



General Assembly

February Session, 2006

Raised Bill No.

593

LCO No. 2308



Referred to Committee on

JUDICIARY

Introduced by:

(JUD)

**AN ACT CONCERNING OFFERS OF COMPROMISE AND OFFERS OF JUDGMENT.**

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

1 Section 1. Subsection (b) of section 52-192a of the 2006 supplement  
2 to the general statutes is repealed and the following is substituted in  
3 lieu thereof (*Effective October 1, 2006, and applicable to offers of compromise*  
4 *filed on or after said date*):

5 (b) In the case of any action to recover damages resulting from  
6 personal injury or wrongful death, [whether in tort or in contract, in  
7 which it is alleged that such injury or death resulted from the  
8 negligence of a health care provider,] an offer of compromise pursuant  
9 to subsection (a) of this section shall state with specificity all damages  
10 then known to the plaintiff or the plaintiff's attorney upon which the  
11 action is based. At least sixty days prior to filing such an offer, the  
12 plaintiff or the plaintiff's attorney shall provide the defendant or the  
13 defendant's attorney with an authorization to disclose medical records  
14 that meets the privacy provisions of the Health Insurance Portability  
15 and Accountability Act of 1996 (P.L. 104-191) (HIPAA), as amended  
16 from time to time, or regulations adopted thereunder, and disclose any

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LEGISLATIVE REFERENCE SECTION

17 and all expert witnesses who will testify as to the prevailing  
 18 professional standard of care. The plaintiff shall file with the court a  
 19 certification that the plaintiff has provided each defendant or such  
 20 defendant's attorney with all documentation supporting such  
 21 damages.

22 Sec. 2. Section 52-194 of the 2006 supplement to the general statutes  
 23 is repealed and the following is substituted in lieu thereof (*Effective*  
 24 *October 1, 2006, and applicable to offers of compromise filed on or after said*  
 25 *date*):

26 In any action, the plaintiff may, [within sixty] not later than ten days  
 27 after being notified by the defendant of the filing of an offer of  
 28 compromise, file with the clerk of the court a written acceptance of the  
 29 offer signed by the plaintiff or the plaintiff's attorney agreeing to settle  
 30 the underlying action for the sum certain specified in the defendant's  
 31 offer of compromise. Upon the filing of the written acceptance and  
 32 receipt by the plaintiff of such sum certain, the plaintiff shall file a  
 33 withdrawal of the action with the clerk of the court and the clerk shall  
 34 record the withdrawal of the action against the defendant accordingly.  
 35 No trial may be postponed because the period within which the  
 36 plaintiff may accept the offer has not expired, except at the discretion  
 37 of the court.

38 Sec. 3. (*Effective from passage*) Sections 52-192a to 52-195, inclusive, of  
 39 the general statutes, revision of 1958, revised to January 1, 2005, shall  
 40 be applicable to any cause of action accruing prior to October 1, 2005.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>October 1, 2006, and applicable to offers of compromise filed on or after said date</i>	52-192a(b)

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Sec. 2	<i>October 1, 2006, and applicable to offers of compromise filed on or after said date</i>	52-194
Sec. 3	<i>from passage</i>	New section

**Statement of Purpose:**

To amend provisions concerning offers of compromise and offers of judgment to provide that: (1) Notice of damages and expert witnesses and authorization to disclose medical records be required in all actions, rather than in only actions alleging negligence of a health care provider as is currently provided, (2) in any civil action, the plaintiff shall be required to file an acceptance of an offer of compromise not later than ten days after the offer is filed, rather than sixty days after the offer is filed as is currently provided, and (3) to clarify that the offer of judgment provisions in effect prior to the effective date of public act 05-275 are applicable to actions accruing before October 1, 2005.

*[Proposed deletions are enclosed in brackets. Proposed additions are indicated by underline, except that when the entire text of a bill or resolution or a section of a bill or resolution is new, it is not underlined.]*

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# Senate

General Assembly

**File No. 451**

February Session, 2006

Substitute Senate Bill No. 593

*Senate, April 10, 2006*

The Committee on Judiciary reported through SEN. MCDONALD of the 27th Dist., Chairperson of the Committee on the part of the Senate, that the substitute bill ought to pass.

## **AN ACT CONCERNING THE APPLICABILITY OF OFFERS OF JUDGMENT.**

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

- 1 Section 1. (NEW) (*Effective from passage*) Sections 52-192a to 52-195,  
2 inclusive, of the general statutes, revision of 1958, revised to January 1,  
3 2005, shall be applicable to any cause of action accruing prior to  
4 October 1, 2005.

This act shall take effect as follows and shall amend the following sections:

Section 1	<i>from passage</i>	New section
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**JUD** Joint Favorable Subst.

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The following fiscal impact statement and bill analysis are prepared for the benefit of members of the General Assembly, solely for the purpose of information, summarization, and explanation, and do not represent the intent of the General Assembly or either House thereof for any purpose:

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***OFA Fiscal Note***

***State Impact:*** None

***Municipal Impact:*** None

***Explanation***

The bill clarifies that the offer of judgment provisions in effect prior to the effective date of public act 05-275 are applicable to actions accruing before October 1, 2005. There is no associated fiscal impact.

***The Out Years***

***State Impact:*** None

***Municipal Impact:*** None

**OLR Bill Analysis****sSB 593*****AN ACT CONCERNING THE APPLICABILITY OF OFFERS OF JUDGMENT.*****SUMMARY:**

This bill specifies that the offer of judgment law that was replaced by the offer of compromise law in 2005 applies to any cause of action accruing before October 1, 2005. The offer of compromise law applies to any cause of action that accrues on or after October 1, 2005. In general, a cause of action accrues when the right to file a law suit on a claim is complete.

PA 05-275, which became effective October 1, 2005, changed the "offer of judgment" law in several ways, including changing the terminology to "offer of compromise" and ending the process in a withdrawal of the lawsuit after payment, instead of after a judgment against the defendant.

Also PA 05-275 reduces the interest rate the court may award with respect to an offer of compromise for cases that accrue after September 30, 2005, from 12% to 8%, and established some additional requirements for such cases.

EFFECTIVE DATE: Upon passage

**BACKGROUND*****Contract Cases or Cases Seeking Money Judgments***

By law, in any contract case or a case seeking money damages, plaintiffs and defendants can use a statutory procedure to offer to settle the case for a specified amount. This was called an "offer of judgment"; the 2005 act changed the term to "offer of compromise."

Both allow the plaintiff to file an offer with the court clerk up to 30 days before trial. After trial, the court must examine the record to determine whether the plaintiff made an offer that the defendant failed to accept. Under the prior offer of judgment law, if it determined that the plaintiff recovered an amount equal to or greater than the sum stated in his offer of judgment, the court had to add 12% annual interest. A defendant had 60 days to file an acceptance of the offer with the court clerk. If he notified the clerk that he accepted the offer, the clerk had to enter judgment.

The 2005 act reduces the interest the court must add from 12% to 8% for claims that accrue after September 30, 2005. It prohibits the plaintiff from making the offer for at least 180 days after service of process on the defendant. It gives the defendant 30, instead of 60, days to accept.

Under the act, if the defendant accepts the offer, he must file his acceptance with the court clerk. After the plaintiff receives the amount specified in the offer from the defendant, he must file a withdrawal of the lawsuit with the clerk, which the clerk must record. Thus, no judgment is entered against the defendant.

Under the old law and the 2005 act, defendants may also file an offer with the court clerk up to 30 days before trial. The plaintiff has 10 days after being notified of the defendant's offer to accept it. If the plaintiff recovers less than the offer of judgment, he must pay the defendant's costs accruing after he received the offer, including reasonable attorney's fees up to \$350.

The 2005 act gives the plaintiff 60 days to accept the defendant's offer, instead of 10. After the plaintiff files an acceptance of an offer to compromise with the clerk and receives the amount specified in the offer, he must file a withdrawal of the lawsuit with the clerk, who must record.

**Medical Malpractice Cases**

The 2005 act requires that, in medical malpractice cases, a plaintiff's offer of compromise must specify all damages known to him or his

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attorney when the offer is made. At least 60 days before filing the offer, the plaintiff or his attorney must provide the defendant or his attorney with an authorization to disclose medical records that meets federal privacy provisions under the 1996 federal Health Insurance Portability and Accountability Act (HIPAA), and disclose all expert witnesses who will testify about the prevailing professional standard of care. The plaintiff must file with the court a certification that he has provided each defendant or his attorney with all supporting documentation.

**COMMITTEE ACTION**

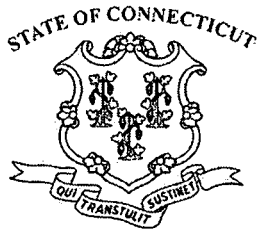
Judiciary Committee

Joint Favorable Substitute

Yea 38    Nay 2    (03/27/2006)

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SECTION





General Assembly

February Session, 2006

[SENATE] Amendment [A. 7]

LCO No. 4122



Offered by:  
SEN. MCDONALD, 27<sup>th</sup> Dist.

To: Subst. Senate Bill No. 593

File No. 451

Cal. No. 334

**"AN ACT CONCERNING THE APPLICABILITY OF OFFERS OF JUDGMENT."**

1 After the last section, add the following and renumber sections and  
2 internal references accordingly:

3 "Sec. 501. Section 52-184d of the 2006 supplement to the general  
4 statutes is repealed and the following is substituted in lieu thereof  
5 (*Effective from passage*):

6 (a) For the purposes of this section:

7 (1) "Health care provider" means a provider, as defined in  
8 subsection (b) of section 20-7b, or an institution, as defined in section  
9 19a-490, as amended, and includes a health care institution or facility  
10 operated by the state;

11 (2) "Relative" means a victim's spouse, parent, grandparent,  
12 stepfather, stepmother, child, grandchild, brother, sister, half brother,  
13 half sister or spouse's parents, and includes such relationships that are

14 created as a result of adoption and any person who has a family-type  
15 relationship with a victim;

16 (3) "Representative" means a legal guardian, attorney, health care  
17 agent or any person recognized in law or custom as a patient's agent;  
18 and

19 (4) "Unanticipated outcome" means the outcome of a medical  
20 treatment or procedure that differs from an expected result.

21 (b) In any civil action brought by an alleged victim of an  
22 unanticipated outcome of medical care, or in any arbitration  
23 proceeding related to such civil action, any and all statements,  
24 affirmations, gestures or conduct expressing apology, fault, sympathy,  
25 commiseration, condolence, compassion or a general sense of  
26 benevolence that are made by a health care provider or an employee of  
27 a health care provider to the alleged victim, a relative of the alleged  
28 victim or a representative of the alleged victim and that relate to the  
29 discomfort, pain, suffering, injury or death of the alleged victim as a  
30 result of the unanticipated outcome of medical care shall be  
31 inadmissible as evidence of an admission of liability or as evidence of  
32 an admission against interest."

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SENATE AMENDMENT

Calendar: 334

LCO: 4/20

Bill: 513

A

ADOPTED voice  REJECTED voice

ADOPTED roll  REJECTED roll

# REPORT ON BILLS FAVORABLY REPORTED BY COMMITTEE

**COMMITTEE:** Judiciary Committee

**File No.:**

**Bill No.:** SB-593

**PH Date:** 3/24/2006

**Action/Date:** JFS 3/27/06

**Reference Change:**

**TITLE OF BILL:**

AN ACT CONCERNING OFFERS OF COMPROMISE AND OFFERS OF JUDGMENT.

**SPONSORS OF BILL:**

Sen. McDonald, 27<sup>th</sup> District  
Insurance Association of Connecticut (IAC)  
Connecticut Trial Lawyers Association (CTLA)

**REASONS FOR BILL:**

Legislation last year repealed the offer of judgment statute effective 10/1/05. However, the new language regarding the offer of compromise only applies to actions accruing on or after the effective date of 10/1/05. This means that all actions accruing before 10/1/05 do not fall under the new statute. However, since the old offer of judgment section is repealed, there is no law under which one could file an offer of judgment on those actions accruing before the effective date.

**SUBSTITUTE LANGUAGE:** Deletes the bill and replaces it with language that specifies sections 52-192a to 52-195, inclusive, are applicable to any cause of action accruing prior to October 1, 2005.

**RESPONSE FROM ADMINISTRATION/AGENCY:**

Nothing submitted

**NATURE AND SOURCES OF SUPPORT:**

Connecticut Conference of Municipalities - This bill 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.

IAC - We support section 1 and 2 of this bill. The changes made to CGS section 52-192a by P.A. 05-275 should be expanded so that all civil actions are treated equally. The problem these changes addressed, access to information so that a fair assessment of the offer can be made, and 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. We strongly urge you to amend this section to include all such civil actions.

Section 2 of this bill 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. Section 3 reduces the meaningful reforms of P.A. 05-275. 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?

#### **NATURE AND SOURCES OF OPPOSITION:**

Douglas P. Mahoney, CTLA - We support Section 3 of this bill as it simply confirms the intent of the legislature when passing Public Act 05-275. However, we object to sections 1 and 2 of this bill, which make substantive changes to the offer of judgment statute which is unnecessary or harmful to injured citizens of Connecticut. (addressed in substitute language)

Section 1 of the bill would extend the pre-filing requirements applying to medical malpractice 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. 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.

Also, the 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 this bill is even more puzzling. Why reduce the time limit for the plaintiff to accept the offer of judgment from sixty days to ten days? 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.

Diana Caliendo

Sarah Kolb

3/30/06

Reported by

Date

CONNECTICUT  
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**JUDICIARY COMMITTEE  
VOTE TALLY SHEET**

**Bill No.:** SB-593

**Amendment Letter:**

AN ACT CONCERNING OFFERS OF COMPROMISE AND OFFERS OF JUDGMENT.

**Chair:** MCDONALD, A.

**Motion:** MCDONALD, A.

**Second:** STAPLES, C.

**Action:** Joint Favorable Substitute

**Language Change:** Proposed Substitute

TOTALS	Voting	Yea	Nay	Abstain	Absent and Not Voting	Voice Vote
	40	38	2	0	1	

	yea	nay	abstain	absent		yea	nay	abstain	absent
Sen. McDonald, A. S27	X				Rep. McMahon, F. 015	X			
Rep. Lawlor, M. 099	X				Sen. Meyer, E. S12	X			
Sen. Handley, M. S04	X				Rep. Michele, R. 077	X			
Rep. Spallone, J. 036	X				Rep. Olson, M. 046	X			
Sen. Kissel, J. S07	X				Rep. O'Neill, A. 069		X		
Rep. Farr, R. 019	X				Rep. Powers, C. 151	X			
Rep. Barry, R. 012	X				Sen. Roraback, A. S30	X			
Rep. Berger, J. 073	X				Rep. Rowe, T. 123	X			
Rep. Cafero, L. 142	X				Rep. Serra, J. 033	X			
Rep. Candelaria, J. 095	X				Rep. Staples, C. 096	X			
Sen. Cappiello, D. S24		X			Rep. Stone, C. 009	X			
Sen. Coleman, E. S02	X				Rep. Walker, T. 093	X			
Rep. Dillon, P. 092	X				Rep. Winkler, L. 041	X			
Rep. Doyle, P. 028	X								
Rep. Dyson, W. 094	X								
Rep. Fox, G. 146	X								
Rep. Fritz, M. 090				X					
Rep. Geragosian, J. 025	X								
Rep. Giegler, J. 138	X								
Rep. Godfrey, B. 110	X								
Sen. Gomes, E. S23	X								
Rep. Gonzalez, M. 003	X								
Rep. Green, K. 001	X								
Rep. Hamm, G. 034	X								
Rep. Hamzy, W. 078	X								
Rep. Hovey, D. 112	X								
Rep. Klarides, T. 114	X								
Rep. Labriola, D. 131	X								

Vote date: 3/27/2006 4:30:00 PM

Correction date: