

2009-2010 Regular Sessions

I N   S E N A T E

(PREFILED)

January 7, 2009

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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.