

4383

2013-2014 Regular Sessions

I N S E N A T E

March 26, 2013

Introduced by Sen. GOLDEN -- read twice and ordered printed, and when printed to be committed to the Committee on Judiciary

AN ACT to amend the civil practice law and rules, in relation to disclosure of expert witnesses

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

1 Section 1. Subparagraph (i) of paragraph 1 of subdivision (d) of
2 section 3101 of the civil practice law and rules, as amended by chapter
3 184 of the laws of 1988, is amended to read as follows:
4 (i) Upon request, each party shall identify each person whom the party
5 expects to call as an expert witness at trial and shall disclose in
6 reasonable detail the subject matter on which each expert is expected to
7 testify, the substance of the facts and opinions on which each expert is
8 expected to testify, the qualifications of each expert witness and a
9 summary of the grounds for each expert's opinion. A PARTY WHO HAS THE
10 BURDEN OF PROOF ON A CLAIM, CAUSE OF ACTION, DAMAGE OR DEFENSE SHALL
11 SERVE ITS RESPONSE TO AN EXPERT DEMAND PURSUANT TO THIS SECTION ON OR
12 BEFORE THE FILING OF THE NOTE OF ISSUE. SUCH PARTY HAS UNTIL THE FILING
13 OF THE NOTE OF ISSUE TO SERVE SUCH RESPONSE REGARDLESS OF HOW EARLY THE
14 DEMAND IS MADE. ANY OPPOSING PARTY SHALL SERVE ITS ANSWERING RESPONSE
15 PURSUANT TO THIS SECTION NO LATER THAN SIXTY DAYS AFTER THE FILING OF
16 THE NOTE OF ISSUE. ANY AMENDED OR SUPPLEMENTAL EXPERT DISCLOSURE SHALL
17 BE ALLOWED ONLY WITH THE PERMISSION OF THE COURT. A PARTY WHO FAILS TO
18 COMPLY WITH THIS RULE IS PRECLUDED FROM OFFERING THE TESTIMONY AND OPIN-
19 IONS OF THE EXPERT FOR WHOM A TIMELY RESPONSE HAS NOT BEEN GIVEN. THE
20 STATUTORY STAY FOR DISCLOSURE PURSUANT TO SUBDIVISION (B) OF RULE THIR-
21 TY-TWO HUNDRED FOURTEEN OF THIS CHAPTER UPON THE SERVICE OF A DISPOSI-
22 TIVE MOTION UNDER RULE THIRTY-TWO HUNDRED ELEVEN OF THIS CHAPTER SHALL
23 NOT APPLY TO THE SERVICE OF THESE EXPERT RESPONSES. ANY MOTION BY A
24 PARTY TO PRECLUDE, OR LIMIT EXPERT TESTIMONY PURSUANT TO THIS SECTION,
25 MUST BE MADE AS SOON AS PRACTICABLE BUT NO LATER THAN FORTY-FIVE DAYS

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

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1 AFTER THE PARTY'S RECEIPT OF THE EXPERT DISCLOSURE OR THE MOTION WILL BE
2 WAIVED. However, where a party for good cause shown retains an expert an
3 insufficient period of time before the commencement of trial to give
4 appropriate notice thereof, the party shall not thereupon be precluded
5 from introducing the expert's testimony at the trial solely on grounds
6 of noncompliance with this paragraph. In that instance, upon motion of
7 any party, made before or at trial, or on its own initiative, the court
8 may make whatever order may be just. In an action for medical, dental or
9 podiatric malpractice, a party, in responding to a request, may omit the
10 names of medical, dental or podiatric experts but shall be required to
11 disclose all other information concerning such experts otherwise
12 required by this paragraph.

13 S 2. This act shall take effect immediately and shall apply to all
14 actions commenced after such date.