malpractice claim accrued, whatever that exactly means, accrued prior to October 1, '05, you're going to get a 12% interest rate, not an 8% interest rate.

That certainly means for those cases that accrued after October 1, '05, but have not yet been settled, there will be a bigger payout. And I don't really understand that change in public policy from a year ago when it was at that point, made the decision that 12% was too high a rate of interest.

It was more of a punitive interest rather than a fair rate of interest. And it was a little hard to follow because the Bill in Committee did a variety of things.

But has come out of the Senate, it's really a very simple Bill, and it's just changing the rate of interest and making clear in the law that you have to pay a higher rate of interest than was otherwise the

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case. So I will be voting no on this Bill, Mr.
Speaker.

SPEAKER AMANN:

Thank you, Sir. Representative Rowe.

REP. ROWE: (123rd)

Good afternoon, Mr. Speaker.

SPEAKER AMANN:

Good afternoon, Sir.

REP. ROWE: (123rd)

Thank you. Briefly, whatever one thinks of the medical malpractice reform we passed last Session, I think that this is a good fix to a problem of ambiguity that had left some in the bar and on the bench confused as to what exactly we meant to do with regard to October 1, 2005, and whether or not the 8% interest rate applied, and the old offer of judgment rules applied, or the 12%, and the new offer of compromise applied, and vice versa. So this clarifies that, and it's a modest step, but I think it will help, so I support it. Thank you.

SPEAKER AMANN:

Thank you, Sir. Care to remark further on the Bill as amended? Care to remark further on the Bill

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as amended? If not, staff and guests please come to the Well of the House. Members please take your seats, and the machine will be open.

CLERK:

The House of Representatives is voting by Roll Call. Members to the Chamber. The House is voting by Roll Call. Members to the Chamber please.

SPEAKER AMANN:

Have all the Members voted? Have all the Members voted? If all the Members have voted, please check the board to make sure your vote has been properly cast.

If all the Members have voted, the machine will be locked, and the Clerk will take a tally. The Clerk please announce the tally.

CLERK:

Senate Bill Number 593, as amended by Senate Amendment Schedule "A", in concurrence with the Senate.

Total Number Voting	144
Necessary for Passage	73
Those voting Yea	143
Those voting Nay	1

ngw

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Those absent and not voting 7

SPEAKER AMANN:

The Bill passes as amended. Any announcements or introductions? Representative Corky Mazurek.

REP. MAZUREK: (80th)

Thank you, Mr. Speaker, and good afternoon to you, Sir. To my colleagues in the House Chamber, it's a great pleasure for me to introduce one of the best, the finest elementary schools in Wolcott, Connecticut.

This would be Frisbie Elementary School. Kids, stand up and wave to the House of Representatives. And I hope you'll all join me and give them a nice round of applause.

(APPLAUSE)

SPEAKER AMANN:

Representative Ward.

REP. WARD: (86th)

Thank you, Mr. Speaker. For the purposes of an introduction.

SPEAKER AMANN:

Please proceed, Sir.

REP. WARD: (86th)

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3617-3917

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the picture of the offender who, by the way, looks extremely scary. So if I was a gun seller, I would never sell him one, just by the looks.

SEN. MCDONALD: Are there any questions? Thank you, I'm sorry, Representative Farr.

REP. FARR: Yeah, just a quick question, where did this murder occur?

KIM SUNDQUIST: Gastonia, North Carolina.

REP. FARR: And did they make any effort to trace the gun, where it came from?

KIM SUNDQUIST: They can't find the gun. They have no murder weapon. They do know it was a large caliber, per the article, it was a large caliber handgun.

REP. FARR: Thank you very much.

SEN. MCDONALD: Thank you. Next is Susan Giacalone followed by Marilyn Denny. Is Marilyn here?

SUSAN GIACALONE: Good evening, Senator McDonald and Members of the Judiciary Committee. For the record, my name's Susan Giacalone. I'm here on behalf of the Insurance Association of Connecticut.

SB 548
HB 5730
SB 593
HB 5732

I have submitted written testimony, so I will keep my comments, try to keep them very brief tonight. We've submitted testimony on four bills.

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In opposition to Senate Bill 548, in opposition to House Bill 5730, we support Senate Bill 593, two of the Sections, we do not support the third Section in Senate Bill 593. And we've also submitted testimony in support of House Bill 5732.

Just briefly, I'm going to address my comments now to House Bill 5730. Again, I'll be very brief. This is a bill you have seen for years and years and years in a row.

It's a bill that seeks to change the way uninsured motorists' claims are handled in the State of Connecticut. It's a bill that has died year after year and, we would say, for good cause.

This would change the very nature of the way we do business in the State of Connecticut, 42 other states like Connecticut do not have anything like this, and we say for good reason.

This would lead or incentivize fraud. It would change, again, I keep saying the very nature of the way we handle insurance. Right now, you have to prove you have a viable claim.

This would change that and say, you know what, it's up to you, insurance company, to prove we don't have a viable to claim. So, like I said, I'll keep my comments short. My testimony's been submitted. I'll answer any questions.

SEN. MCDONALD: You clearly are a veteran of testimony before the Judiciary Committee. At this hour, we appreciate your summary and we do

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DOUG MAHONEY: Good evening, Senator McDonald, Representative Lawlor, Members of the Committee. My name's Doug Mahoney, and I'm testifying on two bills, first in favor of Raised House Bill 5730.

And I've submitted written testimony with regard to that and attached the proposed amendment to that bill, which I will address in a moment.

And also to support in part and oppose in part Senate Bill 593, which is the offer of judgment bill. The first is the uninsured motorist bill.

The uninsured motorist bill attempts to address a very real problem that plaintiffs are having, which is triggering their uninsured motorist coverage.

Uninsured motorist coverage is supposed to protect a person when they're in an accident caused by someone who doesn't have insurance.

If it's a, if it's caused by a hit and run driver, that person is per se uninsured because they fled the scene, we don't know who they are so by definition they're uninsured.

The problem arises when the person doesn't flee the scene but stays. And it's kind of strange that you'd be worse off if they stay, but it's true, you are worse off if they stay.

And what happens is you have to remember that these people are driving without insurance. So

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So we encourage you to look favorably on the bill as amended. If I may just touch very, very briefly on the offer of judgment bill, the Legislature last year, as you're well aware, in Public Act 05-275, changed the Offer of Judgment Statute.

SB 593

And Section 4 of that Public Act reads Section 52-192A of the General Statutes, which is the Offer of Judgment Statute, is repealed and the following is substituted in lieu thereof effective October 1, 2005.

And what we've been finding is defendants now are arguing cases that there is no offer of judgment anymore that can be filed at any case which accrued before October 1, 2005.

What this Legislature did is that they repealed the offer of judgment altogether, so there's no more offer of judgment available to a cause of action which accrued before October 1, 2005.

And I offer support for Section 3 of the bill that has been filed, House Bill 5730, which clarifies what your intent was, I believe, that you intended to keep an offer of judgment available.

But for actions that accrue after October 1, 2005, that there's an offer of compromise. And I think there's just some technical problem with the language and that's why we support Part 3 of the bill. We object to Parts 1 and 2.

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Part 1 would require an authorization to allow defense have unlimited access to a plaintiff's medical records before they could file an offer of judgment.

And what Part 2 does is it reduces the amount of time a plaintiff has to accept an offer of judgment from 60 days to 10 days. We submit that ten days is just not workable.

People are on vacation, they're away. The defendant files an offer of judgment, you can't reach your client in ten days.

It's just not a reasonable amount of time to communicate with your client. So we oppose Section 1 and 2 of the offer of judgment bill but we support Part 3.

SEN. MCDONALD: Thank you. You packed a lot in there, and effectively. Thank you. I appreciate it. Let me just first start with the offer of judgment. If I heard you correctly, people have made this argument, has anybody bought it?

DOUG MAHONEY: Yes, Your Honor. Yes, Your Honor, jeez, it's getting late. Your Honor bought it, a Judge in Bridgeport bought it in a case called Warmey.

We got the decision, it was our office's case and we got the decision just yesterday. And, in that decision, the court, it was a case in which it was a 2003 car accident.

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We filed the lawsuit in September of 2005. We filed the offer of judgment a few months ago. The defendant objected to the offer of judgment, said plaintiffs can no longer file offers of judgments if the accident predates October 1, 2005.

And the court, just yesterday we got the card, sustained the defendant's objection to our offer of judgment. And that's the first and only decision I know of that's come down on either side of the fence.

SEN. MCDONALD: Yeah, I've got to tell you, we do this stuff all the time of repealing sections and replacing them with new sections. It's not that we got rid of the old stuff retroactively.

It's that we're replacing it on a going forward basis. But we've had, I've had an opportunity to talk to some of our legal counsel on this and it was clear to us.

But maybe we need to go back to make it clear for a judge somewhere, so we'll take a look at that. With respect to the uninsured and underinsured motorist issues, what's the, tell me once again why it's a problem with the underinsured motorists as well.

DOUG MAHONEY: Sure. In the example I gave, the fellow who caused our accident, who rear-ended the plaintiff, produced an insurance card to the officer identifying a policy with Progressive Insurance.

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And Progressive advises us that that's a \$20,000 policy, the minimal policy a person has to have to drive a car.

SEN. MCDONALD: No, I understand that, so after you get your \$20,000, the underinsured policy is telling you that you need to go out and--

DOUG MAHONEY: Right, they won't accept the claim. They're saying how do we know that he didn't have an Allstate policy or a nationwide policy? You haven't proven he didn't have other policies of insurance.

SEN. MCDONALD: So they require you to go out and prove the negative?

DOUG MAHONEY: Correct.

SEN. MCDONALD: Well, that's helpful. All right. Representative Farr.

REP. FARR: Yeah, I'm just the offer of judgment fix that's in this bill here, if you made an offer of judgment, the court has ruled that there is no offer of judgment available.

Now, we pass this and say you can do not an offer of judgment but, what's the new term they use, offer of compromise. You would then have to go out and do a new offer, is that correct?

DOUG MAHONEY: I think you're in a bind because the legislation that was passed last term says the offer of compromise is only available to actually--

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REP. FARR: Right, no, but I mean if we passed the fixed, then what happens? How do we fix that group of cases?

DOUG MAHONEY: I think, I think that the language in Section Three of the bill that's been submitted simply says that what the Legislature intended is to keep the law as it was to all actions accruing before October 1 and changing it to an offer of compromise for all actions accruing after October 1.

REP. FARR: So anybody who had that offer of judgment before October 1, the court has said that's not effective?

DOUG MAHONEY: In this particular case, the offer of judgment was actually filed two months ago. The case accrued two months before this.

REP. FARR: So, but passing this wouldn't make the offer of judgment effective.

DOUG MAHONEY: It would.

REP. FARR: You'd have to go back and do the offer of compromise.

DOUG MAHONEY: No, I think it would make the offer of judgment, because that was the law that was in effect up until October 1, when the cause of action accrued.

REP. FARR: I just, I always wonder about retroactivity here.

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DOUG MAHONEY: It's not retroactive. I think what you're simply clarifying is what your intent was at the time.

SEN. MCDONALD: Yeah, if I may, I think the goal is to say that when we repealed the offer of judgment, we meant it from that point forward not repealing it for cases that accrued prior.

REP. FARR: I know, but we're now vesting an interest in something that didn't occur at the time. Okay, I'm always a little troubled by doing, reaching back and doing things although I see another one I want to do that too. Too much against this.

SEN. MCDONALD: With the hour comes the truth. Anything further? Thank you very much.

DOUG MAHONEY: Thank you very much. Thank you.

SEN. MCDONALD: Hang on. I lost my place. Okay, sure.

SHIRLEY PRIPSTEIN: Let's see if I can remember my name. Senator McDonald, Members of the Committee, my name is Shirley Pripstein. I'm an attorney with Greater Hartford Legal Aid.

I'm speaking to you tonight as a representative of the Family Law Section of the Connecticut Bar Association. I'm speaking in support of Senate Bill 699 and in opposition to House Bill 5816.

You've heard a lot about Senate Bill 699 tonight. We, the Family Law Section, did not

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PART 13
3918-4165

2006

Statement

Insurance Association of Connecticut

Judiciary Committee

March 24, 2006

SB 593, An Act Concerning Offers of Compromise and Offers of Judgment

The Insurance Association of Connecticut supports Section 1 and 2 of SB 593, An Act Concerning Offers of Compromise and Offers of Judgment, which makes some minor tweaks to P.A. 05-275. The IAC commends this Committee and the legislature for amending the offer of judgment statutes last year in P.A. 05-275.

P.A. 05-275 reduced the interest rate; removed the stigma of judgment and attempted to provide some guidelines when an offer may be filed other than being a subject of timing.

The changes made to C.G.S. section 52-192a by P.A. 05-275 should be expanded so that all civil actions are treated equally. P.A. 05-275 amended section 52-192a by requiring that an offer, filed in a medical malpractice case, state with specificity all damages known to the plaintiff upon which the action is based and 60 days prior to filing an offer, the plaintiff must provide the defendant an authorization for medical records. The problem these changes addressed, access to information so that a fair assessment of the offer can be made, are experienced in all types of civil

cases in which personal injuries have been claimed. The changes made in P.A. 05-275 regarding this need for information have been changes the IAC has been advocating for the past 10 years and are not unique to medical malpractice cases. The IAC strongly urges you to amend this section to include all such civil actions.

Section 2 of SB 593 simply seeks to reinstate what had been the status quo, and the only working component of the prior "offer of judgment" statutes, regarding the time allowed a plaintiff to respond to a defendant's offer. P.A. 05-275 increased the plaintiff's response time to a defendant's offer by 50 days. It is unclear why a plaintiff would need any more time. The plaintiff is the party who brought the action and has full knowledge of what they believe their case is worth. Why then would they need any additional time to respond?

The IAC is strongly opposed to section 3 of this bill which seeks to delay the benefit of the changes made by P.A. 05-275. P.A. 05-275 became effective as of October 1, 2005 on any action filed as of that date. Section 3 seeks to change the implementation date so that any cause of action that occurred before October 1, 2005 still benefits from the old offer of judgment rule. Section 3 reduces the meaningful reforms of P.A. 05-275. The Legislature expected P.A. 05-275 to have a meaningful impact on the settlement of cases. Furthermore, section 3 creates a problematic legal void. Offers of judgment no longer exist as of October 1, 2005. How then

could an offer of judgment be filed after that date? Permitting parties to file "offers of judgment" for accidents that happened up to September 30, 2005, delays any meaningful impact for several years. Additionally, delaying the applicability of the change creates a "legal void." "Offers of Judgment" no longer exist as of October 1, 2005. How then can a party file an "offer of judgment" if no such thing exists?

The IAC urges your rejection of Section 3 of this bill.

CONNECTICUT
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CONNECTICUT TRIAL LAWYERS ASSOCIATION

Oppose in Part S.B. No. 593 (Raised)

The Connecticut Trial Lawyers Association opposes in part S.B. No. 593 (Raised), "An Act Concerning Offers of Compromise and Offers of Judgment". The Offer of Judgment statute was amended last term by P.A. 05-275, Section 4, et seq. Section 3 of S. B. No. 593 seeks to address a technical error which exists in Public Act 05-275, Section 4. The Connecticut Trial Lawyers Association supports Section 3 of S.B. No. 593 as it simply confirms the intent of the legislature when passing Public Act 05-275. However, we object to Sections 1 and 2 of S.B. No. 593, which make substantive changes to the offer of judgment statute which are unnecessary or harmful to injured citizens of Connecticut.

Section 1 of the Bill would extend the pre-filing requirements applying to med mal cases, to all cases. Under the proposal, a plaintiff would have to provide the defendant with an unlimited HIPAA authorization before the plaintiff could file an offer of judgment. Why a plaintiff who is claiming a simple shoulder injury, for example, would have to provide an unlimited medical authorization is not clear. It seems as though this would raise all types of privacy concerns and allow access to the defendant to obviously unrelated medical records, some of which may be embarrassing.

If the concern to defendants is that they have all relevant records to evaluate the claim, the 2005 amendment to the statutes addresses that problem by preventing the plaintiff from filing the offer of judgment for 180 days from service of suit. The defendants have six months to collect all of their information through written discovery and through depositions. The standard written

discovery promulgated by the Judiciary does not allow unfettered access to all medical records; rather it requires production of all relevant pre and post accident records. The proposed legislation would be an "end run" on the standard discovery requests that are in place.

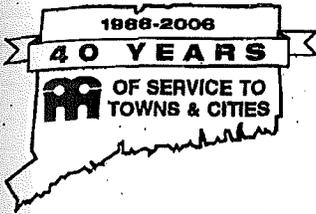
Passage of Section 1, may result in fewer offers of judgment being filed. Some plaintiffs will object to producing a HIPAA authorization and therefore will not be eligible to file. Some plaintiffs lawyers will not want, for whatever reason, to comply with the "pre-filing" requirements. The result will be fewer offers of judgment. Offers of judgment encourage settlement. If they are not filed, the impact can only be negative in terms of the backlog of pending files at the courthouses.

Section 2 of Raised Bill No. 593 is even more puzzling. Why reduce the time limit for the plaintiff to accept the offer of judgment from sixty days to ten days? Why would defendants have thirty days to accept an offer of judgment and plaintiffs have ten? What is the possible reasoning there, other than to cause plaintiffs to not timely accept? When people are on vacation (either the lawyer or the client) it may be impossible to make contact and convey the defendant's offer within ten days. A plaintiff may want to consult with family before acting on a defendant's offer of judgment and that may not be achievable within ten days. There can be no "good reason" for reducing the time limit. For years, plaintiffs only had ten days to accept an offer of judgment filed by a defendant. Public Act 05-275, Section 6 changed that time limit to sixty days to cure that inequity. There is no reason, one year later to return to the ten day time limit.

Wherefore, the Connecticut Trial Lawyers Association supports Section Three of S.B. No. 593 and opposes Sections One and Two.

Respectfully Submitted,

Douglas P. Mahoney



CONNECTICUT CONFERENCE OF MUNICIPALITIES

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TESTIMONY

of the

CONNECTICUT CONFERENCE OF MUNICIPALITIES

to the

JUDICIARY COMMITTEE

March 24, 2006

The Connecticut Conference of Municipalities appreciates the opportunity to testify on the following bill of interest to towns and cities:

S.B. 593, “An Act Concerning Offers of Compromise and Offers of Judgment”

CCM supports this bill.

S.B. 593 would add more reason and clarity to civil action procedures in the State of Connecticut. It would still provide for fair and reasonable remedies to persons, without sacrificing fairness.

CCM urges the Committee to favorably report this bill.

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If you have any questions, please call Ron Thomas or Gian-Carl Casa of CCM at (203) 498-3000.