

4787

2011-2012 Regular Sessions

I N A S S E M B L Y

February 7, 2011

Introduced by M. of A. TITONE, LAVINE, ORTIZ, SPANO, ROSENTHAL, BENEDETTO, J. RIVERA, WEPRIN, MAISEL, SCHROEDER, CYMBROWITZ, PEOPLES-STOKES, PAULIN, LANCMAN, MILLMAN, MARKEY, KELLNER, DINOWITZ, CASTRO, MENG, AUBRY, O'DONNELL, COLTON, SCHIMEL, SCARBOROUGH, ZEBROWSKI, ROBINSON, JEFFRIES -- Multi-Sponsored by -- M. of A. BING, BOYLAND, BROOK-KRASNYY, BURLING, CALHOUN, CRESPO, CROUCH, DESTITO, ENGLEBRIGHT, GALEF, GIBSON, GLICK, JAFFEE, MAYERSOHN, McENENY, McKEVITT, MONTESANO, PHEFFER, PRETLOW, RAIA, RUSSELL, WRIGHT -- read once and referred to the Committee on Insurance

AN ACT to amend the insurance law, in relation to the definition of serious injury and determining the sufficiency of the evidence with respect thereto

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

1 Section 1. Subsection (d) of section 5102 of the insurance law, as
2 amended by chapter 955 of the laws of 1984, is amended to read as
3 follows:
4 (d) "Serious injury" means a personal injury which results in death;
5 dismemberment; significant disfigurement; a fracture; A PARTIAL OR
6 COMPLETE TEAR OR IMPINGEMENT OF A NERVE, TENDON, LIGAMENT, MUSCLE OR
7 CARTILAGE; INJURY TO ANY PART OF THE SPINAL COLUMN THAT RESULTS IN INJURY
8 TO AN INTERVERTEBRAL DISC; IMPINGEMENT OF THE SPINAL CORD, SPINAL
9 CANAL, NERVE, TENDON OR MUSCLE; loss of a fetus; permanent TOTAL OR
10 PARTIAL loss of use of a body organ, member, function or system; ANY
11 INJURY RESULTING IN THE NEED FOR A SURGICAL PROCEDURE; ANY permanent
12 consequential limitation of use of a body organ [or], member, FUNCTION
13 OR SYSTEM; ANY significant limitation of use of a body ORGAN, MEMBER,
14 function or system; or [a] ANY medically determined injury or impairment
15 of a PERMANENT OR non-permanent nature which prevents the injured person
16 from performing substantially all of the material acts which constitute
17 such person's usual and customary daily activities for not less than

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

LBD03019-02-1

1 ninety days during the one hundred eighty days immediately following the
2 occurrence of the injury or impairment. A FINDING OF SERIOUS INJURY
3 UNDER ANY OF THE ABOVE ENUMERATED CATEGORIES IN THIS DEFINITION SHALL BE
4 A SUFFICIENT BASIS FOR AN AWARD FOR PAST AND/OR FUTURE DAMAGES.

5 S 2. The insurance law is amended by adding a new section 5102-a to
6 read as follows:

7 S 5102-A. ISSUES OF FACT AND SUFFICIENCY OF THE EVIDENCE. WHETHER AN
8 INJURY QUALIFIES AS A SERIOUS INJURY PURSUANT TO SUBSECTION (D) OF
9 SECTION FIVE THOUSAND ONE HUNDRED TWO OF THIS ARTICLE SHALL BE A QUES-
10 TION OF FACT. WHERE EVIDENCE IS OFFERED AS TO (A) WHETHER AN INJURY
11 QUALIFIES AS A SERIOUS INJURY PURSUANT TO SUBSECTION (D) OF SECTION FIVE
12 THOUSAND ONE HUNDRED TWO OF THIS ARTICLE, OR (B) THE CAUSATION OF SUCH
13 AN INJURY, THE SUFFICIENCY AND WEIGHT OF EVIDENCE OFFERED, INCLUDING BUT
14 NOT LIMITED TO THAT PERTAINING TO QUALITATIVE AND/OR QUANTITATIVE
15 ASSESSMENT OF INJURY, SHALL BE RESERVED FOR THE TRIER OF FACT.

16 S 3. This act shall take effect immediately and shall be applicable
17 to: (i) all actions and proceedings commenced on or after the effective
18 date of this act; and (ii) all actions and proceedings commenced prior
19 to the effective date of this act and pending on the effective date of
20 this act, where as of such date a trial of the issues thereon has not
21 yet commenced and a dispositive motion has not yet been filed.