

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:

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

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

7 SECTION 7580. DEFINITIONS.
8 7581. APPLICABILITY.
9 7582. LIMITATION ON LIABILITY.
10 7583. SETTLEMENT PROCEEDINGS.
11 7584. INSTRUCTIONS TO JURY.

12 S 7580. DEFINITIONS. AS USED IN THIS ARTICLE:

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

LBD04200-01-1

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

16 2. "ATTENDING PHYSICIAN" MEANS AN OBSTETRICIAN-GYNECOLOGIST OR A
17 PHYSICIAN ENGAGED IN FAMILY PRACTICE WHOSE PROFESSIONAL LIABILITY INSUR-
18 ANCE CLASSIFICATION INCLUDES OBSTETRICS.

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

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

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

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

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

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

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

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

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

51 3. WHERE THE FUND MAKES PAYMENT PURSUANT TO THE TERMS OF THE SETTLE-
52 MENT IN THE AMOUNT AGREED UPON, THE TRUSTEES OF THE FUND SHALL REVIEW
53 ALL PERTINENT MEDICAL RECORDS, INCLUDING ALL RECORDS, TESTIMONY AND
54 EVIDENCE RELATING TO THE ACTION TO DETERMINE WHETHER THE NEGLIGENCE OR
55 MISCONDUCT OF THE ATTENDING PHYSICIAN OR MIDWIFE WAS EGREGIOUS OR GROSS-
56 LY CONTRARY TO GENERALLY ACCEPTABLE MEDICAL STANDARDS. WHERE THE TRUSTEE

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

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

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

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

25 2. A BOARD OF TRUSTEES AS HEREIN CONSTITUTED SHALL ADMINISTER SUCH
26 FUND. SUCH BOARD SHALL CONSIST OF NINE MEMBERS APPOINTED BY THE GOVER-
27 NOR, SIX OF WHOM SHALL BE BOARD CERTIFIED OBSTETRICIAN-GYNECOLOGISTS
28 LICENSED TO PRACTICE SUCH SPECIALTY IN THIS STATE AND CURRENTLY ENGAGED
29 IN ACTIVE PRACTICE IN SUCH SPECIALTY AT THE TIME OF THEIR APPOINTMENT.
30 TWO MEMBERS SHALL BE APPOINTED UPON THE RECOMMENDATION OF THE TEMPORARY
31 PRESIDENT OF THE SENATE, TWO MEMBERS SHALL BE APPOINTED UPON THE RECOM-
32 MENDATION OF THE SPEAKER OF THE ASSEMBLY, ONE MEMBER SHALL BE APPOINTED
33 UPON THE RECOMMENDATION OF THE MINORITY LEADER OF THE SENATE AND ONE
34 MEMBER SHALL BE APPOINTED UPON THE RECOMMENDATION OF THE MINORITY LEADER
35 OF THE ASSEMBLY. THREE OF THE MEMBERS APPOINTED BY THE GOVERNOR (NOT
36 UPON THE RECOMMENDATION OF A LEGISLATIVE LEADER) AND THE MEMBERS
37 APPOINTED UPON THE RECOMMENDATION OF THE TEMPORARY PRESIDENT OF THE
38 SENATE AND THE SPEAKER OF THE ASSEMBLY RESPECTIVELY, SHALL BE LICENSED
39 AND CURRENTLY ENGAGED AS HEREINABOVE PROVIDED. THE GOVERNOR SHALL DESIG-
40 NATE ONE OF THE MEMBERS OF THE BOARD AS CHAIRPERSON. THE TERM OF OFFICE
41 OF MEMBERS SHALL BE THREE YEARS, PROVIDED, HOWEVER, THAT OF THE MEMBERS
42 FIRST APPOINTED, THREE SHALL BE APPOINTED FOR TERMS EXPIRING ON DECEMBER
43 THIRTY-FIRST, TWO THOUSAND TWELVE, THREE SHALL BE APPOINTED FOR TERMS
44 EXPIRING ON DECEMBER THIRTY-FIRST, TWO THOUSAND THIRTEEN AND THREE SHALL
45 BE APPOINTED FOR TERMS EXPIRING ON DECEMBER THIRTY-FIRST, TWO THOUSAND
46 FOURTEEN. TWO OF THE THREE MEMBERS WHOSE TERMS EXPIRE ON SUCH DECEMBER
47 THIRTY-FIRST IN TWO THOUSAND TWELVE, TWO THOUSAND THIRTEEN AND TWO THOU-
48 SAND FOURTEEN RESPECTIVELY SHALL ALSO BE LICENSED AND ENGAGED AS HEREIN-
49 ABOVE PROVIDED. VACANCIES SHALL BE FILLED IN THE MANNER OF ORIGINAL
50 APPOINTMENT FOR THE REMAINDER OF THE TERM. THE MEMBERS SHALL RECEIVE NO
51 COMPENSATION FOR THEIR SERVICES, BUT SHALL BE ENTITLED TO RECEIVE THEIR
52 ACTUAL AND NECESSARY EXPENSES INCURRED IN THE PERFORMANCE OF THEIR
53 DUTIES.

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

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

6 4.(A) IN ANY PERSONAL INJURY ACTION AGAINST AN ATTENDING PHYSICIAN OR
7 A MIDWIFE SUBJECT TO THE PROVISIONS OF ARTICLE SEVENTY-FIVE-B OF THE
8 CIVIL PRACTICE LAW AND RULES, THE REASONABLENESS OF THE AMOUNT OF ANY
9 VERDICT RENDERED AGAINST AN ATTENDING PHYSICIAN OR A MIDWIFE SHALL BE
10 SUBJECT TO AUTOMATIC APPEAL TO THE APPELLATE DIVISION OF THE SUPREME
11 COURT IN THE DEPARTMENT WHEREIN THE UNDERLYING VERDICT WAS RENDERED.
12 WHERE, AFTER APPEAL, THE AMOUNT OF DAMAGES TO BE AWARDED TO THE PLAIN-
13 TIFF OR PLAINTIFFS AS DETERMINED BY A JUDGE OR JURY, AND AFTER REVIEW BY
14 THE APPELLATE DIVISION, IS DETERMINED TO BE GREATER THAN TWO HUNDRED
15 FIFTY THOUSAND DOLLARS, THE APPELLATE DIVISION SHALL NOTIFY THE CHAIR-
16 PERSON OF THE FUND OF THE AMOUNT OF SUCH VERDICT WITHIN FIVE DAYS AFTER
17 IT IS RENDERED. TOGETHER WITH SUCH NOTIFICATION, THE COURT SHALL PROVIDE
18 THE BOARD WITH A TRANSCRIPT OF THE TRIAL TESTIMONY AND ANY EVIDENCE
19 PRESENTED AT THE TRIAL. WITHIN THIRTY DAYS AFTER SUCH NOTIFICATION, THE
20 BOARD SHALL PAY THE AMOUNT IN EXCESS OF TWO HUNDRED FIFTY THOUSAND
21 DOLLARS TO THE SUCCESSFUL PLAINTIFF OR PLAINTIFFS. WHERE HOWEVER, UPON
22 REVIEW OF THE TRANSCRIPT AND EVIDENCE SO SUBMITTED, THE BOARD DETERMINES
23 THAT THE NEGLIGENCE OR MISCONDUCT OF THE ATTENDING PHYSICIAN OR MIDWIFE
24 WAS SO EGREGIOUS OR GROSSLY CONTRARY TO GENERALLY ACCEPTABLE MEDICAL
25 STANDARDS OF CARE, NO PAYMENT FROM THE FUND FOR FUTURE CAUSES OF ACTION
26 ACCRUING ON AND AFTER THE DATE OF THE BOARD'S DETERMINATION SHALL BE
27 MADE, EXCEPT AS PROVIDED FOR IN PARAGRAPH (B) OF THIS SUBDIVISION. WHERE
28 PAYMENT FROM THE FUND IS DENIED FOR ANY SUCH FUTURE CAUSE OF ACTION
29 BECAUSE OF THE BOARD'S DETERMINATION IN A PRIOR CAUSE OF ACTION THAT AN
30 ATTENDING PHYSICIAN'S OR MIDWIFE'S CONDUCT WAS SO EGREGIOUS OR GROSSLY
31 CONTRARY TO GENERALLY ACCEPTABLE MEDICAL STANDARDS OF CARE, THE PLAIN-
32 TIFF OR PLAINTIFF'S VERDICT AS RENDERED BY THE JUDGE OR JURY SHALL
33 STAND, AND SHALL BE SUBJECT TO ASSESSMENT AND COLLECTION PROCEDURES AS
34 OTHERWISE APPLICABLE TO JUDGMENTS RENDERED IN ACCORDANCE WITH ALL OTHER
35 APPROPRIATE PROVISIONS OF LAW.

36 (B) WHERE, AS PROVIDED FOR IN PARAGRAPH (A) OF THIS SUBDIVISION OR IN
37 THE COURSE OF PARTICIPATING IN A SETTLEMENT PROCEEDING AS PROVIDED FOR
38 IN SECTION SEVEN THOUSAND FIVE HUNDRED EIGHTY-THREE OF THE CIVIL PRAC-
39 TICE LAW AND RULES, THE BOARD HAS MADE A DETERMINATION THAT AN ATTENDING
40 PHYSICIAN'S OR MIDWIFE'S CONDUCT WAS SO EGREGIOUS OR GROSSLY CONTRARY TO
41 ACCEPTABLE MEDICAL STANDARDS, SUCH ATTENDING PHYSICIAN OR MIDWIFE SHALL
42 BE THEREAFTER PERMANENTLY BARRED FROM PARTICIPATING IN THE BENEFITS OF
43 THE FUND FOR ANY CAUSE OF ACTION OCCURRING ON OR AFTER THE DATE SUCH
44 DECISION TO DENY PAYMENT IS RENDERED. HOWEVER, ON OR AFTER THE DATE
45 OCCURRING FIVE YEARS AFTER THE DATE SUCH DECISION IS RENDERED AN ATTEND-
46 ING PHYSICIAN OR MIDWIFE MAY APPLY TO THE BOARD FOR A CERTIFICATE OF
47 REINSTATEMENT WHICH, IF GRANTED SHALL PERMIT THE ATTENDING PHYSICIAN OR
48 MIDWIFE TO RESUME PARTICIPATION IN THE BENEFITS ACCORDED BY THE FUND.
49 SUCH CERTIFICATE SHALL BE GRANTED BY THE BOARD ONLY WHERE IT DETERMINES
50 THAT AFTER A REVIEW AND ASSESSMENT OF SUCH ATTENDING PHYSICIAN'S OR
51 MIDWIFE'S PROFESSIONAL CONDUCT AND HIS OR HER DEMONSTRATED PROFICIENCY
52 IN THE PROVISION OF MEDICAL SERVICES DURING SUCH PERIOD AFTER DISQUALI-
53 FICATION AND PRIOR TO THE DATE OF REAPPLICATION, REINSTATEMENT IS
54 WARRANTED.

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

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

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

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

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

25 TITLE 11-E

26 MEDICAL EXPENSES OF CERTAIN INFANTS

27 SECTION 369-LL. DEFINITIONS.

28 369-MM. ESTABLISHMENT OF PROGRAM.

29 369-NN. PROGRAM ELIGIBILITY AND OPERATIONS.

30 369-OO. RELATIONSHIP OF PROGRAM TO MEDICAL ASSISTANCE PROGRAM.

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

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

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

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

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

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

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

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

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

7 S 369-00. RELATIONSHIP OF PROGRAM TO MEDICAL ASSISTANCE PROGRAM.
8 NOTWITHSTANDING ANY INCONSISTENT PROVISION OF LAW, EXPENDITURES INCURRED
9 BY LOCAL SOCIAL SERVICES DISTRICTS UNDER THIS TITLE RELATED TO PROGRAM
10 EXPENSES SHALL BE CONSIDERED EXPENDITURES UNDER THE PROGRAM OF MEDICAL
11 ASSISTANCE FOR NEEDY PERSONS UNDER TITLE ELEVEN OF THIS ARTICLE AND
12 THERE SHALL BE PAID TO EACH SUCH DISTRICT FIFTY PERCENT OF THE AMOUNT
13 EXPENDED BY SUCH DISTRICT UNDER THIS TITLE, AND FOR THE ADMINISTRATION
14 THEREOF, AFTER FIRST DEDUCTING THEREFROM ANY FEDERAL FUNDS PROPERLY
15 RECEIVED OR TO BE RECEIVED ON ACCOUNT THEREOF.

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

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

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

26 10-A. SPECIAL PROVISIONS RELATING TO EXPERT WITNESSES. IN CASES OF
27 MEDICAL MISCONDUCT BASED UPON AN ALLEGATION THAT THE TESTIMONY GIVEN BY
28 A PERSON WHO TESTIFIES AS AN EXPERT WITNESS FAILS TO MEET PROFESSIONAL
29 CLINICAL STANDARDS ACCEPTABLE TO THE OFFICE, THE OFFICE, IN ADDITION TO
30 ANY OTHER PENALTY OR SANCTION OTHERWISE PERMITTED, MAY IMPOSE A CIVIL
31 PENALTY OF NOT LESS THAN FIFTY THOUSAND DOLLARS AGAINST THE WITNESS, OR
32 SUSPEND OR PERMANENTLY REVOKE SUCH WITNESS' LICENSE TO PRACTICE IN THIS
33 STATE. SUCH A PROCEEDING SHALL BE GIVEN PRIORITY BY THE BOARD, AND THE
34 BOARD SHALL RENDER A DECISION WITHIN NINETY DAYS AFTER A COMPLAINT HAS
35 BEEN RECEIVED.

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

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