

Legislative History for Connecticut Act

PA 11-077

PA11-077

SB1207

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Transcripts from the Joint Standing Committee Public Hearing(s) and/or Senate
and House of Representatives Proceedings

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H-1118

CONNECTICUT
GEN. ASSEMBLY
HOUSE

PROCEEDINGS
2011

VOL.54
PART 27
8900-9257

law/lxe/jr/fst/gbr.
HOUSE OF REPRESENTATIVES

758
June 7, 2011

announce the tally.

THE CLERK:

Senate Bill 1001, as amended by Senate "A" in
concurrence with the Senate:

Total number voting	142
Necessary for passage	72
Those voting Yea	116
Those voting Nay	26
Those absent and not voting	9

SPEAKER DONOVAN:

Bill as amended is passed. Will the Clerk please
call Calendar 552.

THE CLERK:

On page 25, Calendar 552, Senate Bill Number 1207,
AN ACT CONCERNING OFFERS OF COMPROMISE, favorable report
of the Committee on Judiciary.

SPEAKER DONOVAN:

Representative Fox.

REP. FOX (146th):

Thank you, Mr. Speaker.

I move for the acceptance of the Joint Committee's
favorable report and passage of the bill.

SPEAKER DONOVAN:

Question's on acceptance of the Committee's

law/lxe/jr/fst/gbr.
HOUSE OF REPRESENTATIVES

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June 7, 2011

Favorable report and passage of bill.

Will you remark?

REP. FOX (146th):

Thank you, Mr. Speaker.

This addresses -- offers a compromise which occur in civil actions. What it does is it -- with respect to those cases that are malpractice cases, what -- what is currently the case is that offers of compromise can be filed when discovery is completed. Apparently there's been some difficulty in ascertaining when that -- when that time actually takes place. What this bill does is it says offers of compromise can be filed after one year or 365 days.

Mr. Speaker, the Senate has an amendment, LCO Number 6773. I would ask that it be called and I be allowed to summarize.

SPEAKER DONOVAN:

Will the Clerk please call LCO 6773, which is previously designated Senate "A".

THE CLERK:

LCO Number 6773, Senate "A" offers by Senators Coleman and Kissel.

SPEAKER DONOVAN:

Any objection to summarization? If not,

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June 7, 2011

Representative fox, you may proceed.

REP. FOX (146th):

Thank you, Mr. Speaker.

The amendment says that if the offer is not accepted within 60 days or prior to the rendering of the verdict by a jury, then the offer is considered rejected, and I would move adoption.

SPEAKER DONOVAN:

Any -- any remarks on the amendment? Any remarks on the amendment? If not, I'll try your minds. All those in favor of the amendment, please signify by saying aye.

REPRESENTATIVES:

Aye.

SPEAKER DONOVAN:

Opposed Nay. The amendment is adopted. Remark further on the bill as amended. If not, staff and guests, please come to well of the house. Members take their seats. The machine will be opened.

THE CLERK:

The House of Representatives is voting by a roll call, members to the Chamber. The house is voting by roll call, members to the Chamber, please.

SPEAKER DONOVAN:

Have all the members voted? Have all the members

voted? Please check the roll call board to make sure your vote is properly cast. If all the members have voted, the machine will be -- the machine will be locked. Clerk, please take a tally. Clerk, please announce the tally.

THE CLERK:

Senate Bill 1207 as amended by Senate "A" in concurrence with the Senate:

Total number voting	140
Necessary for passage	71
Those voting Yea	111
Those voting Nay	29
Those absent and not voting	11

SPEAKER DONOVAN:

Bill as amended is passed. Representative Orange, for what reason do you stand?

REP. ORANGE (48th):

Mr. Speaker, I rise to let you know that at this hour of the morning, I wasn't quite paying attention and I meant to vote in the negative.

SPEAKER DONOVAN:

In the negative, the transcript will so note. Representative Kokoruda.

REP. KOKORUDA (101st):

I rise also that I thought I pushed, my button didn't.

JOINT
STANDING
COMMITTEE
HEARINGS

JUDICIARY

PART 15
4610-4935

2011

MICHAEL ZIMMER: I agree with you a hundred percent and we've never had more than 30 people out of 166 at a meeting in my tenure there.

REP. ADINOLFI: Well and I'm asking you if maybe we should do something in this bill somewhere along the line to clarify that, you know, that space shall be required -- provided as required, something like that.

MICHAEL ZIMMER: Well, unfortunately, "as required." I'm not looking to disagree with you because I think it's one extreme or the other. But as a board president I've got -- it's like saying shouldn't Bridgeport have had all the ballots they needed. You know what I'm saying? That's the only analogy I can use. "As required" -- I don't know how many people are going to come to the meeting until the night of the meeting.

REP. ADINOLFI: Well, in my association we all reply and mail in our proxies and we generally know before the meeting. But the rule is that we have to provide for everyone so -

MICHAEL ZIMMER: That sounds like a great rule, we actually have to do that as follow up, that sounds like a great way to do that.

REP. ADINOLFI: Okay, thank you.

SENATOR COLEMAN: Other members with questions? Seeing none, thank you very much for your testimony. Kathleen Nastri is next.

KATHLEEN NASTRI: I used my three minutes getting here.

Chairman Coleman, members of the committee, my name is Kathleen Nastri, I am a past president of the Connecticut Trial Lawyers. I am a partner in the law firm of Koskoff, Koskoff and

SB1207

Bieder where I practice primarily personal injury and malpractice litigation. And I'm here today in support of Senate Bill 1207, which is AN ACT CONCERNING OFFERS OF COMPROMISE.

I'm going to assume that the committee members are aware of the procedures involving offers of compromise and the well accepted public policy behind offers of compromise that has to do with encouraging litigants to resolve their cases early on and promote judicial economy.

The problem with arbitrated compromise as it relates to medical malpractice cases has been that there was a change in the statute in 2005, I believe, that specifically affected only malpractice cases. And it put in additional requirements for litigants in malpractice cases before they were allowed to file offers of compromise.

The practical effect of those additional requirements has been in direct contravention with what the policy in the statute is and the result has been that people who have malpractice cases no longer file offers of compromise because the requirements are so stringent. When we do file offers of compromise we are met with objections and motions to strike and all kinds of other things that require additional judicial intervention to try to get the issues resolved.

So the proposed amendment to 52-192A simply makes it -- makes plaintiffs wait for a year from the time they file their lawsuit before they are allowed to file the offer of compromise.

It makes sense. It's efficient, it's clear and it allows the parties early on in the case to

do what they need to do to get the investigation done and get the right evaluation of their case before they file their offers of compromise.

I did look at some of the testimony that had been submitted by the Hospital Association and the Insurance Association in opposition to the amendment. And it's clear that that opposition comes from people who are not involved in the trenches in discovery in malpractice cases.

The testimony submitted by the Hospital Association and the Insurance Association implied that plaintiff's lawyer could sort of lie in wait for the 364th day, not provide any information whatsoever about the value of the case and then file an offer of compromise, forcing the defense to make an uneducated decision. Really, that couldn't be further off from what happens in these cases.

The discovery process which begins on day one, requires us as plaintiffs to provide defense counsel with medical records, authorizations, information about expert witnesses. We engage in depositions, we find out what the real facts in the case are. We produce our clients for depositions so they can be deposed and evaluated early on in the case.

My very firm belief is putting this one year time limit not only is consistent with the public policy in the statute, but would encourage lawyers and litigants to get to work early on in the case, which is going to help everybody to move these cases through the system at a much more sensible and efficient rate.

SENATOR COLEMAN: Other questions? Seeing none,
Thank you, Attorney Nastri.

JACQUELINE IVEL: Thank you.

REP. FOX: We hope to see you again soon. Susan Giacalone.

SUSAN GIACALONE: Good afternoon, Representative Fox and members of the Judiciary Committee. For the record, my name is Susan Giacalone. I am here on behalf of the Insurance Association of Connecticut. I have submitted written comments and I will keep my comments brief. I submitted comments on Senate Bill 1207, AN ACT CONCERNING OFFERS OF COMPROMISE. Quite briefly, we don't support the measure that's before you even though it only applies to the now cases. We have actually advocated over the years that the change you adopted in 2005 applied to all civil cases so the only change we would actually recommend would be that the limitation of the providing of information apply to all civil cases and not just the now cases.

The only way you can settle a case is if you have information. Time isn't a controlling factor. Offers can be filed as soon as suit has filed and someone hasn't stopped -- or started treating it. Also, I'd like to speak and comment on House Bill 6608, AN ACT ADOPTING THE REVISED UNIFORM ARBITRATION ACT. This is a bill you have seen -- I think I have been doing this 10 years and I think you've seen it for 10 years. There are many, many provisions that we oppose in the bill, nothing's changed on it. The biggest provision is the powers that it provides to the arbiter that actually equates out of a judge.

Arbitration is supposed to be an alternative method to the court system. The awards of punitive damages, attorney's fees, those are all things to the civil system. The parties



**TESTIMONY OF
CONNECTICUT HOSPITAL ASSOCIATION
SUBMITTED TO THE
JUDICIARY COMMITTEE
Friday, March 25, 2011**

SB 1207, An Act Concerning Offers Of Compromise

The Connecticut Hospital Association (CHA) appreciates the opportunity to submit testimony concerning SB 1207, An Act Concerning Offers Of Compromise. CHA opposes the bill.

Under current law, an offer to compromise for a specific settlement amount may be filed by a plaintiff in a medical malpractice action 60 days after the plaintiff has disclosed medical records, or provided an authorization to review medical records, and has provided the name of each expert that plaintiff intends to use to support the claim.

SB 1207 would revise existing Section 52-192a of the general statutes to eliminate any obligations of the plaintiff to provide a medical basis for determining whether the offer to settle is well-founded, and would put the defendant in a position of having to reject all offers. SB 1207 would unjustly disadvantage defendants and give them an impossible choice: accept the offer without an appropriate basis to measure its merit, or reject the offer and automatically be exposed to penalty interest on the claim.

This radical and unwarranted change to existing law would increase the pressure on an already stretched medical malpractice system.

CHA understands the need for a fair and appropriate malpractice system, but we must object to SB 1207.

Thank you for your consideration of our position.

For additional information, contact CHA Government Relations at (203) 294-7310.

JDI:pae

Statement**Insurance Association of Connecticut**

Judiciary Committee

March 25, 2011

SB 1207, An Act Concerning Offers of Compromise

The Insurance Association of Connecticut is opposed to SB 1207, An Act Concerning Offers of Compromise, as drafted.

SB 1207 seeks to undo some of the changes made to the offer of compromise statute this legislature adopted just six years ago. Section 52-192a was amended to require that an offer of compromise, filed in a medical malpractice case, state with specificity all damages known to the plaintiff upon which the action is based. Also Sec. 52-192a was amended to require that 60 days prior to filing an offer the plaintiff must provide the defendant an authorization for medical records. These changes made the offer of compromise process, in medical malpractice claims, fundamentally fairer. Prior to these changes offers were filed and the defendants had little to no information to assess the legitimacy of the offer.

Information is key to being able to properly assess the validity of any offer. SB 1207 seeks to remove all requirements of providing any information. In exchange SB 1207 would require a plaintiff to wait to file such an offer one year from the date of service. Time limitation without information does not ensure the fairness of the offer of compromise process. The plaintiff may not have completed treatment within that time period. Discovery may not be complete in that time period. The current process of

triggering the filing to the availability of information provides for the fairest approach to the *offer of compromise statute*.

The ability to fairly assess an offer of compromise is experienced in all types of civil cases in which personal injuries have been claimed and are not unique to medical malpractice cases. To improve the effectiveness of the offer of compromise statute all defendants, not just those in medical malpractice claims, should have adequate knowledge of the injury claimed, the cost associated with such injury and prior related claims. The IAC strongly urges you to amend Section 52-192a to apply the current offer of compromise standards to all civil actions.



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TRIAL
LAWYERS
ASSOCIATION

150 Trumbull Street, 2nd Floor
Hartford, CT 06103
p) 860.522.4345 f) 860.522.1027
www.cttriallawyers.org

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LINE 18

SENATE BILL 1207
PUBLIC HEARING: 3-25-11

TO: MEMBERS OF THE JUDICIARY COMMITTEE
FROM: CONNECTICUT TRIAL LAWYERS ASSOCIATION *Kathleen Nastro*
DATE: MARCH 25, 2011
RE: SUPPORT SENATE BILL 1207 – AAC OFFERS OF COMPROMISE

The Connecticut Trial Lawyers Association supports SB 1207.

The purpose of General Statutes § 52-192a is to encourage pretrial settlements and, consequently, to conserve judicial resources. Blakeslee Arpaia Chapman, Inc. v. EI Constructors, Inc., 239 Conn. 708, 742 (1997). "[T]he strong public policy favoring the pretrial resolution of disputes...is substantially furthered by encouraging defendants to accept reasonable offers of judgment...Section 52-192a encourages fair and reasonable compromise between litigants by penalizing a party that fails to accept a reasonable offer of settlement." *Id.* The statute has been described as an "indigenous procedural device for promoting judicial economy." Paine Webber Jackson and Curtis, Inc. v. Winters, 22 Conn. App. 640, 655 (1990).

That well-recognized purpose has been rendered meaningless by the current requirements for offers of compromise filed in medical malpractice cases. Not only is it difficult to meet those requirements, but the requirements themselves have become the source of dispute between litigants. Defense counsel have objected to offers of compromise or moved to strike offers of compromise, on the basis that the plaintiff has not produced sufficient medical records. Defense counsel often demand nearly all medical records in existence, well-beyond what is required by our rules of discovery. The requests often ask for records dating back well more than 10 years, or records on issues completely unrelated to the litigation. This practice requires courts to intervene to interpret the statute. See, e.g. Weth v. New Fairfield Family Practice, DBDCV095007125S; Downs v. Trias, X10UWYCV075009295S.

The proposed changes to the statute would not only be consistent with the stated purpose of Offers of Compromise, but would also provide incentive for all counsel to move through the discovery process more expeditiously and efficiently. Faced with a one-year deadline to assess a case for purposes of filing, accepting or rejecting an offer of compromise, counsel on both sides should be motivated to obtain and exchange relevant information to allow both sides to evaluate the merits of the case. When discovery progresses efficiently, cases are better prepared and may be resolved earlier, whether by acceptance of an offer of compromise or by traditional settlement discussions.

CTLA respectfully requests that you SUPPORT SENATE BILL 1207.

S-618

CONNECTICUT
GEN. ASSEMBLY
SENATE

PROCEEDINGS
2011

VOL. 54
PART 7
2086-2336

rgd/md/gbr
SENATE

151
May 20, 2011

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

THE CHAIR:

All members have voted. All members have voted. The machine will be locked. Mr. Clerk, will you call the tally.

THE CLERK:

Motion is passage of Senate Bill 1057.

Total Number voting 33

Necessary for adoption 17

Those voting Yea 31

Those voting Nay 2

Those absent and not voting 3

THE CHAIR:

The bill has been passed.

Mr. Clerk.

THE CLERK:

Calendar Number 406, File 666, Senate

Bill 1207, AN ACT CONCERNING OFFERS OF COMPROMISE,
favorable report of the Committee on Judiciary.

Clerk is in possession of amendments.

THE CHAIR:

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SENATE

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Senator Coleman.

SENATOR COLEMAN:

Thank you very much, Madam President.

I move acceptance of the joint committee's favorable report and passage of the bill.

THE CHAIR:

Acting on approval of the bill, will you remark?

SENATOR COLEMAN:

Thank you, Madam President.

This is a bill that seeks to facilitate pretrial settlements of civil matters. And there is an amendment, LCO 6773, which at this time I ask the Clerk to call.

THE CHAIR:

Mr. Clerk.

THE CLERK:

LCO 6773, which is designated Senate Amendment Schedule "A." It is offered by Senator Coleman of the second District, et al.

THE CHAIR:

Senator Coleman.

SENATOR COLEMAN:

I move adoption of the amendment, Madam

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SENATE

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May 20, 2011

President.

THE CHAIR:

The question is on adoption.

Will you remark?

SENATOR COLEMAN:

Madam President, the underlying bill establishes a period of one year in order for discovery in a personal injury matter to take place. At the conclusion of that one-year period the plaintiff in the action would be authorized to extend an offer of compromise.

What this amendment does is to provide that 60 days after the offer of compromise is extended, the defendant would have an opportunity to respond to that offer of compromise.

I think the amendment makes the bill a better bill and provides a fair opportunity for both sides to engage in meaningful settlement discussions regarding a personal injury matter. And consequently I would ask the members of the Senate to support this amendment.

Thank you, Madam President.

THE CHAIR:

Thank you, Senator Coleman.

rgd/md/gbr
SENATE

154
May 20, 2011

Will you remark? Will you remark? Seeing
none, all in favor of amendment, Senate Amendment

"A," please say, aye.

SENATORS:

Aye.

THE CHAIR:

Thank you. Opposed?

It has now been adopted.

Senator Coleman.

SENATOR COLEMAN:

Thank you, Madam President.

The bill as amended would provide that in personal injury actions the parties have a period of one year in order to engage in any discovery that's desired. At the conclusion of that one-year period the plaintiff may offer or extend an offer of compromise, and 60 days after the receipt of such an offer the defendant may indicate that they accept or they could reject the offer.

If the 60 days expires without any response from the defendant, that would be interpreted as a rejection of the offer and that offer would not be available to the defendant unless refiled by the plaintiff.

rgd/md/gbr
SENATE

155
May 20, 2011

I think the amendment again, makes a good bill better. I would urge support for the bill as amended.

THE CHAIR:

Will you remark further?

Senator Kissel.

SENATOR KISSEL:

Thank you very much, Madam President.

I also rise to support the bill. My understanding, that the bill, even prior to being admitted, came out unanimously last year from the Judiciary Committee. For a variety of reasons it never actually passed into law .

And I agree with Senator Coleman's indication that the amendment probably makes a good bill even better. And I would urge my colleagues to support the measure.

Thank you.

THE CHAIR:

Thank you very much.

Will you remark further? Will you remark further?

Senator Coleman, do you want to talk, please?

SENATOR COLEMAN:

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SENATE

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May 20, 2011

If there is no further discussion or remarks to be made, Madam President, I would move that this item be placed on our consent calendar.

THE CHAIR:

Seeing no objection, so ordered.

Thank you, sir.

Mr. Clerk.

THE CLERK:

Calendar page 33, Calendar Number 213, File Number 335, Senate Bill 1040, AN ACT CONCERNING VOCATIONAL TECHNICAL SCHOOLS, favorable report of the Committees on Education and Finance Revenue and Bonding.

THE CHAIR:

Senator Stillman.

SENATOR STILLMAN:

Thank you, Madam President.

I move the joint committee's favorable report and adoption of the bill.

THE CHAIR:

Acting on approval of the bill, will you remark further?

SENATOR STILLMAN:

Yes. Thank you, Madam.

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SENATE

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May 20, 2011

THE CLERK:

An immediate roll call has been ordered in the Senate on the third consent calendar. Will all Senators please return to the Chamber. Immediate roll call has been ordered in the Senate on the third consent calendar. Will all Senators please return to the Chamber.

Madam President, the third consent calendar begins on calendar page 12, Calendar 406, Senate Bill 1207; calendar page 21, Calendar Number 498, House Bill 5184; calendar page 27, Calendar Number 78, Senate Bill -- calendar -- (inaudible) Calendar Number 35 -- correction, page 27, Calendar Number 78, Senate Bill Number 35.

SB1040

And on page 33, Calendar 213, Senate Bill 1040.

Madam President, that completes those items placed on the third consent calendar.

THE CHAIR:

Mr. Clerk, would you please call and announce another roll call. The machines will be open.

THE CLERK:

The Senate is now voting by roll call on the third consent calendar. Will all Senators please

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SENATE

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May 20, 2011

return to the Chamber. The Senate is now voting by roll call on the third consent calendar. Will all Senators please return to the Chamber.

THE CHAIR:

Senator Williams, will you vote, please?

Thank you, sir. Thank you.

Okay let's go. Thank you.

All members voted. All members voted. The machines will be locked. Mr. Clerk, will you call that tally.

THE CLERK:

Motion is adoption of third consent calendar.

Total Number voting	33
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Necessary for adoption	17
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Those voting Yea	33
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Those voting Nay	0
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Those absent and not voting	3
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THE CHAIR:

The consent calendar has now been adopted.

Senator Looney.

SENATOR LOONEY:

Yes. Thank you, Madam President.

Would yield the floor at this point for members for announcements or points of personal