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

637

2011-2012 Regular Sessions

I N S E N A T E

(PREFILED)

January 5, 2011

Introduced by Sen. GOLDEN -- 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 personal liability of obstetricians-gynecologists and midwives in certain cases, the qualifications of expert witnesses who testify in personal injury actions against such professionals, and the appeal of verdicts rendered therein; to amend the state finance law, in relation to establishing the impaired infant compensation fund; to amend the social services law, in relation to the eligibility of impaired infants for the cost of medical assistance; and to amend the public health law, in relation to professional misconduct and physician profiles

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

Section 1. The civil practice law and rules is amended by adding a new article 75-B to read as follows:

ARTICLE 75-B
LIABILITY FOR DAMAGES IN MEDICAL MALPRACTICE ACTIONS AGAINST OBSTETRICIANS-GYNECOLOGISTS AND MIDWIVES

SECTION 7580. DEFINITIONS.
7581. APPLICABILITY.
7582. LIMITATION ON LIABILITY.
7583. SETTLEMENT PROCEEDINGS.
7584. INSTRUCTIONS TO JURY.

S 7580. DEFINITIONS. AS USED IN THIS ARTICLE:

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

1. "PERSONAL INJURY ACTION" MEANS ANY MEDICAL MALPRACTICE ACTION ACCRUING PRIOR TO, ON, OR AFTER THE EFFECTIVE DATE OF THIS ARTICLE AGAINST AN ATTENDING PHYSICIAN OR MIDWIFE, OR ANY SUCH ACTION AGAINST A PROFESSIONAL SERVICES LIMITED LIABILITY COMPANY, A FOREIGN PROFESSIONAL SERVICES LIMITED LIABILITY COMPANY, A REGISTERED LIMITED LIABILITY PARTNERSHIP OR A NEW YORK REGISTERED FOREIGN LIMITED LIABILITY PARTNERSHIP ORGANIZED OR OPERATING PURSUANT TO THE PROVISIONS OF THE LIMITED LIABILITY LAW OR THE PARTNERSHIP LAW WHERE THE ATTENDING PHYSICIAN OR MIDWIFE HAS A MEMBERSHIP OR PARTNERSHIP INTEREST, OR IS AN EMPLOYEE, WHETHER SUCH ACTION IS ALLEGED IN TORT, CONTRACT, COMMON LAW, CASE LAW, STATUTE OR OTHERWISE, AND IN WHICH THE PLAINTIFF OR PLAINTIFFS SEEK NON-ECONOMIC AND/OR ACTUAL ECONOMIC DAMAGES AS A RESULT OF THE NEGLIGENCE OR OTHER MISCONDUCT OF THE ATTENDING PHYSICIAN OR MIDWIFE WHICH IS ALLEGED TO HAVE CAUSED AN INJURY TO AN INFANT PRIOR TO, DURING, OR IMMEDIATELY AFTER HIS OR HER BIRTH OR DELIVERY.

2. "ATTENDING PHYSICIAN" MEANS AN OBSTETRICIAN-GYNECOLOGIST OR A PHYSICIAN ENGAGED IN FAMILY PRACTICE WHOSE PROFESSIONAL LIABILITY INSURANCE CLASSIFICATION INCLUDES OBSTETRICS.

3. "MIDWIFE" MEANS A MIDWIFE WHO IS LICENSED UNDER THE PROVISIONS OF ARTICLE ONE HUNDRED FORTY OF THE EDUCATION LAW AND WHO HAS ENTERED INTO A WRITTEN AGREEMENT WITH AN ATTENDING PHYSICIAN AS PROVIDED FOR IN SECTION SIX THOUSAND NINE HUNDRED FIFTY-ONE OF SUCH ARTICLE.

4. "NON-ECONOMIC DAMAGES" MEANS SUBJECTIVE, NON-PECUNIARY DAMAGES ARISING FROM PAIN, SUFFERING, INCONVENIENCE, PHYSICAL IMPAIRMENT OR DISFIGUREMENT, MENTAL ANGUISH, EMOTIONAL DISTRESS, LOSS OF SOCIETY AND COMPANIONSHIP, LOSS OF CONSORTIUM, INJURY TO REPUTATION, HUMILIATION AND ANY OTHER NON-PECUNIARY DAMAGES, HOWEVER IDENTIFIED.

5. "ACTUAL ECONOMIC DAMAGES" MEANS OBJECTIVELY VERIFIABLE PECUNIARY DAMAGES ARISING FROM LOSS OF EARNINGS AND EARNING CAPACITY, BURIAL COSTS, AND ANY OTHER PECUNIARY DAMAGES HOWEVER IDENTIFIED PROVIDED, HOWEVER, THAT SUCH TERM SHALL NOT INCLUDE THE COST OF ANY MEDICAL CARE, TREATMENT OR SERVICES, INCLUDING CUSTODIAL CARE, WHICH MAY BE REQUIRED TO BE PROVIDED IN THE FUTURE TO ANY INJURED PLAINTIFF.

S 7581. APPLICABILITY. THE PROVISIONS OF THIS ARTICLE SHALL APPLY TO ALL CLAIMS FOR DAMAGES IN A PERSONAL INJURY ACTION RESULTING FROM THE NEGLIGENCE OR OTHER MISCONDUCT OF AN ATTENDING PHYSICIAN OR A MIDWIFE AT THE BIRTH OF AN INFANT, WHOSE NEGLIGENCE OR MISCONDUCT IS ALLEGED TO HAVE CAUSED INJURY TO AN INFANT PRIOR TO, DURING, OR IMMEDIATELY AFTER HIS OR HER BIRTH OR DELIVERY AND ALL OTHER CLAIMS, CROSS-CLAIMS, COUNTER-CLAIMS, AND CLAIMS FOR CONTRIBUTION AND INDEMNITY ARISING FROM SUCH CLAIM.

S 7582. LIMITATION ON LIABILITY. 1. IN ANY PERSONAL INJURY ACTION SUBJECT TO THE PROVISIONS OF THIS SECTION, WHERE THE DETERMINATION AS TO THE AMOUNT OF DAMAGES TO BE AWARDED TO A SUCCESSFUL PLAINTIFF OR PLAINTIFFS IS DETERMINED BY A JUDGE OR JURY UPON A VERDICT, THE PERSONAL LIABILITY OF THE ATTENDING PHYSICIAN OR MIDWIFE FOR NON-ECONOMIC DAMAGES AND ACTUAL ECONOMIC DAMAGES SUFFERED BY THE INJURED PLAINTIFF OR PLAINTIFFS, IN THE AGGREGATE, SHALL NOT EXCEED TWO HUNDRED FIFTY THOUSAND DOLLARS WHERE THE BOARD OF TRUSTEES OF THE IMPAIRED INFANT COMPENSATION FUND DETERMINES THAT THE AMOUNT IN EXCESS OF SUCH TWO HUNDRED FIFTY THOUSAND DOLLARS LIABILITY SHALL BE PAID PURSUANT TO SECTION EIGHTY-FOUR-B OF THE STATE FINANCE LAW. NO PART OF THE PERSONAL ASSETS OF ANY PHYSICIAN OR MIDWIFE WHICH EXCEEDS SUCH TWO HUNDRED FIFTY THOUSAND DOLLAR LIMITATION SHALL BE SUBJECT TO ANY JUDGMENT RENDERED IN AN ACTION WHERE THE EXCESS AMOUNT IS PAID BY THE FUND. WHERE THE VERDICT OF THE JUDGE OR JURY AWARDS DAMAGES IN AN AMOUNT WHICH EXCEEDS TWO HUNDRED

FIFTY THOUSAND DOLLARS, AND THE BOARD OF TRUSTEES OF SUCH FUND DETERMINES THAT SUCH EXCESS AMOUNT SHALL NOT BE PAYABLE FROM SUCH FUND, THERE SHALL BE NO LIMIT ON SUCH PHYSICIAN'S OR MIDWIFE'S LIABILITY AND SUCH VERDICT AS TO DAMAGES SHALL PROCEED FOR ASSESSMENT AND COLLECTION AS OTHERWISE PROVIDED BY LAW. EXCEPT AS AUTHORIZED IN SECTION SEVEN THOUSAND FIVE HUNDRED EIGHTY-THREE OF THIS ARTICLE, NO PART OF ANY AWARD WHETHER DEEMED PART OF THE PERSONAL LIABILITY OF THE ATTENDING PHYSICIAN OR MIDWIFE PAID FROM THE IMPAIRED INFANT COMPENSATION FUND SHALL INCLUDE ANY AMOUNT ATTRIBUTABLE TO MEDICAL CARE, TREATMENT OR SERVICES, INCLUDING CUSTODIAL CARE, WHICH MAY BE REQUIRED TO BE PROVIDED IN THE FUTURE TO ANY INJURED PLAINTIFF.

2. THE PROVISIONS OF SECTION SEVEN THOUSAND FIVE HUNDRED EIGHTY-THREE OF THIS ARTICLE SHALL APPLY TO ANY PERSONAL INJURY ACTION WHICH WOULD OTHERWISE BE SUBJECT TO THE PROVISIONS OF THIS ARTICLE WHERE THE DETERMINATION AS TO THE AMOUNT OF DAMAGES TO BE AWARDED IS MADE BY MUTUAL AGREEMENT OF THE PARTIES OR SETTLEMENT TO THE ACTION AGREED UPON PRIOR TO THE RENDERING OF A VERDICT BY THE JUDGE OR JURY.

S 7583. SETTLEMENT PROCEEDINGS. 1. THE PROVISIONS OF THIS SECTION SHALL APPLY TO ANY PERSONAL INJURY ACTION OTHERWISE SUBJECT TO THE PROVISIONS OF THIS ARTICLE WHERE THE DETERMINATION AS TO THE AMOUNT OF DAMAGES TO BE AWARDED IS MADE BY MUTUAL AGREEMENT OF THE PARTIES OR SETTLEMENT TO THE ACTION AGREED UPON AFTER COMMENCEMENT OF THE ACTION BUT PRIOR TO THE RENDERING OF A VERDICT BY JUDGE OR JURY.

2. IN ANY SUCH ACTION AS PROVIDED FOR IN SUBDIVISION ONE OF THIS SECTION, PRIOR TO THE RENDERING OF A VERDICT BY A JUDGE OR JURY, THE PARTIES TO THE ACTION MAY APPLY TO THE BOARD OF TRUSTEES OF THE IMPAIRED INFANT COMPENSATION FUND AND REQUEST SUCH BOARD TO INTERCEDE AND FULLY PARTICIPATE IN PROCEEDINGS TO DETERMINE THE AMOUNT OF DAMAGES TO BE AWARDED BY MUTUAL AGREEMENT OR SETTLEMENT. UPON FILING OF SUCH REQUEST, THE BOARD SHALL ASSIGN A DESIGNEE TO REPRESENT IT AND SUCH DESIGNEE SHALL, SUBJECT TO THE APPROVAL OF THE BOARD, BE EMPOWERED TO SO PARTICIPATE AND BE PRESENT AT ALL DISCUSSIONS APPERTAINING TO A SETTLEMENT. WITH THE AGREEMENT OF ALL THE PARTIES, THE COURT AND THE FUND, THE FUND MAY AGREE TO PAY A PLAINTIFF OR PLAINTIFFS AN AMOUNT IN THE AGGREGATE NOT TO EXCEED TWO MILLION FIFTY THOUSAND DOLLARS, OR WITH RESPECT TO A PROFESSIONAL SERVICES LIMITED LIABILITY COMPANY, A FOREIGN PROFESSIONAL SERVICES LIMITED LIABILITY COMPANY, A REGISTERED LIMITED LIABILITY PARTNERSHIP OR A NEW YORK REGISTERED FOREIGN LIMITED LIABILITY PARTNERSHIP SEVEN HUNDRED FIFTY THOUSAND DOLLARS, ABOVE THE TWO HUNDRED FIFTY THOUSAND DOLLAR LIMITATION PROVIDED FOR IN SECTION SEVEN THOUSAND FIVE HUNDRED EIGHTY-TWO OF THIS ARTICLE FOR THE PURPOSES OF SETTLING SUCH ACTION AND SUCH SETTLEMENT AMOUNT SHALL INCLUDE ACTUAL ECONOMIC DAMAGES AND NON-ECONOMIC DAMAGES INCLUDING MEDICAL TREATMENT CARE AND SERVICES INCLUDING CUSTODIAL CARE WHICH MAY BE REQUIRED TO BE PROVIDED IN THE FUTURE TO THE INJURED PLAINTIFF AND PROVIDED WHERE THE PLAINTIFF OR PLAINTIFFS AGREES TO ACCEPT SUCH SETTLEMENT AS OFFERED BY THE PARTIES AND THE FUND, HE SHALL BE DEEMED TO HAVE WAIVED ANY RIGHTS WHICH WOULD ACCRUE PURSUANT TO SECTION THREE HUNDRED SIXTY-NINE-NN OF THE SOCIAL SERVICES LAW, AND UPON EXECUTING SUCH SETTLEMENT AGREEMENT, HE SHALL BE INELIGIBLE FOR ANY BENEFITS THEREUNDER.

3. WHERE THE FUND MAKES PAYMENT PURSUANT TO THE TERMS OF THE SETTLEMENT IN THE AMOUNT AGREED UPON, THE TRUSTEES OF THE FUND SHALL REVIEW ALL PERTINENT MEDICAL RECORDS, INCLUDING ALL RECORDS, TESTIMONY AND EVIDENCE RELATING TO THE ACTION TO DETERMINE WHETHER THE NEGLIGENCE OR MISCONDUCT OF THE ATTENDING PHYSICIAN OR MIDWIFE WAS EGREGIOUS OR GROSSLY CONTRARY TO GENERALLY ACCEPTABLE MEDICAL STANDARDS. WHERE THE TRUSTEE

MAKES A DETERMINATION THAT AN ATTENDING PHYSICIAN'S OR MIDWIFE'S CONDUCT WAS EGREGIOUS OR GROSSLY CONTRARY TO ACCEPTABLE MEDICAL STANDARDS, NO PAYMENT FROM THE FUND FOR FUTURE CAUSES OF ACTION ACCRUING ON OR AFTER THE DATE OF THE BOARD'S DETERMINATION SHALL THEREAFTER BE MADE EXCEPT AS PROVIDED FOR IN PARAGRAPH (B) OF SUBDIVISION FOUR OF SECTION EIGHTY-FOUR-B OF THE STATE FINANCE LAW.

S 7584. INSTRUCTIONS TO JURY. IN ANY JURY TRIAL, PRIOR TO COMMENCING DELIBERATIONS IN A PERSONAL INJURY ACTION AGAINST AN ATTENDING PHYSICIAN OR MIDWIFE, THE COURT, UPON THE MOTION OF THE ATTORNEY FOR EITHER THE PLAINTIFF OR THE DEFENDANT OR UPON ITS OWN INITIATIVE, SHALL MAKE A DETERMINATION WHETHER THE PROCEEDING IS IN FACT SUBJECT TO THE PROVISIONS OF SECTION SEVEN THOUSAND FIVE HUNDRED EIGHTY-TWO OF THIS ARTICLE. IF SO DETERMINED IN THE AFFIRMATIVE, IT SHALL INSTRUCT THE JURY THAT IN DETERMINING THE AMOUNT OF THE ACTUAL ECONOMIC DAMAGES TO BE INCLUDED IN SUCH VERDICT, IF ANY, THEY MUST NOT INCLUDE ANY AMOUNT WHICH WOULD BE ATTRIBUTABLE TO MEDICAL CARE, TREATMENT OR SERVICES, INCLUDING CUSTODIAL CARE WHICH MAY BE REQUIRED TO BE PROVIDED IN THE FUTURE TO ANY INJURED PLAINTIFF AND IT SHALL FURTHER INFORM THEM OF THE APPLICATION OF TITLE ELEVEN-E OF ARTICLE FIVE OF THE SOCIAL SERVICES LAW.

S 2. The state finance law is amended by adding a new section 84-b to read as follows:

S 84-B. IMPAIRED INFANT COMPENSATION FUND. 1. THERE IS HEREBY ESTABLISHED IN THE CUSTODY OF THE STATE COMPTROLLER A FUND TO BE KNOWN AS THE IMPAIRED INFANT COMPENSATION FUND.

2. A BOARD OF TRUSTEES AS HEREIN CONSTITUTED SHALL ADMINISTER SUCH FUND. SUCH BOARD SHALL CONSIST OF NINE MEMBERS APPOINTED BY THE GOVERNOR, SIX OF WHOM SHALL BE BOARD CERTIFIED OBSTETRICIAN-GYNECOLOGISTS LICENSED TO PRACTICE SUCH SPECIALTY IN THIS STATE AND CURRENTLY ENGAGED IN ACTIVE PRACTICE IN SUCH SPECIALTY AT THE TIME OF THEIR APPOINTMENT. TWO MEMBERS SHALL BE APPOINTED UPON THE RECOMMENDATION OF THE TEMPORARY PRESIDENT OF THE SENATE, TWO MEMBERS SHALL BE APPOINTED UPON THE RECOMMENDATION OF THE SPEAKER OF THE ASSEMBLY, ONE MEMBER SHALL BE APPOINTED UPON THE RECOMMENDATION OF THE MINORITY LEADER OF THE SENATE AND ONE MEMBER SHALL BE APPOINTED UPON THE RECOMMENDATION OF THE MINORITY LEADER OF THE ASSEMBLY. THREE OF THE MEMBERS APPOINTED BY THE GOVERNOR (NOT UPON THE RECOMMENDATION OF A LEGISLATIVE LEADER) AND THE MEMBERS APPOINTED UPON THE RECOMMENDATION OF THE TEMPORARY PRESIDENT OF THE SENATE AND THE SPEAKER OF THE ASSEMBLY RESPECTIVELY, SHALL BE LICENSED AND CURRENTLY ENGAGED AS HEREINABOVE PROVIDED. THE GOVERNOR SHALL DESIGNATE ONE OF THE MEMBERS OF THE BOARD AS CHAIRPERSON. THE TERM OF OFFICE OF MEMBERS SHALL BE THREE YEARS, PROVIDED, HOWEVER, THAT OF THE MEMBERS FIRST APPOINTED, THREE SHALL BE APPOINTED FOR TERMS EXPIRING ON DECEMBER THIRTY-FIRST, TWO THOUSAND TWELVE, THREE SHALL BE APPOINTED FOR TERMS EXPIRING ON DECEMBER THIRTY-FIRST, TWO THOUSAND THIRTEEN AND THREE SHALL BE APPOINTED FOR TERMS EXPIRING ON DECEMBER THIRTY-FIRST, TWO THOUSAND FOURTEEN. TWO OF THE THREE MEMBERS WHOSE TERMS EXPIRE ON SUCH DECEMBER THIRTY-FIRST IN TWO THOUSAND TWELVE, TWO THOUSAND THIRTEEN AND TWO THOUSAND FOURTEEN RESPECTIVELY SHALL ALSO BE LICENSED AND ENGAGED AS HEREINABOVE PROVIDED. VACANCIES SHALL BE FILLED IN THE MANNER OF ORIGINAL APPOINTMENT FOR THE REMAINDER OF THE TERM. THE MEMBERS SHALL RECEIVE NO COMPENSATION FOR THEIR SERVICES, BUT SHALL BE ENTITLED TO RECEIVE THEIR ACTUAL AND NECESSARY EXPENSES INCURRED IN THE PERFORMANCE OF THEIR DUTIES.

3. THE FUND SHALL CONSIST OF ALL MONEYS APPROPRIATED OR TRANSFERRED THERETO BY LAW, ALL MONEYS ASSESSED OR COLLECTED AS PROVIDED BY LAW AND MADE AVAILABLE TO THE FUND, AND ANY OTHER MONEYS, GIFTS OR BEQUESTS

DEPOSITED INTO THE FUND. NO PHYSICIAN, REGARDLESS OF MEDICAL SPECIALTY, LICENSED TO PRACTICE IN THIS STATE NOR ANY MIDWIFE LICENSED TO PRACTICE IN THIS STATE SHALL BE REQUIRED TO PAY ANY FEE, ASSESSMENT, SURCHARGE, TAX OR OTHER OBLIGATION HOWEVER IDENTIFIED AS A MEANS OF PROVIDING A SOURCE OF REVENUE FOR SUCH FUND.

4.(A) IN ANY PERSONAL INJURY ACTION AGAINST AN ATTENDING PHYSICIAN OR A MIDWIFE SUBJECT TO THE PROVISIONS OF ARTICLE SEVENTY-FIVE-B OF THE CIVIL PRACTICE LAW AND RULES, THE REASONABLENESS OF THE AMOUNT OF ANY VERDICT RENDERED AGAINST AN ATTENDING PHYSICIAN OR A MIDWIFE SHALL BE SUBJECT TO AUTOMATIC APPEAL TO THE APPELLATE DIVISION OF THE SUPREME COURT IN THE DEPARTMENT WHEREIN THE UNDERLYING VERDICT WAS RENDERED. WHERE, AFTER APPEAL, THE AMOUNT OF DAMAGES TO BE AWARDED TO THE PLAINTIFF OR PLAINTIFFS AS DETERMINED BY A JUDGE OR JURY, AND AFTER REVIEW BY THE APPELLATE DIVISION, IS DETERMINED TO BE GREATER THAN TWO HUNDRED FIFTY THOUSAND DOLLARS, THE APPELLATE DIVISION SHALL NOTIFY THE CHAIRPERSON OF THE FUND OF THE AMOUNT OF SUCH VERDICT WITHIN FIVE DAYS AFTER IT IS RENDERED. TOGETHER WITH SUCH NOTIFICATION, THE COURT SHALL PROVIDE THE BOARD WITH A TRANSCRIPT OF THE TRIAL TESTIMONY AND ANY EVIDENCE PRESENTED AT THE TRIAL. WITHIN THIRTY DAYS AFTER SUCH NOTIFICATION, THE BOARD SHALL PAY THE AMOUNT IN EXCESS OF TWO HUNDRED FIFTY THOUSAND DOLLARS TO THE SUCCESSFUL PLAINTIFF OR PLAINTIFFS. WHERE HOWEVER, UPON REVIEW OF THE TRANSCRIPT AND EVIDENCE SO SUBMITTED, THE BOARD DETERMINES THAT THE NEGLIGENCE OR MISCONDUCT OF THE ATTENDING PHYSICIAN OR MIDWIFE WAS SO EGREGIOUS OR GROSSLY CONTRARY TO GENERALLY ACCEPTABLE MEDICAL STANDARDS OF CARE, NO PAYMENT FROM THE FUND FOR FUTURE CAUSES OF ACTION ACCRUING ON AND AFTER THE DATE OF THE BOARD'S DETERMINATION SHALL BE MADE, EXCEPT AS PROVIDED FOR IN PARAGRAPH (B) OF THIS SUBDIVISION. WHERE PAYMENT FROM THE FUND IS DENIED FOR ANY SUCH FUTURE CAUSE OF ACTION BECAUSE OF THE BOARD'S DETERMINATION IN A PRIOR CAUSE OF ACTION THAT AN ATTENDING PHYSICIAN'S OR MIDWIFE'S CONDUCT WAS SO EGREGIOUS OR GROSSLY CONTRARY TO GENERALLY ACCEPTABLE MEDICAL STANDARDS OF CARE, THE PLAINTIFF OR PLAINTIFF'S VERDICT AS RENDERED BY THE JUDGE OR JURY SHALL STAND, AND SHALL BE SUBJECT TO ASSESSMENT AND COLLECTION PROCEDURES AS OTHERWISE APPLICABLE TO JUDGMENTS RENDERED IN ACCORDANCE WITH ALL OTHER APPROPRIATE PROVISIONS OF LAW.

(B) WHERE, AS PROVIDED FOR IN PARAGRAPH (A) OF THIS SUBDIVISION OR IN THE COURSE OF PARTICIPATING IN A SETTLEMENT PROCEEDING AS PROVIDED FOR IN SECTION SEVEN THOUSAND FIVE HUNDRED EIGHTY-THREE OF THE CIVIL PRACTICE LAW AND RULES, THE BOARD HAS MADE A DETERMINATION THAT AN ATTENDING PHYSICIAN'S OR MIDWIFE'S CONDUCT WAS SO EGREGIOUS OR GROSSLY CONTRARY TO ACCEPTABLE MEDICAL STANDARDS, SUCH ATTENDING PHYSICIAN OR MIDWIFE SHALL BE THEREAFTER PERMANENTLY BARRED FROM PARTICIPATING IN THE BENEFITS OF THE FUND FOR ANY CAUSE OF ACTION OCCURRING ON OR AFTER THE DATE SUCH DECISION TO DENY PAYMENT IS RENDERED. HOWEVER, ON OR AFTER THE DATE OCCURRING FIVE YEARS AFTER THE DATE SUCH DECISION IS RENDERED AN ATTENDING PHYSICIAN OR MIDWIFE MAY APPLY TO THE BOARD FOR A CERTIFICATE OF REINSTATEMENT WHICH, IF GRANTED SHALL PERMIT THE ATTENDING PHYSICIAN OR MIDWIFE TO RESUME PARTICIPATION IN THE BENEFITS ACCORDED BY THE FUND. SUCH CERTIFICATE SHALL BE GRANTED BY THE BOARD ONLY WHERE IT DETERMINES THAT AFTER A REVIEW AND ASSESSMENT OF SUCH ATTENDING PHYSICIAN'S OR MIDWIFE'S PROFESSIONAL CONDUCT AND HIS OR HER DEMONSTRATED PROFICIENCY IN THE PROVISION OF MEDICAL SERVICES DURING SUCH PERIOD AFTER DISQUALIFICATION AND PRIOR TO THE DATE OF REAPPLICATION, REINSTATEMENT IS WARRANTED.

5. WHERE, IN ANY PERSONAL INJURY ACTION AGAINST AN ATTENDING PHYSICIAN OR MIDWIFE WHICH HAS BEEN REFERRED TO THE BOARD, ANY PARTY HAS APPEALED

THE VERDICT RENDERED BY THE TRIAL COURT, UPON NOTIFICATION OF THE FILING OF SUCH APPEAL BY THE COURT, THE ACTIONS OF THE BOARD SHALL BE STAYED PENDING THE DETERMINATION OF THE APPELLATE COURT. WHEN ALL APPEALS HAVE BEEN EXHAUSTED, THE BOARD SHALL THEN COMMENCE AND MAKE ITS DETERMINATION AS PROVIDED FOR IN THIS SECTION.

6. ALL PAYMENTS FROM THE FUND SHALL BE MADE ON THE AUDIT AND WARRANT OF THE STATE COMPTROLLER, ON VOUCHERS CERTIFIED OR APPROVED IN THE MANNER PROVIDED BY LAW WITHIN THIRTY DAYS OF THE DETERMINATION OF THE BOARD, A COPY OF WHICH DETERMINATION SHALL BE TRANSMITTED TO THE COURT OF RECORD, ALL OF THE PARTIES TO THE ACTION, AND THEIR ATTORNEYS.

7. EXCEPT AS PROVIDED FOR IN PARAGRAPH (A) OF SUBDIVISION FOUR OF THIS SECTION, THE DECISION OF THE BOARD SHALL BE FINAL AND SHALL NOT BE SUBJECT TO FURTHER ADMINISTRATIVE REVIEW OR APPEAL. PAYMENT OF THE INITIAL TWO HUNDRED FIFTY THOUSAND DOLLARS BY, OR ON BEHALF OF, THE ATTENDING PHYSICIAN OR MIDWIFE AND SUCH EXCESS AMOUNT FROM SUCH FUND SHALL CONSTITUTE A FULL SATISFACTION OF SUCH JURY'S VERDICT AND SHALL DISCHARGE THE DEFENDANT FROM ANY FURTHER CLAIM FOR DAMAGES IN SUCH ACTION. NOTWITHSTANDING ANY OTHER PROVISION OF LAW, NO OTHER DEFENDANT IN A PERSONAL INJURY ACTION AGAINST AN ATTENDING PHYSICIAN OR A MIDWIFE SHALL BE JOINTLY AND SEVERALLY LIABLE FOR ANY AMOUNT OF A VERDICT WHICH WOULD OTHERWISE BE ASSESSABLE AGAINST HIM WHERE PAYMENTS HAVE BEEN MADE FROM THE FUND IN SUCH AN ACTION.

S 3. Article 5 of the social services law is amended by adding a new title 11-E to read as follows:

TITLE 11-E

MEDICAL EXPENSES OF CERTAIN INFANTS

SECTION 369-LL. DEFINITIONS.
369-MM. ESTABLISHMENT OF PROGRAM.
369-NN. PROGRAM ELIGIBILITY AND OPERATIONS.
369-OO. RELATIONSHIP OF PROGRAM TO MEDICAL ASSISTANCE PROGRAM.

S 369-LL. DEFINITIONS. AS USED IN THIS SECTION:

1. "IMPAIRED INFANT" SHALL MEAN A PERSON, WHO IS INJURED AS A RESULT OF THE NEGLIGENCE OR OTHER MISCONDUCT OF AN ATTENDING PHYSICIAN OR MIDWIFE AND WHO HAS BEEN AWARDED DAMAGES IN AN ACTION WHICH WAS DETERMINED TO BE SUBJECT TO THE PROVISIONS OF SECTION SEVEN THOUSAND FIVE HUNDRED EIGHTY-TWO OF THE CIVIL PRACTICE LAW AND RULES.

2. "MEDICAL AND OTHER RELATED COSTS" MEANS ANY COSTS INCURRED IN PROVIDING MEDICAL SERVICES AND ANY APPROPRIATE CUSTODIAL CARE TO AN IMPAIRED INFANT DURING HIS OR HER LIFETIME.

3. "PROGRAM" MEANS THE MEDICAL CARE AND ASSISTANCE PROGRAM FOR IMPAIRED INFANTS AS ESTABLISHED IN SECTION THREE HUNDRED SIXTY-NINE-MM OF THIS TITLE.

S 369-MM. ESTABLISHMENT OF PROGRAM. 1. THERE IS HEREBY ESTABLISHED WITHIN THE OFFICE OF TEMPORARY AND DISABILITY ASSISTANCE THE MEDICAL CARE AND ASSISTANCE PROGRAM FOR IMPAIRED INFANTS.

2. NOTWITHSTANDING ANY INCONSISTENT PROVISION OF LAW, THE COMMISSIONER OF SUCH OFFICE, SUBJECT TO THE APPROVAL OF THE DIRECTOR OF THE BUDGET, MAY APPLY FOR APPROPRIATE WAIVERS UNDER FEDERAL LAW AND REGULATION IF NECESSARY OR TAKE OTHER ACTIONS AS MAY BE REQUIRED TO SECURE FEDERAL FINANCIAL PARTICIPATION IN THE COSTS OF THE PROGRAM; MAY WAIVE OR MODIFY ANY PROVISIONS OF THIS CHAPTER OR REGULATION TO IMPLEMENT THIS TITLE; OR MAY PROMULGATE SUCH REGULATIONS AS NECESSARY TO IMPLEMENT THIS TITLE.

S 369-NN. PROGRAM ELIGIBILITY AND OPERATIONS. 1. IN ACCORDANCE WITH REGULATIONS OF THE COMMISSIONER, A LOCAL SOCIAL SERVICES DISTRICT SHALL PAY ALL OF THE MEDICAL AND OTHER RELATED COSTS, INCURRED ON BEHALF OF,

OR IN CONNECTION WITH THE SUPPORT OF, AN IMPAIRED INFANT DURING THE ENTIRETY OF SUCH INFANT'S LIFETIME.

2. FOR PURPOSES OF DETERMINING ELIGIBILITY UNDER THIS TITLE, ANY RESOURCES AVAILABLE TO SUCH INFANT, OR SUCH INFANT'S HOUSEHOLD SHALL NOT BE CONSIDERED NOR REQUIRED TO BE APPLIED TO THE PAYMENT OF SUCH MEDICAL AND OTHER RELATED COSTS.

S 369-OO. RELATIONSHIP OF PROGRAM TO MEDICAL ASSISTANCE PROGRAM. NOTWITHSTANDING ANY INCONSISTENT PROVISION OF LAW, EXPENDITURES INCURRED BY LOCAL SOCIAL SERVICES DISTRICTS UNDER THIS TITLE RELATED TO PROGRAM EXPENSES SHALL BE CONSIDERED EXPENDITURES UNDER THE PROGRAM OF MEDICAL ASSISTANCE FOR NEEDY PERSONS UNDER TITLE ELEVEN OF THIS ARTICLE AND THERE SHALL BE PAID TO EACH SUCH DISTRICT FIFTY PERCENT OF THE AMOUNT EXPENDED BY SUCH DISTRICT UNDER THIS TITLE, AND FOR THE ADMINISTRATION THEREOF, AFTER FIRST DEDUCTING THEREFROM ANY FEDERAL FUNDS PROPERLY RECEIVED OR TO BE RECEIVED ON ACCOUNT THEREOF.

S 4. Paragraph (e) of subdivision 1 of section 2995-a of the public health law is amended by adding a new subparagraph (iv) to read as follows:

(IV) A STATEMENT INDICATING WHETHER A PHYSICIAN OR MIDWIFE HAS BEEN DISQUALIFIED AND IS INELIGIBLE FOR THE BENEFITS OF PARTICIPATING IN THE IMPAIRED INFANT COMPENSATION FUND PROGRAM ESTABLISHED IN SECTION EIGHT-Y-FOUR-B OF THE STATE FINANCE LAW, AS A RESULT OF CONDUCT DEEMED EGREGIOUS OR GROSSLY CONTRARY TO GENERALLY ACCEPTABLE MEDICAL STANDARDS;

S 5. Section 230 of the public health law is amended by adding a new subdivision 10-a to read as follows:

10-A. SPECIAL PROVISIONS RELATING TO EXPERT WITNESSES. IN CASES OF MEDICAL MISCONDUCT BASED UPON AN ALLEGATION THAT THE TESTIMONY GIVEN BY A PERSON WHO TESTIFIES AS AN EXPERT WITNESS FAILS TO MEET PROFESSIONAL CLINICAL STANDARDS ACCEPTABLE TO THE OFFICE, THE OFFICE, IN ADDITION TO ANY OTHER PENALTY OR SANCTION OTHERWISE PERMITTED, MAY IMPOSE A CIVIL PENALTY OF NOT LESS THAN FIFTY THOUSAND DOLLARS AGAINST THE WITNESS, OR SUSPEND OR PERMANENTLY REVOKE SUCH WITNESS' LICENSE TO PRACTICE IN THIS STATE. SUCH A PROCEEDING SHALL BE GIVEN PRIORITY BY THE BOARD, AND THE BOARD SHALL RENDER A DECISION WITHIN NINETY DAYS AFTER A COMPLAINT HAS BEEN RECEIVED.

S 6. Severability. If any clause, sentence, paragraph, subdivision or part of this act, or the application thereof to any person or circumstance, shall be adjudged by any court of competent jurisdiction to be invalid or unconstitutional, such judgment shall not affect, impair or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, subdivision or part of this act, or in its application to the person or circumstance, directly involved in the controversy in which such judgment shall have been rendered.

S 7. This act shall take effect immediately and shall apply to any cause of action which (i) has accrued prior to such date for which a verdict has not yet been rendered, or (ii) accrues on or after such date.