S T A T E O F N E W Y O R K

1183

2009-2010 Regular Sessions

I N A S S E M B L Y

(PREFILED)

January 7, 2009

Introduced by M. of A. SEMINERIO -- read once and referred to the Committee on Judiciary

AN ACT to amend the civil practice law and rules, in relation to damages for non-economic loss in personal injury actions against public entities

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

Section 1. Section 105 of the civil practice law and rules is amended by adding a new subdivision (r-1) to read as follows:

(R-1) PUBLIC ENTITY. THE TERM "PUBLIC ENTITY" MEANS THE STATE, A COUNTY, CITY, TOWN, OR VILLAGE, A PUBLIC UNIVERSITY, BOARD OF EDUCATION, COMMUNITY SCHOOL BOARD, BOARD OF COOPERATIVE EDUCATIONAL SERVICES, OR SCHOOL DISTRICT, A FIRE DISTRICT, VOLUNTEER FIRE DEPARTMENT OR FIRE COMPANY, A PUBLIC HOSPITAL, CLINIC, HEALTH CENTER, OR HOSPITALS CORPORATION, A PUBLIC AUTHORITY, A PUBLIC BENEFIT CORPORATION, OR ANY OFFICER, AGENT OR EMPLOYEE OF A PUBLIC ENTITY.

S 2. The civil practice law and rules is amended by adding a new article 17 to read as follows:

ARTICLE 17
LIABILITY OF PUBLIC ENTITIES

SECTION 1700. DEFINITIONS.
1701. LIMITED LIABILITY OF PUBLIC ENTITIES.

S 1700. DEFINITIONS. AS USED IN THIS ARTICLE THE TERM "NON-ECONOMIC LOSS" INCLUDES BUT IS NOT LIMITED TO PAIN AND SUFFERING, MENTAL ANGUISH, LOSS OF CONSORTIUM OR OTHER DAMAGES FOR NON-ECONOMIC LOSS.

S 1701. LIMITED LIABILITY OF PUBLIC ENTITIES. NOTWITHSTANDING ANY OTHER PROVISION OF LAW, IN ANY ACTION AGAINST A PUBLIC ENTITY FOR

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

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PERSONAL INJURY, INCLUDING INJURY RESULTING IN DEATH, EXCEPT AN ACTION BASED UPON AN INTENTIONAL TORT, THE FOLLOWING LIMITATIONS SHALL APPLY:

1. THERE SHALL BE NO RIGHT TO RECOVER DAMAGES FOR NON-ECONOMIC LOSS FOR ANY INJURY, EXCEPT AN INJURY RESULTING IN DEATH, PERMANENT LOSS OF A BODILY FUNCTION, DISMEMBERMENT OR SIGNIFICANT DISFIGUREMENT, UNLESS THE FAIR AND REASONABLE VALUE OF ALL MEDICAL SERVICES THAT WERE, OR WITH REASONABLE CERTAINLY WILL BE, RENDERED IN TREATMENT OF AND ATTRIBUTABLE TO SUCH INJURY EQUALS OR EXCEEDS THE SUM OF FIVE THOUSAND DOLLARS, WHETHER OR NOT SUCH SUM WAS OR WILL BE PAID BY THE INJURED PERSON.

2. THERE SHALL BE NO RIGHT TO RECOVER DAMAGES FOR NON-ECONOMIC LOSS IN EXCESS OF TWO HUNDRED FIFTY THOUSAND DOLLARS.

3. EXCEPT AS OTHERWISE PROVIDED IN THIS SECTION, THE PROVISIONS OF THIS SECTION SHALL APPLY TO ALL CLAIMS BROUGHT AGAINST A PUBLIC ENTITY BY OR ON BEHALF OF THE INJURED PERSON OR DECEDENT, ALL DERIVATIVE CLAIMS BY THE SPOUSE OR OTHER FAMILY MEMBERS OF SUCH INJURED PERSON OR DECEDENT AND ALL CLAIMS FOR CONTRIBUTION OR COMMON-LAW INDEMNIFICATION, WHETHER BROUGHT IN THE SAME, OR ANOTHER, ACTION; PROVIDED, HOWEVER, THAT THE TOTAL AMOUNT OF DAMAGES FOR NON-ECONOMIC LOSS THAT MAY BE RECOVERED BY ALL SUCH CLAIMANTS, WHEN ADDED TOGETHER, SHALL NOT EXCEED THE LIMITATION SET FORTH IN SUBDIVISION TWO OF THIS SECTION.

S 3. This act shall take effect immediately and shall apply to all actions and proceedings pending on or commenced on or after such effective date.