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

223

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

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

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

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

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

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

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

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

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