

Legislative History for Connecticut Act

PA 14-37

HB5338

House	743-747	5
Senate	2245-2268	24
Judiciary	1740-1741, 1747-1748, <u>1790</u>	5
		34

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**CONNECTICUT
GENERAL ASSEMBLY
HOUSE**

**PROCEEDINGS
2014**

**VOL.57
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mhr
HOUSE OF REPRESENTATIVES

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April 9, 2014

vote in the affirmative and take a tally.

And will the Clerk please announce the tally.

THE CLERK:

Bill Number, House Bill 5149.

Total number voting 143

Necessary for passage 72

Those voting Yea 143

Those voting Nay 0

Absent, not voting 6

SPEAKER SHARKEY:

The bill passes; next bill.

Will the Clerk please call Calendar Number 52.

THE CLERK:

Yes, Mr. Speaker.

On page 7, Calendar Number 52, Favorable Report of the, of the joint standing Committee on Judiciary, House Bill 5338, AN ACT CONCERNING THE ADMISSIBILITY OF RECORDS AND REPORTS OF CERTAIN EXPERT WITNESSES AS BUSINESS ENTRIES.

SPEAKER SHARKEY:

Representative Matt Ritter of the 1st District; you have the floor, sir.

REP. RITTER (1st):

Thank you, Mr. Speaker.

I move acceptance of the joint committee's Favorable Report and passage of bill.

SPEAKER SHARKEY:

The question is on acceptance of the joint committee's Favorable Report and passage of the bill.

Will you remark, sir?

REP. RITTER (1st):

Yes, Mr. Speaker.

This bill does two things. One is it changes the admissibility rules for certain physicians in certain civil cases, and it also adds the definition of health care providers, by adding mental health workers and social workers to the record of admissibility rules other doctors do.

Mr. Speaker, thank you.

SPEAKER SHARKEY:

Thank you, sir.

Do you care to remark further on the bill before us?

Representative Rebimbas.

REP. REBIMBAS (70th):

Thank you, Mr. Speaker. Good afternoon.

SPEAKER SHARKEY:

Good afternoon, madam.

REP. REBIMBAS (70th):

I rise in support of the legislation that's before us, certainly for what the Vice Chair Ritter had just highlighted.

But it was a technical error in the drafting that prevented out-of-state medical records from being submitted, whereas previously they were, just as if the, just as the in-state medical records were submitted, so this does correct that.

And it also expands on the definition of what a medical provider is, and it's certainly very appropriate to expand that definition to include mental health providers as well as social workers. So I do stand in support of the legislation before us.

SPEAKER SHARKEY:

Thank you, madam.

Would you care to remark? Would you care to remark further on the bill that is before us?

If not, staff and guests to the Well of the House. Members take your seats. The machine will be open.

THE CLERK:

The House of Representatives is voting by roll.

The House of Representatives is voting by roll. Will

members please return to the Chamber immediately.

SPEAKER SHARKEY:

If all the members voted; have all the members voted?

Will the members please check the board to make sure your vote is properly cast. Members please check the board to make sure your vote is properly cast.

If all the members have voted, the machine will be locked.

Representative Molgano? Representative Molgano, how do you wish to have your vote recorded?

REP. MOLGANO (144th):

Yea.

SPEAKER SHARKEY:

Yea; will the Clerk please indicate Representative Molgano is an affirmative.

Representative Arce, for what reason do you rise? If you, if you can hit your button, sir. For what reason?

REP. ARCE (4th):

Voting Yea.

SPEAKER SHARKEY:

Will the Clerk please indicate Representative Arce wishes to be counted in the affirmative.

And will the Clerk please take a tally.

The Clerk please announce the tally.

THE CLERK:

House Bill 5338.

Total number voting 144

Necessary for passage 73

Voting Yea 139

Voting Nay 5

Absent and not voting 5

SPEAKER SHARKEY:

The bill passes.

Will the Clerk please call Calendar Number 82.

THE CLERK:

On page 9, Calendar Number 82, Favorable Report of the joint standing Committee on Government Administration and Elections, Substitute House Bill 5125, AN ACT LIMITING ACCESS TO CERTAIN INFORMATION REGARDING PROHIBITION (sic) OFFICERS UNDER THE FREEDOM OF INFORMATION ACT.

SPEAKER SHARKEY:

The distinguished GAE Chairman, Representative Jutila; you have the floor, sir.

REP. JUTILA (37th):

Thank you, Mr. Speaker.

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Senator Gerratana.

SENATOR GERRATANA:

Madam President, if there's no objection, I would
like to move this item to Consent?

THE CHAIR:

Seeing no objections, so ordered.

Mr. Clerk.

THE CLERK:

On page 5, Calendar 298, Substitute for Senate
Bill Number 470, AN ACT CONCERNING A STUDY OF THE
ADMINISTRATIVE COST TO COLLECT TAXES AND FEES.
favorable report of the Committee on Finance.

THE CHAIR:

Senator Looney.

SENATOR LOONEY:

Thank you, Madam President. That item might be
passed temporarily.

THE CHAIR:

So ordered.

Mr. Clerk.

THE CLERK:

On page 7, Calendar 333, House Bill Number 5338,
AN ACT CONCERNING THE ADMISSIBILITY OF RECORDS
AND REPORTS OF CERTAIN EXPERT WITNESSES AS
BUSINESS ENTRIES, favorable report of the
Committee on Judiciary.

THE CHAIR:

Good Evening, Senator Coleman.

SENATOR COLEMAN:

Good evening, Madam President. I move acceptance of the joint committee's favorable report and passage of the bill.

THE CHAIR:

Motion is on acceptance and passage. Will you remark, sir?

SENATOR COLEMAN:

Thank you, Madam President. Madam President, this bill would merely provide that the reports, records and bills generated by certain professionals who are out of state may be admitted into evidence as business entries in actions for personal injury as well as death. I urge passage of the bill in concurrence with the House, Madam President.

THE CHAIR:

Will you remark? Will you remark?

Senator Kissel.

SENATOR KISSEL:

Thank you very much, Madam President. Just a few questions through you to the proponent of the bill.

THE CHAIR:

Please proceed, sir.

SENATOR KISSEL:

Thank you very much. My first question is is why are we moving forward with this legislation? What was the genesis of it?

Through you, Madam President.

THE CHAIR:

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Senator Coleman.

SENATOR COLEMAN:

Madam President, Senator Kissel may recall during the activity during the committee process, it was reported at public hearing that inadvertently when the statute in question was modified inadvertently, it applied only to in-state healthcare professionals and not out-of-state professionals.

Through you, Madam President.

THE CHAIR:

Senator Kissel.

SENATOR KISSEL:

Thank you very much, and exactly what records does the bill contemplate changing the rules regarding? Through you, Madam President.

THE CHAIR:

Senator Coleman.

SENATOR COLEMAN:

Through you, Madam President, reports regarding treatment as well as bills that -- bills that were generated in connection with such treatment.

Through you, Madam President to Senator Kissel.

THE CHAIR:

Senator Kissel.

SENATOR KISSEL:

Thank you very much.

And this is for personal injury and what other kinds of civil matters?

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Through you, Madam President.

THE CHAIR:

Senator Coleman.

SENATOR COLEMAN:

Madam President, wrongful death actions, through you, to Senator Kissel.

THE CHAIR:

Senator Kissel.

SENATOR KISSEL:

Thank you very much.

And through you, Madam President, would this be limited to automobile accidents or would it cover any kind of wrongful death and any kind of personal injury matter on the civil side?

Through you, Madam President.

THE CHAIR:

Senator Coleman.

SENATOR COLEMAN:

Any kind, Madam President, through you to Senator Kissel.

THE CHAIR:

Senator Kissel.

SENATOR KISSEL:

Thank you very much. Now, we had just debated rules of evidence basically creating a committee that would be established by the Chief Justice to create rules of evidence. Is this in the area where we've aggregated the authority to ourselves

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and we're weighing in on rules of evidence?

Through you, Madam President.

THE CHAIR:

Senator Coleman.

SENATOR COLEMAN:

Madam President, that would be the case and I think during the course of that debate, I think we arrived at the conclusion that if the legislature chose to weigh in on an aspect of evidence that it could do so and that all entities involved including Supreme Court, Superior Court would have to abide by the Legislator's action -- Legislature's action.

Through you, Madam President.

THE CHAIR:

Senator Kissel.

SENATOR KISSEL:

Thank you very much.

And it was my understanding that we had reserve rights to ourselves regarding rules of evidence if, in our opinion, there were matters of public policy and I'm just wondering what the overarching matters of public policy are regarding this particular proposal.

Through you, Madam President.

THE CHAIR:

Senator Coleman.

SENATOR COLEMAN:

I would say, Madam President, through you to Senator Kissel, that the matter of public policy in question here would be the convenience and the

efficiency of advancing the trial of any personal injury or wrongful death matter.

Through you, Madam President.

THE CHAIR:

Senator Kissel.

SENATOR KISSEL:

Thank you very much and so, it's my understanding that the proposal would treat these medical records as a business entry. Is that through -- correct?

Through you, Madam President.

THE CHAIR:

Senator Coleman.

SENATOR COLEMAN:

That is correct, Madam President.

THE CHAIR:

Senator Kissel.

SENATOR KISSEL:

Thank you, very much. Madam President. What does that mean exactly as a business entry as opposed to some other form of evidence?

Through you, Madam President.

THE CHAIR:

Senator Coleman.

SENATOR COLEMAN:

Through you, Madam President, based on my limited knowledge and understanding, a business entry would be a report or record that would be

prepared in the ordinary course of business of a particular professional, held in the files at the office of that professional, and business entry - - or business records are generally felt -- self-authenticating in a court of law so long as they're signed by the business professional that offered the record or the bill.

Through you, Madam President.

THE CHAIR:

Senator Kissel.

SENATOR KISSEL:

Thank you, very much. And for those who may be watching on CTN and for the -- for the edification of our colleagues, when the good Chairman of the Judiciary Committee says "self-authenticating," what does that mean exactly, self-authenticating?

Through you, Madam President.

THE CHAIR:

Senator Coleman.

SENATOR COLEMAN:

Madam President, I just used the expression, I wasn't intending to say I knew what it meant. But I'll take a stab at it. Self-authenticating means that it is -- well, in this case it wouldn't be considered hearsay and it would be an item that would be when presented to the court after the laying of a certain foundation, would be admitted into evidence -- would be admissible into evidence.

Through you, Madam President.

THE CHAIR:

Senator Kissel.

SENATOR KISSEL:

Thank you, very much. Now it's my understanding that federal law -- there's the HIPAA Act, Health Information Protection Act which has certain protections for individuals regarding their health records. Would that essentially trump the release of this information in a court setting?.

Through you, Madam President.

THE CHAIR:

Senator Coleman.

SENATOR COLEMAN:

Based on my understanding, again, it would.

Through you, Madam President.

THE CHAIR:

Senator Kissel.

SENATOR KISSEL:

Thank you very much. So, would the individual need to give their permission for the use of these records in a court proceeding?

Through you, Madam President.

THE CHAIR:

Senator Coleman.

SENATOR COLEMAN:

Madam President, I'm not entirely certain. This scenario would be the records would probably be requested by the plaintiff in the action and consequently, I think the issue of consent would probably be moved.

Through you, Madam President.

THE CHAIR:

Senator Kissel.

SENATOR KISSEL:

Thank you, very much. Well, for example, in a wrongful death matter where the recipient of let's say end-of-life treatment, let's say -- let's say there's an accident in Danbury and the individual resided in New York and was transported to a hospital in the New York area and so the medical records are there in New York, let's say New York City, and after a few days the person that was in the accident dies. So who would have the right to sign off for those records getting into a court-action here in Connecticut?

Through you, Madam President.

THE CHAIR:

Senator Coleman.

SENATOR COLEMAN:

Through you, Madam President, I would venture that it would be either the administrator or the executor of the deceased person's estate.

THE CHAIR:

Senator Kissel.

SENATOR KISSEL:

Thank you very much and would that estate probably be in the state of New York or would that estate be in Connecticut?

Through you, Madam President.

THE CHAIR:

Senator Coleman.

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SENATOR COLEMAN:

Thank you, Madam President. In all likelihood, that estate would be wherever the deceased person resided or was domiciled.

Through you, Madam President.

THE CHAIR:

Senator Kissel.

SENATOR KISSEL:

Thank you very much. And does the creation of an estate such that there would be an individual in charge of the medical records, does that typically take a long time?

Through you, Madam President.

THE CHAIR:

Senator Coleman.

SENATOR COLEMAN:

Madam President, through you, I'm -- I'm pretty certain it would vary depending upon whatever issues may arise during the probate of a will, if there is a will, or the appointment of an administrator.

It may take a short time, it may take a long time.

Through you, Madam President.

THE CHAIR:

Senator Kissel.

SENATOR KISSEL:

Thank you very much. So let's say a plaintiff's attorney -- well, the plaintiff's attorney would be the one representing the estate in this

example. Would that be correct?

Through you, Madam President.

THE CHAIR:

Senator Coleman.

SENATOR COLEMAN:

That would be correct.

Through you, Madam President.

THE CHAIR:

Senator Kissel.

SENATOR KISSEL:

Thank you very much. . And so, regarding the medical records themselves, I believe in a previous answer, Senator Coleman had indicated there need to be -- needs to be a signature on these records; is that correct?

Through you Madam President.

THE CHAIR:

Senator Coleman.

SENATOR COLEMAN:

Bills would have to be signed. Reports would have to be signed. That is correct.

Through you, Madam President.

THE CHAIR:

Senator Kissel.

SENATOR KISSEL:

Thank you very much, and who would typically sign bills?

Through you, Madam President.

THE CHAIR:

Senator Coleman.

SENATOR COLEMAN:

Whoever -- whoever made the bill would typically sign the bill.

Through you, Madam President.

THE CHAIR:

Senator Kissel.

SENATOR KISSEL:

Thank you very much. And is there any basis that the signature would have to be done under oath or it would -- it could merely be whoever is keeping the books at the hospital or -- or anybody who's a -- an administrator at the hospital.

Through you, Madam President.

THE CHAIR:

Senator Coleman.

SENATOR COLEMAN:

There is no requirement that the signature be signed under oath. The only -- only real requirements are that the record be generated in the ordinary course of the professional's business, that they be signed and be held in the files of the professional's office.

Through you, Madam President.

THE CHAIR:

Senator Kissel.

SENATOR KISSEL:

Thank you very much. And is it defined somewhere what the ordinary course of business actually is?

Through you, Madam President.

THE CHAIR:

Senator Coleman.

SENATOR COLEMAN:

Madam President, I'm sure it is. It's not in this bill, though.

Through you, Madam President

THE CHAIR:

Senator Kissel.

SENATOR KISSEL:

Thank you very much. And regarding the medical records as opposed to the bills, would that have to be signed by the physician or APRN or whoever provided the medical treatment or again could someone who's an administrator in a -- let's say it's a hospital, be able to sign off on those treatment records.

Through you, Madam President.

THE CHAIR:

Senator Coleman.

SENATOR COLEMAN:

Through you, Madam President, it would have to be signed by the professional rendering treatment or any employee of that professional's office.

Through you, Madam President.

THE CHAIR:

Senator Kissel.

SENATOR KISSEL:

Thank you very much. And would a copy of a signature be sufficient such as if the information was faxed to the attorney or if it was a copy of a medical record that had previously been signed by a physician.

Through you, Madam President.

THE CHAIR:

Senator Coleman.

SENATOR COLEMAN:

Madam President, I don't know the answer to that. Through you.

THE CHAIR:

Senator Kissel.

SENATOR KISSEL:

Thank you very much. If one were to try to get an answer to that, would one probably go to a code of evidence?

Through you Madam President.

THE CHAIR:

Senator Coleman.

SENATOR COLEMAN:

Madam President, I don't know the answer to that either.

Through you.

THE CHAIR:

Senator Kissel.

SENATOR KISSEL:

Thank you very much. And through you, Madam President, do other states have similar rules regarding evidence regarding these matters such that we would be acting in concert with other states so that it's a similar practice?

Through you, Madam President.

THE CHAIR:

Senator Coleman.

SENATOR COLEMAN:

Madam President, it is my understanding that other states have very similar provisions regarding the entry of business records during the course of legal proceedings in court rooms.

Through you, Madam President.

THE CHAIR:

Senator Kissel.

SENATOR KISSEL:

Thank you very much. And so when -- assuming that this law passes, would -- what's the effective date of this?

Through you, Madam President.

THE CHAIR:

Senator Coleman.

SENATOR COLEMAN:

The effective date would be in the bill, which I don't have in front of me.

Through you, Madam President.

THE CHAIR:

Senator Coleman -- I mean Senator Kissel, sorry.

SENATOR KISSEL:

Thank you very much, Madam President. And through you, do we have other areas of evidence that we accept from out-of-state where upon receipt of that evidence and a signature, that we accept it as evidence in our courts?

Through you, Madam President.

THE CHAIR:

Senator Coleman.

SENATOR COLEMAN:

I don't know for certain, Madam President, I can't think of any off the top of my head.

Through you.

THE CHAIR:

Senator Kissel.

SENATOR KISSEL:

Thank you very much. And -- and why are we carving out just personal injury and wrongful death matters as opposed to so many other areas where there could be litigation in the state of Connecticut and there would have to be records obtained from, for example, New York or Massachusetts or Rhode Island.

Through you, Madam President.

THE CHAIR:

Senator Coleman.

SENATOR COLEMAN:

Through you, Madam President, my suspicion is that personal injury and wrongful death matters are carved out in this bill because those kinds of matters are typically the kinds of matters where reports and records from Healthcare professionals are required in order to prove damages in those kinds of actions.

Through you, Madam President.

THE CHAIR:

Senator Kissel.

SENATOR KISSEL:

Thank you very much. And through you, Madam President, I know that we have another bill out there that we'll get to eventually, that has to do with mediation, typically in a matter where there's uninsured, underinsured insurance that might be available and would this law -- proposal -- bill proposal, should it become law, apply to a mediation or an arbitration as well as litigation.

Through you, Madam President.

THE CHAIR:

Senator Coleman.

SENATOR COLEMAN:

Madam President, I think that's well beyond the scope of this bill, and when such a bill comes over my desk and I study it, I may be prepared to answer that question.

Through you, Madam President.

THE CHAIR:

Senator Kissel.

SENATOR KISSEL:

Thank you very much. Well it's -- it strikes me and I -- I'm hoping that this bill would actually apply to mediations and arbitrations because we strive to have those be an expeditious and efficient way to resolve a dispute quite often regarding personal injury matters or wrongful death, and again we're talking about matters that may occur on the borders such that treatment might be given either in Connecticut or outside the state -- probably outside the state, but somehow the records have to be obtained from outside the state. Would this bill, through you, Madam President, apply to both State-Superior Court actions as well as State-Federal Court actions or is it limited to State-Superior Court actions?

Through you, Madam President.

THE CHAIR:

Senator Coleman.

SENATOR COLEMAN:

Through you, Madam President, our state statutes are applicable to the State-Court actions.

Through you.

THE CHAIR:

Senator Kissel.

SENATOR KISSEL:

Thank you very much. Can the -- through you, Madam President, does the Senator recall because I'm having difficulty myself recalling from the public hearing whether there was testimony either in favor of this or opposed to this? I can't recall any opposition, but I'm just wondering if there's -- was any testimony in support.

Through you, Madam President.

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THE CHAIR:

Senator Coleman.

SENATOR COLEMAN:

Madam President, I don't recall any opposition to
the bill.

THE CHAIR:

Senator Kissel.

SENATOR KISSEL:

Thank you very much. I appreciate the Senator
for his answers to my questions. Happy to
support the bill.

THE CHAIR:

Thank you.

Will you remark further? Will you remark
further?

Senator Welch.

SENATOR WELCH:

Thank you, Madam President. I do have a couple
questions for the proponent of the bill, if I
may, through you.

THE CHAIR:

Please proceed, sir.

SENATOR WELCH:

Thank you, Madam President.

The first question I have really is one of timing
and that is I noticed the statutes that we're
seeking to amend now, some of them date back to
the 70's and, through you, Madam President, why
is it that we're addressing this issue today? I

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can perceive that this -- if it was an issue today, it probably was an issue 10 years ago, 20 years ago, 30 years ago. Is there a particular circumstance that brought this issue to the committee's attention?

Through you, Madam President.

THE CHAIR:

Senator Coleman.

SENATOR COLEMAN:

Through you, Madam President, it's my understanding that there was some modification that was made to the statute relatively recently and it was somebody's oversight not to include out-of-state professionals under the purview of the bill.

Through you, Madam President.

THE CHAIR:

Senator Welch.

SENATOR WELCH:

Thank you, Madam President.

And then I guess the next question I have really highlights one of my concerns in how this bill is drafted. When prior to the bill we have before us, we have a statute and that statute has, I think, narrowly tailored definitions as to the experts that we're going to allow their documents to come into our courts as business records which I think is of great significance. And it ties -- the definitions are tied to the expert by referencing their statutory authorities in chapters 370, 376, 375, et cetera. I see the problem that presents. The problem that presents is you have to be a licensed doctor, dentist, what have you, in the state of Connecticut and so there's a bit of a quandary there. But nonetheless, when you lose those -- those

statutory confines as it were, that we used to define those terms, I think we open ourselves up to maybe some interpretations that we might not want. And I think that leads me to the question that I'd like to ask Senator Coleman and that is what do we mean when we say mental health professional? I think looking at the history of this statute, one might be able to ascertain what we mean by a doctor and dentist because at least in one point in time, they were carefully defined by tying them into our practice acts. We don't have the benefit of that with respect to a social worker or a mental health professional. I don't see a definition in here so, maybe perhaps for the purposes of legislative intent, for all those who might be looking at this statute down the road, Senator Coleman might be able to tell us, not only what a mental -- what we mean by mental health professional, but also by social worker.

Through you, Madam President.

THE CHAIR:

Senator Coleman.

SENATOR COLEMAN:

Thank you, Madam President. Through you to Senator Welch, I would guess that mental health professional might include psychiatrist, psychologist, substance abuse counselor, and social worker. It might include a professional who is involved with maybe counseling in terms of social issues and social relationships.

Through you, Madam President.

THE CHAIR:

Senator Welch.

SENATOR WELCH:

Thank you, Madam President.

I appreciate -- appreciate that answer and I

guess I hope maybe down the road we might be able to -- to tighten these a little bit because of if, for whatever reason, I found myself arguing over this statute and I see that we've define psychologist and psychiatrist and yet we have another term saying mental health professional I would be arguing probably that it means something other than that. . So, I -- I - I guess I struggle with this bill, Madam President. The other reason why I struggle with it I think is one of policy that it think we just adopted not too long ago and Senator Kissel referenced that and I thank the good senator for his answers. And that is we just essentially asked the Supreme Court of Connecticut to take the first stab at all changes to our rules of evidence or code of evidence. Rules or code. I'm sure someone will correct me later. And -- and I think that's probably a good policy and I think the fact that we are now here just days later saying well, hang on, even though we want the Supreme Court to kind of give a first pass at the policy, and how things should be working in our courtrooms because they're probably a lot closer to it than we are. Now we're saying well, with exception of this one issue, we've got this and so we're going to take care of this ourselves. So, I will be voting no today, Madam President. Not that I think this is a horrible idea, I think we just need to tighten it up some more and I think it's just a little bit inconsistent with the policy that we've put forward just a day before today. Thank you, Madam President.

THE CHAIR:

Thank you. Will you remark?

Senator Fasano.

SENATOR FASANO:

Thank you, Madam President. Madam President, I - - I agree with Senator Welch that I think that we have sort of -- what I think it's a very interesting issue whether or not the Legislative Branch can create rules relative to the Judicial

Branch. The Separation of Power comes to mind and I haven't really been able to distinguish whether or not the legislature actually has that ability, but nevertheless, it's been the practice of the legislature to do that from time to time. But we really do is have -- we have two regulatory authorities. We let the courts do some rules, we do some rules and then when we don't like some of the rules, we pass laws to change the rules, and the problem with that is I don't know who's guiding the ship and it's a very interesting question. I'm going to support the bill that's here today. But I think that we should determine whether or not we want to dabble our hands in that area or let the legislature or let the Judiciary Branch determine their rules as they are a separate power. I don't think the Judiciary Branch could determine our rules, they can interpret them, but they cannot promulgate them. The question is how can we do it, therefore? So, Madam President, I'm going to support the bill but I think it's a very interesting question that Senator Welch has brought up. It's been brought up in a few essays that I've read online on this issue as I became more interested. So, with that Madam President, I thank you.

THE CHAIR:

Thank you.

Will you remark? Will you remark?

If not, Mr. Clerk will you please call for a roll call vote. The machine will be open.

THE CLERK:

Immediate roll call has been ordered in the Senate. Immediate roll call has been ordered in the Senate.

THE CHAIR:

Senator Guglielmo.

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If all members have voted, all members have voted, the machine will be closed.

Mr. Clerk will you please call the tally?

THE CLERK:

House bill 5338.

Total number voting 35

Those voting Yea 28

Those voting Nay 7

Absent not voting 1

THE CHAIR:

The bill passes.

Senator Looney.

SENATOR LOONEY:

Thank you, Madam President. Madam President, for a couple of additional markings. First of all, Madam President, calendar page 11, Calendar 390, Senate Bill 80, previously marked go, should be marked pass retaining its place on the calendar and a couple of additional go's, Madam President, to be added to the -- the end of the queue of the list -- bills we've listed so far, calendar page 33, Calendar 97, Senate Bill 46 and calendar page 3, Calendar 187, Senate Bill 426. And Madam President, if the next item that might be called would be calendar page 7, Calendar 335, House Bill 5149, to be followed by calendar page 9, Calendar 348 and calendar page 10, Calendar 349.

THE CHAIR:

Mr. Clerk.

THE CLERK:

On page 7, Calendar 335, House Bill Number 5149,

**JOINT
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HEARINGS**

**JUDICIARY
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disposal, asking for every shred of paper, hard copy or electronic, that are very invasive and intrusive and, essentially, cover the whole gamut of a client's business. I just think that that's wrong. I think that that's an abuse of the process, and I would imagine that, you know, the requesting party would always retain the argument, as well, to go in and say that what they're doing is reasonable and necessary and that there would be a negotiation on the other side about the extent of their reimbursement and what's reasonable to be reimbursed. But what I'm asking for is a hand, thumb -- maybe more than a thumb -- on the scale in favor of the people that we represent and the people that live in this state and the people that are asked to do these things in service of disputes out of state that have nothing to do with them. Thank you.

SENATOR COLEMAN: Any others with questions or comments?

Seeing none, thank you very much for your testimony.

JIM BUDINEZ: Thank you, Mr. Chair.

SENATOR COLEMAN: Doug Mahoney is next.

DOUG MAHONEY: Good morning, members of the committee, Representative Fox, Senator Coleman, I'm Doug Mahoney. I'm president of the Connecticut Trial Lawyers Association. I practice in Bridgeport, and I live in Newtown. And I'm here to testify on behalf of a few different bills. First is House Bill 5338. You may recall that two years ago we had -- we addressed the issue of the admissibility of medical bills, and we passed Public Act 12-142. And when we passed 12-142, two years ago, and the bill went down to the LCO, the language was

HB 5450
HB 5340

changed so that it changed the language of the statute, so now out-of-state medical records and out-of-state medical bills are no longer admissible in Connecticut automatically under the business records exception. It was, I think, a technical error that no one intended. For decades out-of-state medical records and medical bills have been admissible in Connecticut and when the language went to LCO, apparently, we didn't catch it. I'm not sure anyone caught it, but it was certainly never the intention of it. So this bill seeks to correct that error.

And what it also does is it adds the definition of healthcare providers, social workers, and mental health workers. The idea being that these are the folks with some of the lowest paid healthcare providers we have in Connecticut, and rather than pulling them away from their patients and their care for a few hours to answer business records exception questions -- three questions, let's just let their records go in automatically like we do podiatrists and osteopaths and optometrists, et cetera. So that's what the bill seeks to do. We hope it's not controversial. We hope it makes sense, so we support that bill.

The second bill that we support is Raised Bill 5450. If -- anyone who does car accident cases in Connecticut knows that if you cannot resolve the car accident case down at the courthouse, every PJ will say to the lawyers involved, Look, can you folks get rid of this through a binding arbitration. And you make the high, the policy limits; and you make the low, zero; and you resolve the case through binding arbitration.

Whenever that happens, it's with the agreement of the plaintiff's lawyer and the insurance

DOUG MAHONEY: There is no obligation to the UIM carrier, but what happens is I can collect my 20 from the insurance company and now I can go after the individual for the 10,000 overage, I can go after their house, I can go after their wages, I can go after their -- because I've got a judgment against him, there's no high in a trial. So it's not good for insurers, I mean, it's not good -- if insurance companies are interested in protecting their insureds that's not a good situation.

REP. G. FOX: Okay. Well, thank you for the explanation and --

SENATOR COLEMAN: Representative O'Dea.

REP. O'DEA: Thank you, Mr. Chairman.

DOUG MAHONEY: Good morning, Representative O'Dea.

HB 5338
REP. O'DEA: Just a follow-up on the admitting social workers' and mental health workers' records into evidence beyond subpoena. As a defense lawyer, I can tell you that causes me to a pause, because I've had cases where a social worker will write in a report, clear brain injury caused by the motor vehicle accident that was a rear-ender and they didn't claim any injuries at the time of the accident. I think, virtually, every defense lawyer has seen those records, and so -- so in order for those to come in, you got to dispose the social worker, and I can then elicit testimony that social worker has never diagnosed a brain injury or been allowed to diagnose a brain injury. So, in fact, I just had that happen recently. So in this -- in your proposal, would those records be allowed to come in in that scenario?

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DOUG MAHONEY: Yeah. I think they'd still be able to come in, like, for example, I can just subpoena the record keeper from the social worker agency, so I can still get them in as a business record, in your -- you wouldn't have the opportunity in that case to question the person, you could still subpoena the worker and say, hey, how could you conclude this is a brain injury, this makes no sense at all. So under this -- our proposal the records would just come in without having to bring in the record keeper get the social worker. You could still call in that social worker and say, what did you -- how did you come to this, this is crazy. And you'd still have the full opportunity to cross-examine the social worker, take the social worker's deposition, bring it to trial, whatever is, you know, you can get for your case.

REP. O'DEA: So this proposal is just simply to avoid the subpoena stage for business records exceptions?

DOUG MAHONEY: Correct. It is the same thing we do with any other, you know, a chiropractor comes up with a wacky opinion, an optometrist comes up with a wacky opinion, it's just the record goes in without the formality of the thing. You can still bring in the chiropractor and challenge him on their wacky opinion.

REP. O'DEA: Thank you for your testimony.

Thank you, Mr. Chair.

REP. G. FOX: Thank you.

Are there other questions for Attorney Mahoney?

No, thank you very much.



150 Trumbull Street, 2nd Floor
 Hartford, CT 06103
 p) 860 522 4345 f) 860 522 1027
www.cttriallawyers.org

Raised Bill 5338
Public Hearing: 3-5-14

TO: MEMBERS OF THE JUDICIARY COMMITTEE
 FROM: CONNECTICUT TRIAL LAWYERS ASSOCIATION (CTLA)
 DATE: MARCH 5, 2014

RE: **SUPPORT OF HB5338, AAC THE ADMISSABILITY OF RECORDS AND
 REPORTS OF CERTAIN EXPERT WITNESSES AS BUSINESS ENTRIES**

HB 5338 addresses two issues. First it seeks to correct an unintended consequence of Public Act 12-142, section 3. The purpose of Public Act 12-142, section 3 was to make clear that in a personal injury case, the full amount of the medical bills for the person who was injured could be admitted in to evidence. However, when the final language of Public Act 12-142 was drafted by the LCO, language was inserted allowing only the medical bills and records of Connecticut health care providers could be admitted into evidence.

This was an error that was simply not caught. For decades the records and bills of out of state physicians have been admissible in Connecticut courts in the same fashion as are the records and bills of in state physicians. There is no reasonable basis to distinguish between in state and out of state providers. Unfortunately, the change in language was not caught until after passage.

HB5338 would simply return the language of Connecticut General Statutes Section 52-174 to where it was with regard to out of state providers. It was never the intention of anyone when passing Public Act 12-142 to no longer allow out of state records and bills into evidence.

The second purpose of HB5338 is to add to the definition of health care providers those records that can be admitted under Connecticut General Statutes Section 52-174. HB5338 would add to the definition the records of social workers and mental health workers.

Social workers and mental health workers are among our lowest paid and most overworked health care providers. They frequently work in the clinic setting. Under present law, in order to put their records into evidence, the party seeking admission of the records needs to issue a subpoena for the social worker or health care worker to come to court simply to authenticate their records. This pulls them away from their practices and their patients who need them.

HB5338 would allow any party to a lawsuit to put the records into evidence of a health care worker or social worker without issuing a subpoena as we do with any other medical provider under Section 52-174. There is no logical basis to treat these people differently from other providers such as natureopaths, chiropractors and optometrists whose records are allowed into evidence without their presence in court.

WE STRONGLY URGE YOU TO SUPPORT HB5338. Thank you.