

STATE OF NEW YORK

10035

IN SENATE

April 24, 2026

Introduced by Sen. SEPULVEDA -- 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, the general business law and the general obligations law, in relation to modernizing, improving fairness, efficiency, transparency, and reducing costs in civil justice procedures; 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:

1 Section 1. Legislative intent and findings. The legislature finds that
2 substantial and unnecessary costs, delays, and disputes have developed
3 in New York's civil justice system. This act is intended to promote
4 fairness, transparency, efficiency, and reduce costs and delays by clar-
5 ifying disclosure and discovery procedures, reducing abusive practices,
6 protecting litigants' rights, and modernizing court procedures.

7 The legislature finds that substantial and unnecessary motion practice
8 has developed around improper demands for bills of particulars in civil
9 litigation. These disputes often burden courts, delay proceedings, and
10 increase litigation costs for both litigants and the judiciary.

11 It is the intent of this legislation to codify the permissible scope
12 of such demands, itemize allowable requests by case type, prohibit
13 improper and overbroad demands, reduce motion practice, conserve judi-
14 cial resources, promote uniformity and fairness in litigation, and
15 streamline and expedite litigation in personal injury, wrongful death,
16 and medical, dental, and podiatric malpractice cases.

17 § 2. Section 214-a of the civil practice law and rules is REPEALED and
18 a new section 214-a is added to read as follows:

19 § 214-a. Action for medical, dental or podiatric malpractice;
20 commencement. An action for medical, dental, or podiatric malpractice
21 shall be commenced within two years and six months of the later of
22 either (a) when the claimant knew or reasonably should have known of
23 such alleged negligent act or omission and knew or reasonably should
24 have known that such act or omission caused injury, or (b) the date of
25 the last treatment where there is continuous treatment for the same

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

LBD15151-02-6

illness, injury, or condition that gave rise to the act, omission, or failure, whichever is later. In no event shall any such action be commenced more than seven years after the alleged act, omission, or failure, except where fraudulent concealment of the malpractice has occurred. The provisions of this section shall not impair the applicability of equitable estoppel where the defendant's affirmative misconduct prevented timely filing.

§ 3. Section 1015 of the civil practice law and rules is amended by adding a new subdivision (c) to read as follows:

(c) Representatives; pending action. When no personal representative has been appointed for a deceased defendant, and no insurance carrier for the defendant is denying insurance coverage or proceeding pursuant to a reservation of rights, and the plaintiff agrees to limit their recovery to an amount not exceeding the proceeds of the deceased defendant's available insurance coverage, the supreme court, upon motion of any party, shall order that the deceased defendant's attorney of record, or other person deemed appropriate by the court, be appointed and substituted to serve as the deceased defendant's representative solely for the purpose of continuing the pending action, entering into agreements and stipulations relating to such action, and executing any documents necessary to effectuate a settlement of the action.

§ 4. Section 2306 of the civil practice law and rules is amended by adding a new subdivision (c) to read as follows:

(c) Electronic fees. Notwithstanding any contrary provision of law, rule or regulation, where the production of records, as described in this section, is made in certified electronic or digital form, the person or institution producing the records shall not be entitled to charge or receive any fee in excess of six dollars and fifty cents in total. No additional fee shall be charged for certification, transmission, or electronic formatting. This subdivision shall not affect fees otherwise authorized for paper records.

§ 5. Subdivisions (a) and (b) of section 2308 of the civil practice law and rules are REPEALED, subdivision (c) is relettered subdivision (b) and a new subdivision (a) is added to read as follows:

(a) Judicial and non-judicial subpoenas; penalties. (1) If any person subpoenaed under this article fails without reasonable excuse to obey such subpoena, the court, on motion, may issue a warrant directed to a sheriff to bring the witness into court. In the case of a subpoena duces tecum, whether issued by a court, a judge, a clerk of the court, an officer, or an attorney, if the witness fails to produce any document, record, or item specified therein without reasonable excuse, the court shall impose a civil penalty of one hundred dollars per day, commencing on the date that compliance was required and continuing until the subpoena is complied with or otherwise resolved by court order.

(2) This penalty shall be mandatory and shall apply to both judicial subpoenas and subpoenas issued by officers or attorneys under the authority of this article. The court may, in its discretion, award reasonable attorneys' fees and costs associated with enforcing the subpoena to the party seeking compliance.

(3) Nothing in this subdivision shall be construed to limit or impair the court's contempt powers under this article or the availability of other sanctions under law.

§ 6. Subdivision (a) of rule 3043 of the civil practice law and rules, paragraph 6 as amended by chapter 805 of the laws of 1984, is amended to read as follows:

(a) Specified particulars. (1) In actions to recover for personal injuries the following particulars may be required, and the permissible items of demand shall be limited to:

~~[(1)]~~ (i) The date and approximate time of day of the occurrence;
~~[(2)]~~ (ii) Its approximate location;
~~[(3)]~~ (iii) General statement of the acts or omissions constituting the negligence claimed;

~~[(4)]~~ (iv) Where notice of a condition is a prerequisite, whether actual or constructive notice is claimed;

~~[(5)]~~ (v) If actual notice is claimed, a statement of when and to whom it was given;

~~[(6)]~~ (vi) Statement of the injuries and description of those claimed to be permanent, and in an action designated in subsection (a) of section five thousand one hundred four of the insurance law, for personal injuries arising out of negligence in the use or operation of a motor vehicle in this state, in what respect plaintiff has sustained a serious injury, as defined in subsection (d) of section five thousand one hundred two of the insurance law, or economic loss greater than basic economic loss, as defined in subsection (a) of section five thousand one hundred two of the insurance law;

~~[(7)]~~ (vii) Length of time confined to bed and to house;

~~[(8)]~~ (viii) Length of time incapacitated from employment; and

~~[(9)]~~ (ix) Total amounts claimed as special damages for physicians' services and medical supplies; loss of earnings, with name and address of the employer; hospital expenses; nurses' services.

(2) In actions to recover for medical, dental, or podiatric malpractice, the following particulars may be required, and the permissible items of demand shall be limited to:

(i) The dates of treatment or care constituting the alleged acts or omissions;

(ii) The names of involved providers;

(iii) A general statement of the acts or omissions constituting the malpractice claimed;

(iv) A statement of the injuries and description of those claimed to be permanent;

(v) The length of time confined to bed and to house;

(vi) The length of time incapacitated from employment;

(vii) The total amounts claimed as special damages for physicians' services and medical supplies; loss of earnings, with name and address of the employer; hospital expenses; nurses' service; and

(viii) Whether informed consent is disputed.

(3) In actions to recover for wrongful death, the following particulars may be required, and the permissible items of demand shall be limited to:

(i) The date and place of death;

(ii) The alleged act or omission causing death;

(iii) The relationship of the decedent to the distributees;

(iv) The economic loss of distributees;

(v) Funeral or burial expenses;

(vi) The approximate length of pre-death pain and suffering, if claimed; and

(vii) The date when letters of administration or testamentary authority were issued and the court issuing same.

(4) In actions to recover for personal injuries, wrongful death, medical, dental, and podiatric malpractice, the following particulars may be required of defendants or third-party defendants:

(i) Affirmative defenses, or counterclaims, and the permissible items of demand shall be limited to:

(a) Whether contributory negligence or comparative fault is alleged, and if so, the acts or omissions claimed.

(b) Whether the assumption of risk is alleged, and if so, the specific facts underlying that defense.

(c) Whether failure to mitigate damages is alleged, and, if so, the basis for that defense.

(d) Whether a statutory limitation, such as the statute of limitations, is asserted, and if so, the relevant dates relied upon in asserting that defense.

(e) Whether the defense of lack of notice is asserted, and if so, the dates and facts alleged to support that defense.

(ii) If a cross-claim is asserted, the general acts or omissions constituting the negligence claimed.

§ 7. The civil practice law and rules is amended by adding a new rule 3043-a to read as follows:

Rule 3043-a. Improper demands prohibited. (a) In actions to recover for personal injuries, wrongful death, medical, dental, or podiatric malpractice, a demand for a bill of particulars shall not:

(1) Request the names of witnesses or experts;

(2) Seek legal theories or contentions;

(3) Demand production of documents or evidence;

(4) Duplicate discovery otherwise available under article thirty-one of this chapter; and

(5) Request information outside the scope of rule three thousand forty-three of this article.

(b) Any such demand is void and may be disregarded. A responding party may serve written objections to preserve the record.

§ 8. Subdivision (i) of section 3101 of the civil practice law and rules, as added by chapter 574 of the laws of 1993, is amended to read as follows:

(i) In addition to any other matter which may be subject to disclosure, there shall be full disclosure of any films, photographs, video tapes or audio tapes, and social media records, documents, and materials, including transcripts or memoranda thereof, and citation to each social domain name and uniformed resource locator (URL) address accessed and the dates that such social media records, documents, and materials were accessed, involving a person referred to in paragraph one of subdivision (a) of this section, that are obtained by or on behalf of an adverse party. There shall be disclosure of all portions of such material, including out-takes, and all social media records, documents, and materials accessed on every date of such access, rather than only those portions a party intends to use. The provisions of this subdivision shall not apply to materials compiled for law enforcement purposes which are exempt from disclosure under section eighty-seven of the public officers law.

§ 9. Section 3102 of the civil practice law and rules is amended by adding a new subdivision (h) to read as follows:

(h) Pre-suit disclosure in personal injury, wrongful death, and malpractice actions. (1) Notwithstanding any other provision of law, any person who expects to be a plaintiff in a civil action for personal injury, wrongful death, medical malpractice, dental malpractice, or other professional malpractice, and who is unable to identify: (i) a proper party defendant, (ii) the cause or instrumentality of the injury, (iii) the agents or employees involved in the occurrence, or (iv) other

essential facts necessary to prepare and file a complaint, may petition the supreme court or county court by verified application for leave to take depositions, obtain records, issue subpoenas duces tecum, or conduct limited inspections or examinations for the purpose of obtaining such information.

(2) Such verified petition shall include:

(i) the nature of the anticipated action and the factual basis for the claim;

(ii) the type of information sought and its materiality;

(iii) the reasons pre-action disclosure is necessary and cannot be obtained through informal means; and

(iv) the identity of the person or entity from whom discovery is sought, if known.

(3) The court shall grant the petition if it finds that:

(i) the petitioner has a meritorious basis to investigate a claim; and

(ii) the requested disclosure is narrowly tailored to identify defendants, preserve evidence, or clarify issues necessary to initiate suit.

(4) The court may issue a protective order as appropriate to safeguard privacy, trade secrets, or privilege, and shall supervise the scope and conduct of any permitted discovery. Any discovery conducted pursuant to this section may be used in subsequent litigation to the extent admissible under the rules of evidence, subject to objections as to form, privilege, or relevance.

§ 10. Subdivision (a) of section 3103 of the civil practice law and rules, as amended by chapter 205 of the laws of 2013, is amended to read as follows:

(a) Prevention of abuse. (1) The court may at any time on its own initiative, or on motion of any party or of any person from whom or about whom discovery is sought, make a protective order denying, limiting, conditioning or regulating the use of any disclosure device. Such order shall be designed to prevent unreasonable annoyance, expense, embarrassment, disadvantage, or other prejudice to any person or the courts.

(2) Upon written objection to a demand for a bill of particulars as improper under rule three thousand forty-three or rule three thousand forty-three-a of this chapter, a party may request an informal judicial review without motion. The court shall determine the propriety of such demand on an expedited basis, based on written submissions.

§ 11. Rule 3113 of the civil practice law and rules is amended by adding a new subdivision (e) to read as follows:

(e) Order of depositions in certain cases; plaintiff priority. 1. The plaintiff in any civil action to recover damages for personal injuries, wrongful death, or medical, dental, or podiatric malpractice shall have the right to take depositions of parties, witnesses, or other persons before any depositions are taken by the defendants or other adverse parties and shall determine the order in which such depositions shall be taken. The parties may stipulate otherwise in writing.

2. Nothing in this section shall be construed to limit the authority of the court to manage discovery or to issue protective orders pursuant to rule three thousand one hundred three of this article.

3. This subdivision shall apply to all depositions conducted pursuant to this article.

§ 12. Subdivision (a) of section 3121 of the civil practice law and rules, as amended by chapter 294 of the laws of 1984, is amended to read as follows:

(a) Notice of examination. After commencement of an action in which the mental or physical condition or the blood relationship of a party, or of ~~[an agent, employee or]~~ a person in the custody or under the legal control of a party, is in controversy, any party may serve notice on another party to submit to a physical, mental or blood examination by a designated physician, or to produce for such examination ~~[his agent, employee or]~~ the person in ~~[his]~~ such physician's custody or under ~~[his]~~ their legal control. The notice may ~~[require duly executed and acknowledged written authorizations permitting all parties to obtain, and make copies of, the records of specified hospitals relating to such mental or physical condition or blood relationship; where a party obtains a copy of a hospital record as a result of the authorization of another party, he shall deliver a duplicate of the copy to such party. A copy of the notice shall be served on the person to be examined. It shall specify the time, which shall be not less than twenty days after service of the notice, and the conditions and scope of the examination]~~ specify the time, place, manner, conditions, and scope of the examination. As a condition of such examination, or any examination done pursuant to this article, the party or person to be examined shall have the sole and exclusive right to record the entirety of the examination by means of audio or video recording, including through a representative designated by the party. Such recording shall not be conducted in a manner that interferes with the conduct of the examination or the safety of the examinee. No person shall refuse to conduct a physical, mental, or blood examination because the examination is being recorded by or on behalf of the party to be examined. No recording made pursuant to this subdivision shall be subject to discovery or disclosure, including under section three thousand one hundred one or rule three thousand one hundred twenty of this article, unless the party who caused the recording to be made elects to disclose it at trial or uses it in support of or in opposition to a motion. The rights established in this section shall not be waived except by express written stipulation or court order for good cause shown.

§ 13. Rule 3122 of the civil practice law and rules is amended by adding three new subdivisions (e), (f) and (g) to read as follows:

(e) 1. In any civil action or proceeding, all raw data, test instruments, protocols, notes, recordings, scoring sheets, interpretive materials, test results, and other data generated, obtained, or relied upon by any psychologist or neuropsychologist in connection with the evaluation or examination of a party or witness shall be discoverable.

2. The materials described in paragraph one of this subdivision shall be produced upon written demand made pursuant to this article.

3. Failure to produce such materials within the time prescribed by rule or court order shall result in the preclusion of the testimony of the psychologist or neuropsychologist and any findings, conclusions, or opinions based in whole or in part on such undisclosed materials, unless the court finds good cause for the delay and no prejudice to the opposing party.

4. The provisions of this subdivision shall apply regardless of whether the psychologist or neuropsychologist is retained as an expert by a party or conducts the evaluation pursuant to a court order.

5. This subdivision shall not be construed to authorize the disclosure of privileged communications or materials unrelated to the testing process.

(f) 1. In any civil action, no party shall be required to disclose any lien, assignment, encumbrance, security interest, or other right of

recovery held by a third party arising from or relating to litigation funding, lawsuit lending, or non-recourse advances made to a party or their counsel in connection with the action, and such information shall not be subject to discovery.

2. This prohibition shall apply to:

(i) the identity of any funder, lender, or financial institution involved in such arrangement;

(ii) the terms, amounts, or repayment conditions of any such advance or funding; and

(iii) any correspondence, contract, or communication relating to such financing.

3. Nothing in this section shall be construed to limit disclosure of:

(i) statutory liens created by operation of law, such as, Medicaid, Medicare, ERISA, or workers' compensation recovery rights; or

(ii) liens expressly waived or placed in issue by a party in the action.

4. Any attempt to introduce or rely upon such funding-related information for impeachment, bias, or credibility purposes shall be inadmissible and subject to exclusion under section four thousand five hundred thirteen of this chapter and other applicable rules of evidence, unless the court finds that the party has voluntarily placed such matter in controversy.

(g) 1. In any action or proceeding governed by this chapter, the social security number of any party, witness, or non-party shall not be discoverable, either directly or indirectly, through any request for disclosure, subpoena, interrogatory, demand for bill of particulars, deposition, or other means of civil discovery.

2. This prohibition shall include:

(i) full or partial social security numbers;

(ii) any identifier from which a social security number may be derived or reconstructed; and

(iii) requests made for the stated purpose of identification or verification that would require disclosure of a social security number.

3. Notwithstanding the provisions of this subdivision, a court may order limited disclosure of a social security number under seal only upon a showing of good cause and necessity, and only under such protective conditions as are appropriate to prevent public dissemination or misuse.

4. Any disclosure made in violation of this subdivision shall be inadmissible in evidence and subject to sanctions under section three thousand one hundred twenty-six of this article.

§ 14. Subdivision (a) of rule 3122-a of the civil practice law and rules is amended by adding a new paragraph 5 to read as follows:

5. Notwithstanding any contrary provision of law, rule or regulation, the total fee for producing certified medical, hospital, or nursing home records and bills, including imaging studies, in response to a subpoena duces tecum in certified electronic or digital format shall not exceed six dollars and fifty cents. No additional fees shall be charged for certification or transmission by electronic means, including through a secure portal, encrypted file, or cloud-based platform.

§ 15. The civil practice law and rules is amended by adding a new section 4552 to read as follows:

§ 4552. Spoliation of evidence in civil proceedings. (a) Definition. For purposes of this section, "spoliation" means the loss, alteration, or destruction of evidence relevant to the claims or defenses in a civil

1 action, whether by a party or nonparty, occurring at a time when the
2 person or entity had a legal duty to preserve such evidence.

3 (b) Elements for sanction or remedy. A party that claims to be
4 adversely affected by spoliation of evidence and seeks a remedy shall
5 establish, by a preponderance of the evidence, that:

6 (1) the person or entity alleged to have committed the spoliation had
7 control over the evidence and a duty to preserve it at the time of the
8 spoliation;

9 (2) the spoliation occurred with a culpable mental state, which
10 includes intentional, willful, or negligent conduct; and

11 (3) the evidence was relevant to a claim or defense such that a
12 reasonable trier of fact could conclude that the evidence would support
13 that claim or defense.

14 (c) Presumption of relevance. Where the spoliation is found to have
15 been committed intentionally, willfully, or negligently, the relevance
16 of the lost, altered, or destroyed evidence to the claim or defense of
17 the party affected shall be presumed.

18 (d) Sanctions and remedies. Upon the finding of spoliation, the court
19 shall have broad discretion in fashioning an appropriate sanction or
20 remedy, which may include, but not limited to:

21 (1) permitting the introduction of evidence concerning the circum-
22 stances of the spoliation;

23 (2) giving an adverse inference instruction to the trier of fact;

24 (3) preclusion of testimony or evidence;

25 (4) striking pleadings or dismissing claims or defenses in whole or in
26 part;

27 (5) monetary sanctions, including costs and attorneys' fees; or

28 (6) any other sanction the court deems just and proper.

29 (e) Dependent direct cause of action. Where a party or nonparty
30 receives written notice to preserve specific evidence relevant to a
31 civil action and thereafter negligently, intentionally, or willfully
32 spoliates such evidence, and no adequate remedy exists under subdivision
33 (d) of this section, a dependent direct cause of action for spoliation
34 may be commenced only by a party to the original proceeding who has
35 suffered substantial prejudice. Such action shall be dependent on the
36 underlying litigation. It may be brought only if spoliation was discov-
37 ered after commencement of that action and the court has made a finding
38 under this section.

39 (f) Nonparty jurisdiction. Upon motion and notice, the court may
40 assert jurisdiction over a nonparty who spoliated evidence in violation
41 of this section to impose any remedy set forth herein.

42 § 16. Subdivision (g) of section 5003-a of the civil practice law and
43 rules, as added by chapter 269 of the laws of 1992, is amended to read
44 as follows:

45 (g) The term "tender", as used herein, shall mean either to personally
46 deliver or to mail, by registered or certified mail, return receipt
47 requested, or by electronic mail, provided that such electronic mail is
48 sent to the electronic mail address of the settling party's attorney
49 with a request for confirmation of delivery. Tender by electronic mail
50 shall be complete upon transmission, unless the sender receives notice
51 that the electronic mail was not delivered.

52 § 17. Section 8001 of the civil practice law and rules is amended by
53 adding a new subdivision (d) to read as follows:

54 (d) Electronic patient information. 1. A person responding to a
55 request for patient information made or authorized by a "qualified
56 person", as defined by section eighteen of the public health law, or an

1 attorney who has written authorization from such "qualified person"
2 authorizing such attorney to execute a request for patient information,
3 or who is subpoenaed to produce records in a criminal proceeding, or in
4 an action, or before a grand jury, or for examination before trial or
5 hearing in an action in any court, or before an officer, person, or body
6 authorized to conduct the examination or hearing, shall be paid by the
7 person seeking the records a fee not to exceed six dollars and fifty
8 cents total for the production of certified medical, hospital, or nurs-
9 ing home records, including imaging records, audit trails, and itemized
10 bills, when such records are requested in an electronic or digital
11 format.

12 2. No additional fee shall be charged for the certification,
13 encryption, emailing, uploading, portal access, or any other method of
14 secure electronic transmission of such records.

15 3. The production of such subpoenaed certified electronic records
16 shall satisfy the requirements of section two thousand three hundred six
17 and rule three thousand one hundred twenty-two-a of this chapter.

18 § 18. Section 8303-a of the civil practice law and rules is amended by
19 adding a new subdivision (d) to read as follows:

20 (d) The court may award costs or reasonable attorneys' fees to a party
21 burdened by repeated or knowingly improper demands for bills of partic-
22 ulars in violation of rule three thousand forty-three or rule three
23 thousand forty-three-a of this chapter.

24 § 19. The general business law is amended by adding a new article 45-B
25 to read as follows:

26 ARTICLE 45-B

27 FAIR CONTRACTING IN LICENSED PROFESSIONS

28 Section 1530. Definitions.

29 1531. Prohibition of mandatory arbitration or mediation agree-
30 ments.

31 1532. Voluntary dispute resolution permitted.

32 1533. Enforcement.

33 1534. Severability.

34 § 1530. Definitions. For the purposes of this article, the following
35 terms shall have the following meanings:

36 1. "Mandatory arbitration agreement" means any clause or provision in
37 a contract that requires any current or future dispute between the
38 parties to be resolved through arbitration as a condition of entering
39 into, continuing, or renewing a contractual relationship.

40 2. "Mandatory mediation agreement" means any clause or provision in a
41 contract requiring a party to participate in mediation, settlement
42 conferences, or other alternative dispute resolution proceedings before
43 or instead of pursuing legal or administrative remedies.

44 3. "Licensed profession or industry" means any profession, occupation,
45 business, trade, or service that is subject to licensure, certification,
46 registration, or regulatory approval by any agency, board, department,
47 or authority of the state of New York or any of its political subdivi-
48 sions.

49 § 1531. Prohibition of mandatory arbitration or mediation agreements.

50 1. No person, firm, business, or entity engaged in a licensed profes-
51 sion or industry shall require any individual, patient, client, custom-
52 er, or consumer to enter into a mandatory arbitration agreement or a
53 mandatory mediation agreement regarding personal injury, wrongful death,
54 medical, dental, or podiatric malpractice actions, as a condition of, or
55 in consideration for:

56 (a) the receipt of services, or

1 (b) the provision of professional services.

2 2. Any such provision included in a contract shall be deemed void,
3 invalid, and unenforceable as against public policy.

4 § 1532. Voluntary dispute resolution permitted. Nothing in this arti-
5 cle shall prohibit parties from entering into an arbitration or medi-
6 ation agreement after a dispute has arisen, provided that such an agree-
7 ment is executed knowingly and voluntarily, in writing, and it is not a
8 condition for the continued provision or receipt of services or profes-
9 sional services, and all parties are advised in writing of their right
10 to seek relief through the courts or administrative forums.

11 § 1533. Enforcement. 1. Any person aggrieved by a violation of this
12 article may bring an action in any court of competent jurisdiction for:

13 (a) injunctive relief,

14 (b) declaratory relief,

15 (c) actual damages, and

16 (d) reasonable attorneys' fees and costs.

17 2. The attorney general shall have the authority to investigate and
18 bring civil actions to enforce the provisions of this article.

19 3. Any state or local agency responsible for licensing the relevant
20 profession or industry may initiate disciplinary or enforcement action
21 for violations of this article.

22 § 1534. Severability. If any clause, sentence, paragraph, subdivision
23 or section of this article shall be adjudged by any court of competent
24 jurisdiction to be invalid, such judgment shall not affect, impair, or
25 invalidate the remainder thereof, but shall be confined in its operation
26 to the clause, sentence, paragraph, subdivision or section thereof
27 directly involved in the controversy in which such judgment shall have
28 been rendered. It is hereby declared to be the intent of the legislature
29 that this article would have been enacted even if such invalid
30 provisions had not been included herein.

31 § 20. The general obligations law is amended by adding a new section
32 5-338 to read as follows:

33 § 5-338. Limitations on the enforcement of nondisclosure and non-dis-
34 paragement clauses in certain disputes. 1. Any provision in a stipu-
35 lation, agreement, release, or order resolving an action to recover
36 damages for personal injury, wrongful death, or medical, dental, or
37 podiatric malpractice that requires any party to maintain confidentiali-
38 ty, or refrain from disparaging a party, or refrain from disclosing any
39 information relating to the dispute, action, or settlement terms shall
40 be deemed void and unenforceable as a matter of law.

41 2. The provisions of this section shall not be waived by any party.
42 Any agreement purporting to waive the protections of this section shall
43 be void and unenforceable.

44 3. Nothing contained in this section shall be construed to authorize
45 or encourage the making of libelous, slanderous, or knowingly false
46 statements. Statements made with malice and intent to defame remain
47 actionable under applicable law, and the voiding of confidentiality or
48 non-disparagement provisions shall not be deemed a defense to such
49 conduct.

50 4. Nothing contained in this section shall prohibit any party from
51 voluntarily maintaining confidentiality, or refraining from disparaging
52 a party, or refraining from disclosing any information relating to the
53 dispute, action, or settlement terms.

54 5. If any clause, sentence, paragraph or subdivision of this section
55 shall be adjudged by any court of competent jurisdiction to be invalid,
56 such judgment shall not affect, impair, or invalidate the remainder

1 thereof, but shall be confined in its operation to the clause, sentence,
2 paragraph or subdivision thereof directly involved in the controversy in
3 which such judgment shall have been rendered. It is hereby declared to
4 be the intent of the legislature that this article would have been
5 enacted even if such invalid provisions had not been included herein.

6 § 21. Subdivision (a) of section 15-108 of the general obligations
7 law, as amended by chapter 742 of the laws of 1974, is amended to read
8 as follows:

9 (a) Effect of release of or covenant not to sue tortfeasors. When a
10 release or a covenant not to sue or not to enforce a judgment is given
11 to one of two or more persons liable or claimed to be liable in tort for
12 the same injury, or the same wrongful death, it does not discharge any
13 of the other tortfeasors from liability for the injury or wrongful death
14 unless its terms expressly so provide, but it reduces the claim of the
15 releasor against the other tortfeasors to the extent of any amount stip-
16 ulated by the release or the covenant, or in the amount of the consider-
17 ation paid for it, or in the amount of the released tortfeasor's equita-
18 ble share of the damages under article fourteen of the civil practice
19 law and rules, whichever is the greatest. No general release or covenant
20 not to sue entered into pursuant to this section in personal injury,
21 wrongful death, and medical, dental, and podiatric malpractice actions
22 shall include, name, or purport to release any insurance carrier, insur-
23 ance company, or risk retention group unless the person executing such
24 release has a present and legally cognizable claim or cause of action
25 against such insurer or risk retention group independent of its contrac-
26 tual obligation to indemnify or defend its insured. Any inclusion of an
27 insurer or risk retention group in a general release in contravention of
28 this subdivision shall be void and of no effect and shall not constitute
29 a waiver of any rights by the party executing the release.

30 § 22. This act shall take effect on the ninetieth day after it shall
31 have become a law. Effective immediately, the addition, amendment and/or
32 repeal of any rule or regulation necessary for the implementation of
33 this act on its effective date are authorized to be made and completed
34 on or before such effective date.