

2009-2010 Regular Sessions

I N S E N A T E

(PREFILED)

January 7, 2009

Introduced by Sen. KRUGER -- read twice and ordered printed, and when printed to be committed to the Committee on Codes

AN ACT to amend the civil practice law and rules, in relation to limiting the amount of awards in medical malpractice lawsuits; and to amend the insurance law, in relation to establishing the excess medical malpractice liability fund

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 Section 1. The civil practice law and rules is amended by adding a new
2 article 50-C to read as follows:

3 ARTICLE 50-C

4 LIMITATION ON DAMAGE AWARDS IN MEDICAL MALPRACTICE LAWSUITS

5 SECTION 5051. DEFINITIONS.

6 5052. LIMITATION ON DAMAGE AWARDS.

7 S 5051. DEFINITIONS. AS USED IN THIS ARTICLE:

8 1. "NONECONOMIC DAMAGES" MEANS NONPECUNIARY DAMAGES ARISING FROM PAIN,
9 SUFFERING, INCONVENIENCE, PHYSICAL IMPAIRMENT OR DISFIGUREMENT, MENTAL
10 ANGUISH, EMOTIONAL DISTRESS, LOSS OF SOCIETY AND COMPANIONSHIP, LOSS OF
11 CONSORTIUM, INJURY TO REPUTATION, HUMILIATION AND ALL OTHER NONPECUNIARY
12 DAMAGES.

13 2. "ACTUAL ECONOMIC DAMAGES" MEANS OBJECTIVELY VERIFIABLE PECUNIARY
14 DAMAGES ARISING FROM MEDICAL EXPENSES AND MEDICAL CARE, LOSS OF EARNINGS
15 AND EARNING CAPACITY, BURIAL COSTS, LOSS OF USE OF PROPERTY, LOSS OF
16 GUIDANCE, COSTS OF REPAIR OR REPLACEMENT OF PROPERTY, COSTS OF OBTAINING
17 SUBSTITUTE DOMESTIC SERVICES, LOSS OF EMPLOYMENT, LOSS OF BUSINESS OR
18 EMPLOYMENT OPPORTUNITIES, REHABILITATION SERVICES, CUSTODIAL CARE AND
19 ALL OTHER PECUNIARY DAMAGES.

20 3. "PERSONAL INJURY ACTION" MEANS ANY ACTION, INCLUDING BUT IN NO
21 MANNER LIMITED TO MEDICAL, DENTAL AND PODIATRIC MALPRACTICE ACTIONS,

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets
[] is old law to be omitted.

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1 WHETHER IN TORT, CONTRACT OR OTHERWISE, IN WHICH THE PLAINTIFF SEEKS
2 DAMAGES FOR INJURY TO THE PERSON OR WRONGFUL DEATH.

3 4. "COMPENSATION AWARD" MEANS THE TOTAL AMOUNT OF NONECONOMIC DAMAGES
4 AND ACTUAL ECONOMIC DAMAGES AWARDED TO A PREVAILING PLAINTIFF.

5 S 5052. LIMITATION ON DAMAGE AWARDS. IN ANY PERSONAL INJURY ACTION,
6 THE PREVAILING PLAINTIFF OR PERSON WHO CLAIMS INJURY BY OR THROUGH SUCH
7 INJURED PLAINTIFF SHALL NOT RECEIVE A COMPENSATION AWARD WHICH EXCEEDS:
8 (I) THE TOTAL AMOUNT OF THE MEDICAL MALPRACTICE POLICY HELD BY THE
9 DEFENDANT; OR (II) THE SUM OF THE TOTAL AMOUNT OF THE MEDICAL MALPRAC-
10 TICE POLICIES HELD BY THE DEFENDANTS, IN CASES OF JOINT LIABILITY.

11 S 2. The insurance law is amended by adding a new section 5518 to read
12 as follows:

13 S 5518. EXCESS MEDICAL MALPRACTICE LIABILITY FUND. 1. THERE IS HEREBY
14 ESTABLISHED THE EXCESS MEDICAL MALPRACTICE LIABILITY FUND TO PROVIDE FOR
15 THE PAYMENT OF CLAIMS OF LIABILITY RELATED TO LOSS, DAMAGE, OR EXPENSE
16 INCIDENT TO SUCH CLAIMS ARISING OUT OF THE DEATH OR INJURY OF ANY PERSON
17 DUE TO MEDICAL, DENTAL, PODIATRIC, CERTIFIED NURSE-MIDWIFERY OR HOSPITAL
18 MALPRACTICE BY ANY LICENSED PHYSICIAN, DENTIST, PODIATRIST, CERTIFIED
19 NURSE-MIDWIFE, CERTIFIED REGISTERED NURSE ANESTHETIST OR HOSPITAL.

20 2. IN ACCORDANCE WITH REGULATIONS PRESCRIBED BY THE SUPERINTENDENT,
21 EACH INSURER PROVIDING POLICIES OF MEDICAL MALPRACTICE INSURANCE, AS
22 DEFINED IN SECTION FIVE THOUSAND FIVE HUNDRED ONE OF THIS ARTICLE, SHALL
23 REPORT EXCESS PROFIT, IF ANY, ON SUCH POLICIES TO THE DEPARTMENT. EXCESS
24 PROFIT SHALL BE A PROFIT BEYOND A PERCENTAGE RATE OF RETURN ON NET WORTH
25 ATTRIBUTABLE TO SUCH POLICIES, COMPUTED IN ACCORDANCE WITH REGULATIONS
26 PROMULGATED PURSUANT TO THE PROVISIONS OF ARTICLE TWENTY-THREE OF THIS
27 CHAPTER, AND DETERMINED BY THE SUPERINTENDENT TO BE SO FAR ABOVE A
28 REASONABLE AVERAGE PROFIT AS TO AMOUNT TO AN EXCESS PROFIT, TAKING INTO
29 CONSIDERATION THE FACT THAT LOSSES OR PROFITS BELOW A REASONABLE AVERAGE
30 PROFIT WILL NOT BE RECOUPED FROM THE POLICYHOLDERS.

31 3. THE SUPERINTENDENT SHALL DIRECT THAT EXCESS PROFIT AS DETERMINED IN
32 ACCORDANCE WITH SUBSECTION TWO OF THIS SECTION SHALL BE DEPOSITED INTO
33 THE EXCESS MEDICAL MALPRACTICE LIABILITY FUND ESTABLISHED BY SUBSECTION
34 ONE OF THIS SECTION.

35 4. THE SUPERINTENDENT SHALL HAVE JURISDICTION OVER THE EXCESS MEDICAL
36 MALPRACTICE LIABILITY FUND AND SHALL PROMULGATE REGULATIONS TO PROVIDE
37 FOR THE PROCESSING OF APPLICABLE CLAIMS AND FOR THE DISTRIBUTION OF THE
38 FUNDS AVAILABLE PURSUANT TO THIS SECTION.

39 S 3. This act shall take effect on the one hundred eightieth day after
40 it shall have become a law and shall apply to actions and policy periods
41 commenced on or after such effective date; provided, however, that
42 effective immediately, the addition, amendment and/or repeal of any rule
43 or regulation necessary for the implementation of this act on its effec-
44 tive date are authorized and directed to be made and completed on or
45 before such effective date.