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

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-KRASNY, 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:

Section 1. Subsection (d) of section 5102 of the insurance law, as amended by chapter 955 of the laws of 1984, is amended to read as follows:

(d) "Serious injury" means a personal injury which results in death; dismemberment; significant disfigurement; a fracture; A PARTIAL OR COMPLETE TEAR OR IMPINGEMENT OF A NERVE, TENDON, LIGAMENT, MUSCLE OR CARTILAGE; INJURY TO ANY PART OF THE SPINAL COLUMN THAT RESULTS IN INJURY TO AN INTERVERTEBRAL DISC; IMPINGEMENT OF THE SPINAL CORD, SPINAL CANAL, NERVE, TENDON OR MUSCLE; loss of a fetus; permanent TOTAL OR PARTIAL loss of use of a body organ, member, function or system; ANY INJURY RESULTING IN THE NEED FOR A SURGICAL PROCEDURE; ANY permanent consequential limitation of use of a body organ [or], member, FUNCTION OR SYSTEM; ANY significant limitation of use of a body ORGAN, MEMBER, function or system; or [a] ANY medically determined injury or impairment of a PERMANENT OR non-permanent nature which prevents the injured person from performing substantially all of the material acts which constitute 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

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

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

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

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