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I N S E N A T E

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Introduced by Sens. DeFRANCISCO, ADDABBO, AKSHAR, AMEDORE, AVELLA, BOYLE, BRESLIN, COMRIE, DILAN, ESPAILLAT, FELDER, FUNKE, GALLIVAN, GIANARIS, HAMILTON, HASSELL-THOMPSON, HOYLMAN, KAMINSKY, KENNEDY, KRUEGER, LANZA, LARKIN, LATIMER, MONTGOMERY, PANEPINTO, PARKER, PERALTA, PERKINS, PERSAUD, RANZENHOFER, RITCHIE, RIVERA, ROBACH, SANDERS, SERRANO, SQUADRON, STAVISKY, YOUNG -- read twice and ordered printed, and when printed to be committed to the Committee on Judiciary -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the civil practice law and rules, in relation to accrual of causes of action for medical, dental and podiatric malpractice

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

1 Section 1. The opening paragraph of subdivision (g) of section 203 of
2 the civil practice law and rules is designated paragraph 1 and a new
3 paragraph 2 is added to read as follows:
4 2. NOTWITHSTANDING ANY OTHER PROVISION OF LAW TO THE CONTRARY, FOR THE
5 PURPOSES OF SECTIONS FIFTY-E AND FIFTY-I OF THE GENERAL MUNICIPAL LAW,
6 SECTION TEN OF THE COURT OF CLAIMS ACT, AND THE PROVISIONS OF ANY OTHER
7 LAW PERTAINING TO THE COMMENCEMENT OF AN ACTION OR SPECIAL PROCEEDING,
8 OR TO THE FILING OF A NOTICE OF CLAIM AS A CONDITION PRECEDENT TO
9 COMMENCEMENT OF AN ACTION OR SPECIAL PROCEEDING WITHIN A SPECIFIED TIME
10 PERIOD, THE PERIOD IN WHICH TO COMMENCE AN ACTION OR PROCEEDING OR TO
11 FILE SUCH NOTICE OF CLAIM FOR MEDICAL, DENTAL OR PODIATRIC MALPRACTICE
12 SHALL NOT BEGIN TO RUN UNTIL THE LATER OF EITHER: (A) WHEN ONE KNOWS OR
13 REASONABLY SHOULD HAVE KNOWN OF THE ALLEGED NEGLIGENT ACT OR OMISSION
14 AND KNOWS OR REASONABLY SHOULD HAVE KNOWN THAT SUCH NEGLIGENT ACT OR
15 OMISSION HAS CAUSED AN INJURY; OR (B) THE DATE OF THE LAST TREATMENT
16 WHERE THERE IS CONTINUOUS TREATMENT FOR THE SAME ILLNESS, INJURY OR
17 CONDITION WHICH GAVE RISE TO THE ACCRUAL OF AN ACTION. HOWEVER, SUCH
18 ACTION SHALL COMMENCE NO LATER THAN SEVEN YEARS FROM THE ACT, OMISSION
19 OR FAILURE COMPLAINED OF OR LAST TREATMENT WHERE THERE IS CONTINUOUS
20 TREATMENT FOR THE SAME ILLNESS, INJURY OR CONDITION WHICH GAVE RISE TO

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

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1 THE ACT, OMISSION OR FAILURE; PROVIDED, HOWEVER, THAT WHERE THE ACTION
2 IS BASED UPON THE DISCOVERY OF A FOREIGN OBJECT IN THE BODY OF A
3 PATIENT, THE ACTION MAY BE COMMENCED WITHIN ONE YEAR OF THE DATE OF SUCH
4 DISCOVERY OR OF THE DATE OF DISCOVERY OF FACTS WHICH WOULD REASONABLY
5 LEAD TO SUCH DISCOVERY, WHICHEVER IS EARLIER.

6 S 2. Section 214-a of the civil practice law and rules, as amended by
7 chapter 485 of the laws of 1986, is amended to read as follows:

8 S 214-a. Action for medical, dental or podiatric malpractice to be
9 commenced within two years and six months; exceptions. An action for
10 medical, dental or podiatric malpractice must be commenced within two
11 years and six months of the ACCRUAL OF ANY SUCH ACTION. THE ACCRUAL OF
12 AN ACTION OCCURS AT THE LATER OF EITHER (A) WHEN ONE KNOWS OR REASONABLY
13 SHOULD HAVE KNOWN OF THE ALLEGED NEGLIGENT ACT OR OMISSION AND KNOWS OR
14 REASONABLY SHOULD HAVE KNOWN THAT SUCH NEGLIGENT ACT OR OMISSION HAS
15 CAUSED AN INJURY; OR (B) WITHIN TWO YEARS AND SIX MONTHS OF THE LAST
16 TREATMENT WHERE THERE IS CONTINUOUS TREATMENT FOR THE SAME ILLNESS,
17 INJURY OR CONDITION WHICH GAVE RISE TO THE ACCRUAL OF AN ACTION. HOWEV-
18 ER, SUCH ACTION SHALL COMMENCE NO LATER THAN SEVEN YEARS FROM THE act,
19 omission or failure complained of or last treatment where there is
20 continuous treatment for the same illness, injury or condition which
21 gave rise to the said act, omission or failure; provided, however, that
22 where the action is based upon the discovery of a foreign object in the
23 body of the patient, the action may be commenced within one year of the
24 date of such discovery or of the date of discovery of facts which would
25 reasonably lead to such discovery, whichever is earlier. For the purpose
26 of this section the term "continuous treatment" shall not include exam-
27 inations undertaken at the request of the patient for the sole purpose
28 of ascertaining the state of the patient's condition. For the purpose of
29 this section the term "foreign object" shall not include a chemical
30 compound, fixation device or prosthetic aid or device.

31 S 3. With regard to any person, who within two years and six months
32 (or in actions to which section 50-e or 50-i of the general municipal
33 law or section 10 of the court of claims act apply, the period applica-
34 ble under such sections) prior to the effective date of this act, (a)
35 knew or reasonably should have known of a negligent act or omission
36 constituting medical, dental or podiatric malpractice, and knew or
37 reasonably should have known that such negligent act or omission has
38 caused an injury, or (b) within two years and six months (or in actions
39 to which section 50-e or 50-i of the general municipal law or section 10
40 of the court of claims act apply, the period applicable under such
41 sections) of his or her last treatment where there was continuous treat-
42 ment for the same illness, injury or condition giving rise to the
43 accrual of a medical, dental or podiatric malpractice action; notwith-
44 standing any other provision of law to the contrary, such person's
45 action for medical, dental or podiatric malpractice shall be deemed to
46 accrue on the effective date of this act and shall be commenced within
47 two years and six months (or in actions to which section 50-e or 50-i of
48 the general municipal law or section 10 of the court of claims act
49 apply, the period applicable under such sections) of such effective
50 date, provided that if an action would be timely pursuant to subdivision
51 (a) of this section, such action must be commenced within seven years of
52 the act or omission referred to in subdivision (a) of this section.
53 Where a specific provision of law exists in any other provision of law
54 which is inconsistent with the provisions of this act, such provision
55 shall apply unless a provision of this act specifies that such provision
56 of this act shall apply notwithstanding any other provision of law.

1 S 4. This act shall take effect immediately.