STATE OF NEW YORK

7588

IN SENATE

January 26, 2018

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

AN ACT to amend the civil practice law and rules, in relation to certain negligent actions or claims; to amend a chapter of the laws of 2017, amending the civil practice law and rules relating to accrual of causes of action for medical, dental and podiatric malpractice, as proposed in legislative bills numbers S. 6800 and A. 8516, in relation to the effectiveness thereof; to repeal certain provisions of a chapter of the laws of 2017, amending the civil practice law and rules relating to accrual of causes of action for medical, dental and podiatric malpractice, as proposed in legislative bills numbers S. 6800 and A. 8516, relating to certain negligent acts or omissions; and to repeal certain provisions of the civil practice law and rules relating thereto

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Paragraph 2 of subdivision (g) of section 203 of the civil practice law and rules, as added by a chapter of the laws of 2017, amending the civil practice law and rules relating to accrual of causes of action for medical, dental and podiatric malpractice, as proposed in legislative bills numbers S.6800 and A.8516, is REPEALED and a new paragraph 2 is added to read as follows:

2. Notwithstanding paragraph one of this subdivision, in an action or claim for medical, dental or podiatric malpractice, where the action or claim is based upon the alleged negligent failure to diagnose cancer or a malignant tumor, whether by act or omission, for the purposes of sections fifty-e and fifty-i of the general municipal law, section ten of the court of claims act, and the provisions of any other law pertaining to the commencement of an action or special proceeding, or to the serving of a notice of claim as a condition precedent to commencement of an action or special proceeding within a specified time period, the time in which to commence an action or special proceeding or to serve a notice of claim shall not begin to run until the later of either (i) when the person knows or reasonably should have known of such alleged

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

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negligent act or omission and knows or reasonably should have known that such alleged negligent act or omission has caused injury, provided, that such action shall be commenced no later than seven years from such alleged negligent act or omission, or (ii) the date of the last treatment where there is continuous treatment for such injury, illness or condition.

§ 2. Section 214-a of the civil practice law and rules, as amended by a chapter of the laws of 2017, amending the civil practice law and rules relating to accrual of causes of action for medical, dental and podiatric malpractice, as proposed in legislative bills numbers S.6800 and A.8516, is amended to read as follows:

§ 214-a. Action for medical, dental or podiatric malpractice to be commenced within two years and six months; exceptions. An action for medical, dental or podiatric malpractice must be commenced within two years and six months of the [~~accrual of any such action. The accrual of an action occurs at the later of either (a) when one knows or reasonably should have known of the alleged negligent failure to diagnose a malignant tumor or cancer, whether by act or omission and knows or reasonably should have known that such negligent act or omission has caused the injury; or (b) the date of the last treatment where there is continuous treatment for the same illness, injury or condition which gave rise to the accrual of an action. However, such action shall commence no later than seven years from the~~] act, omission or failure complained of or last treatment where there is continuous treatment for the same illness, injury or condition which gave rise to the said act, omission or failure; provided, however, that: (a) where the action is based upon the discovery of a foreign object in the body of the patient, the action may be commenced within one year of the date of such discovery or of the date of discovery of facts which would reasonably lead to such discovery, whichever is earlier; and (b) where the action is based upon the alleged negligent failure to diagnose cancer or a malignant tumor, whether by act or omission, the action may be commenced within two years and six months of the later of either (i) when the person knows or reasonably should have known of such alleged negligent act or omission and knows or reasonably should have known that such alleged negligent act or omission has caused injury, provided, that such action shall be commenced no later than seven years from such alleged negligent act or omission, or (ii) the date of the last treatment where there is continuous treatment for such injury, illness or condition. For the purpose of this section the term "continuous treatment" shall not include examinations undertaken at the request of the patient for the sole purpose of ascertaining the state of the patient's condition. For the purpose of this section the term "foreign object" shall not include a chemical compound, fixation device or prosthetic aid or device.

§ 3. Section 3 of a chapter of the laws of 2017, amending the civil practice law and rules relating to accrual of causes of action for medical, dental and podiatric malpractice, as proposed in legislative bills numbers S.6800 and A.8516, is REPEALED.

§ 4. Notwithstanding sections 50-e and 50-i of the general municipal law, section 10 of the court of claims act, and the provisions of any other law pertaining to the commencement of an action or special proceeding, or to the serving of a notice of claim as a condition precedent to commencement of an action or special proceeding within a specified time period, with regard to any action or claim arising from alleged medical malpractice based upon an alleged negligent failure to diagnose cancer or a malignant tumor, whether by act or omission, which,

within ten months prior to the effective date of the act that created this section, became time-barred under any applicable limitations period then in effect, such action or claim may be commenced within six months of the effective date of the act that created this section, and not beyond. The provisions added by section one and amended by section two of the act that created this section shall not apply to such actions.

§ 5. Section 4 of a chapter of the laws of 2017, amending the civil practice law and rules relating to accrual of causes of action for medical, dental and podiatric malpractice, as proposed in legislative bills numbers S.6800 and A.8516, is amended to read as follows:

§ 4. This act shall take effect immediately **and shall apply to acts, omissions, or failures occurring on or after such effective date**.

§ 6. This act shall take effect immediately; provided, however, that sections one, two, three and four of this act shall take effect on the same date and in the same manner as a chapter of the laws of 2017, amending the civil practice law and rules relating to accrual of causes of action for medical, dental and podiatric malpractice, as proposed in legislative bills numbers S.6800 and A.8516, takes effect provided, further, that the provisions added by section one of this act shall also apply to acts, omissions, or failures occurring within 1 year and 90 days prior to the effective date of this act, and not before, and further provided, however, that for actions or claims governed by section 10 of the court of claims act such section one shall also apply to acts, omissions, or failures occurring within 2 years prior to the effective date of this act, and not before; provided, further, that the provisions amended by section two of this act shall also apply to acts, omissions, or failures occurring within 2 years and 6 months prior to the effective date of this act, and not before.