

1883

2009-2010 Regular Sessions

I N A S S E M B L Y

January 14, 2009

Introduced by M. of A. CALHOUN -- Multi-Sponsored by -- M. of A. CROUCH
-- read once and referred to the Committee on Judiciary

AN ACT to amend the civil practice law and rules, in relation to setting certain limits on noneconomic damage awards for personal injury and wrongful death actions

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

1 Section 1. Legislative intent. The legislature of the state of New
2 York finds and declares that noneconomic damage awards for personal
3 injury and wrongful death are often arbitrary and bear little relation-
4 ship to the severity of the injury for which compensation is sought. The
5 purpose of this act is to set certain limitations on noneconomic damage
6 awards for personal injury and wrongful death actions. These limits
7 would not apply in cases where gross negligence is found by a court or
8 jury.

9 S 2. The civil practice law and rules is amended by adding a new arti-
10 cle 50-C to read as follows:

11 ARTICLE 50-C

12 LIMITATION ON DAMAGES, NONECONOMIC DAMAGES

13 SECTION 5051. DEFINITIONS.

14 5052. DAMAGE AWARDS.

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

16 1. "NONECONOMIC DAMAGES" MEANS SUBJECTIVE, NONPECUNIARY DAMAGES ARIS-
17 ING FROM PAIN, SUFFERING, INCONVENIENCE, PHYSICAL IMPAIRMENT OR DISFIG-
18 UREMENT, MENTAL ANGUISH, EMOTIONAL DISTRESS, LOSS OF SOCIETY AND COMPAN-
19 IONSHIP, LOSS OF CONSORTIUM, INJURY TO REPUTATION, HUMILIATION AND OTHER
20 NONPECUNIARY DAMAGES.

21 2. "ACTUAL ECONOMIC DAMAGES" MEANS OBJECTIVELY VERIFIABLE PECUNIARY
22 DAMAGES ARISING FROM MEDICAL EXPENSES AND MEDICAL CARE, LOSS OF EARNINGS
23 AND EARNING CAPACITY, BURIAL COSTS, LOSS OF USE OF PROPERTY, COSTS OF
24 REPAIR OR REPLACEMENT OF PROPERTY, COSTS OF OBTAINING SUBSTITUTE DOMES-

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

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1 TIC SERVICES, LOSS OF EMPLOYMENT, LOSS OF BUSINESS OR EMPLOYMENT OPPOR-
2 TUNITIES, REHABILITATION SERVICES, CUSTODIAL CARE AND OTHER PECUNIARY
3 DAMAGES.

4 3. "PERSONAL INJURY ACTION" MEANS ANY ACTION, WHETHER IN TORT,
5 CONTRACT, OR OTHERWISE, IN WHICH THE PLAINTIFF SEEKS DAMAGES FOR INJURY
6 TO THE PERSON OR WRONGFUL DEATH.

7 4. "COMPENSATION" MEANS MONETARY AWARDS.

8 S 5052. DAMAGE AWARDS. IN ANY PERSONAL INJURY ACTION, THE PREVAILING
9 PLAINTIFF MAY BE AWARDED:

10 1. COMPENSATION FOR ACTUAL ECONOMIC DAMAGES SUFFERED BY THE INJURED
11 PLAINTIFF; AND

12 2. COMPENSATION FOR NONECONOMIC DAMAGES SUFFERED BY THE INJURED PLAIN-
13 TIFF NOT TO EXCEED (A) TWO HUNDRED FIFTY THOUSAND DOLLARS, OR (B) THE
14 AMOUNT AWARDED IN ECONOMIC DAMAGES, OR (C) THE STATE AVERAGE ANNUAL WAGE
15 AS DETERMINED BY THE STATE DEPARTMENT OF TAXATION AND FINANCE, MULTI-
16 PLIED BY THE LIFE EXPECTANCY OF THE INJURED PLAINTIFF AS DETERMINED BY
17 THE COURT, MULTIPLIED BY 0.36, WHICHEVER AMOUNT IS GREATEST. THE TWO
18 HUNDRED FIFTY THOUSAND DOLLAR LIMITATION SHALL BE EFFECTIVE IMMEDIATELY
19 AND SHALL BE ADJUSTED ON JANUARY FIRST OF EACH SUBSEQUENT YEAR BY THE
20 INCREASE OR DECREASE IN THE UNITED STATES BUREAU OF LABOR STATISTICS
21 CONSUMER PRICE INDEX FOR ALL URBAN CONSUMERS FOR THE PRECEDING CALENDAR
22 YEAR. THIS PROVISION SHALL NOT APPLY WHERE A VERDICT OR DECISION OF A
23 COURT INVOLVES A FINDING OF WILLFUL, WANTON OR GROSS NEGLIGENCE AGAINST
24 THE RESPONSIBLE PARTY OR PARTIES.

25 S 3. This act shall take effect immediately and shall apply to all
26 causes of action which accrue on or after such date.