

ASSEMBLY, No. 2015

STATE OF NEW JERSEY

219th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2020 SESSION

Sponsored by:

Assemblyman JON M. BRAMNICK

District 21 (Morris, Somerset and Union)

SYNOPSIS

Provides that limitation on lawsuit option does not apply in accident caused by drunk driver.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel.



1 **AN ACT** concerning liability for noneconomic loss under certain
 2 policies of automobile insurance under certain circumstances and
 3 amending P.L.1972, c.70.
 4

5 **BE IT ENACTED** *by the Senate and General Assembly of the State*
 6 *of New Jersey:*
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8 1. Section 8 of P.L.1972, c.70 (C.39:6A-8) is amended to read
 9 as follows:

10 8. Tort exemption; limitation on the right to noneconomic loss.

11 One of the following two tort options shall be elected, in
 12 accordance with section 14.1 of P.L.1983, c.362 (C.39:6A-8.1), by
 13 any named insured required to maintain personal injury protection
 14 coverage pursuant to section 4 of P.L.1972, c.70 (C.39:6A-4):

15 a. Limitation on lawsuit option. Every owner, registrant,
 16 operator or occupant of an automobile to which section 4 of
 17 P.L.1972, c.70 (C.39:6A-4), personal injury protection coverage,
 18 section 4 of P.L.1998, c.21 (C.39:6A-3.1), medical expense benefits
 19 coverage, or section 45 of P.L.2003, c.89 (C.39:6A-3.3) regardless
 20 of fault, applies, and every person or organization legally
 21 responsible for his acts or omissions, is hereby exempted from tort
 22 liability for noneconomic loss to a person who is subject to this
 23 subsection and who is either a person who is required to maintain
 24 personal injury protection coverage pursuant to section 4 of
 25 P.L.1972, c.70 (C.39:6A-4), medical expense benefits pursuant to
 26 section 4 of P.L.1998, c.21 (C.39:6A-3.1) or benefits pursuant to
 27 section 45 of P.L.2003, c.89 (C.39:6A-3.3), or is a person who has a
 28 right to receive benefits under section 4 of P.L.1972,
 29 c.70 (C.39:6A-4), section 4 of P.L.1998, c.21 (C.39:6A-3.1) or
 30 section 45 of P.L.2003, c.89 (C.39:6A-3.3), as a result of bodily
 31 injury, arising out of the ownership, operation, maintenance or use
 32 of such automobile in this State, unless that person has sustained a
 33 bodily injury which results in death; dismemberment; significant
 34 disfigurement or significant scarring; displaced fractures; loss of a
 35 fetus; or a permanent injury within a reasonable degree of medical
 36 probability, other than scarring or disfigurement. An injury shall be
 37 considered permanent when the body part or organ, or both, has not
 38 healed to function normally and will not heal to function normally
 39 with further medical treatment. For the purposes of this subsection,
 40 "physician" means a physician as defined in section 5 of P.L.1939,
 41 c.115 (C.45:9-5.1).

42 In order to satisfy the tort option provisions of this subsection,
 43 the plaintiff shall, within 60 days following the date of the answer
 44 to the complaint by the defendant, provide the defendant with a
 45 certification from the licensed treating physician or a board-

EXPLANATION – Matter enclosed in bold-faced brackets **[thus]** in the above bill is
 not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1 certified licensed physician to whom the plaintiff was referred by
2 the treating physician. The certification shall state, under penalty of
3 perjury, that the plaintiff has sustained an injury described above.
4 The certification shall be based on and refer to objective clinical
5 evidence, which may include medical testing, except that any such
6 testing shall be performed in accordance with medical protocols
7 pursuant to subsection a. of section 4 of P.L.1972, c.70 (C.39:6A-4)
8 and the use of valid diagnostic tests administered in accordance
9 with section 12 of P.L.1998, c.21 (C.39:6A-4.7). Such testing may
10 not be experimental in nature or dependent entirely upon subjective
11 patient response. The court may grant no more than one additional
12 period not to exceed 60 days to file the certification pursuant to this
13 subsection upon a finding of good cause.

14 A person is guilty of a crime of the fourth degree if that person
15 purposefully or knowingly makes, or causes to be made, a false,
16 fictitious, fraudulent, or misleading statement of material fact in, or
17 omits a material fact from, or causes a material fact to be omitted
18 from, any certification filed pursuant to this subsection.
19 Notwithstanding the provisions of subsection e. of N.J.S.2C:44-1,
20 the court shall deal with a person who has been convicted of a
21 violation of this subsection by imposing a sentence of imprisonment
22 unless, having regard to the character and condition of the person,
23 the court is of the opinion that imprisonment would be a serious
24 injustice which overrides the need to deter such conduct by others.
25 If the court imposes a noncustodial or probationary sentence, such
26 sentence shall not become final for 10 days in order to permit the
27 appeal of such sentence by the prosecution. Nothing in this
28 subsection a. shall preclude an indictment and conviction for any
29 other offense defined by the laws of this State. In addition, any
30 professional license held by the person shall be forfeited according
31 to the procedures established by section 4 of P.L.1997,
32 c.353 (C.2C:51-5); or

33 b. No limitation on lawsuit option. As an alternative to the
34 basic tort option specified in subsection a. of this section, every
35 owner, registrant, operator, or occupant of an automobile to which
36 section 4 of P.L.1972, c.70 (C.39:6A-4), personal injury protection
37 coverage, section 4 of P.L.1998, c.21 (C.39:6A-3.1), medical
38 expense benefits coverage, or section 45 of P.L.2003,
39 c.89 (C.39:6A-3.3), regardless of fault, applies, and every person or
40 organization legally responsible for his acts or omissions, shall be
41 liable for noneconomic loss to a person who is subject to this
42 subsection and who is either a person who is required to maintain
43 the coverage mandated by P.L.1972, c.70 (C.39:6A-1 et seq.) or is a
44 person who has a right to receive benefits under section 4 of that act
45 (C.39:6A-4), as a result of bodily injury, arising out of the
46 ownership, operation, maintenance or use of such automobile in this
47 State.

48 The tort option provisions of subsection b. of this section shall

1 also apply to the right to recover for noneconomic loss of any
2 person eligible for benefits pursuant to section 4 of P.L.1972,
3 c.70 (C.39:6A-4), section 4 of P.L.1998, c.21 (C.39:6A-3.1) or
4 section 45 of P.L.2003, c.89 (C.39:6A-3.3) but who is not required
5 to maintain personal injury protection coverage pursuant to section
6 4 of P.L.1972, c.70 (C.39:6A-4), medical expense benefits coverage
7 pursuant to section 4 of P.L.1998, c.21 (C.39:6A-3.1) or benefits
8 pursuant to section 45 of P.L.2003, c.89 (C.39:6A-3.3) and is not an
9 immediate family member, as defined in section 14.1 of P.L.1983,
10 c.362 (C.39:6A-8.1), under a standard automobile insurance policy
11 or basic automobile insurance policy.

12 The tort option provision of subsection b. of this section shall
13 also apply to the right to recover for noneconomic loss of any
14 person eligible for benefits pursuant to section 4 of P.L.1972,
15 c.70 (C.39:6A-4), section 4 of P.L.1998, c.21 (C.39:6A-3.1) or
16 section 45 of P.L.2003, c.89 (C.39:6A-3.3) when bodily injury is
17 sustained in an accident caused by a person who is convicted of, or
18 pleads guilty to, operating a motor vehicle in violation of R.S.39:4-
19 50, section 2 of P.L.1981, c.512 (C.39:4-50.4a), or a similar statute
20 from any other jurisdiction.

21 The tort option provisions of subsection a. of this section shall
22 also apply to any person subject to section 14 of P.L.1985,
23 c.520 (C.39:6A-4.5) and to every named insured and any other
24 person to whom the benefits of the special automobile insurance
25 policy provided in section 45 of P.L.2003, c.89 (C.39:6A-3.3) or the
26 medical expense benefits of the basic automobile insurance policy
27 pursuant to section 4 of P.L.1998, c.21 (C.39:6A-3.1) apply whether
28 or not the person has elected the optional \$10,000 liability coverage
29 insuring against loss resulting from liability imposed by law for
30 bodily injury or death provided for in subsection c. of section 4 of
31 P.L.1998, c.21 (C.39:6A-3.1).

32 The tort option provisions of subsections a. and b. of this section
33 as provided in this 1998 amendatory and supplementary act shall
34 apply to automobile insurance policies issued or renewed on or after
35 the effective date of P.L.1998, c.21 (C.39:6A-1.1 et al.) and as
36 otherwise provided by law.
37 (cf: P.L.2003, c.89, s.52)

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39 2. This act shall take effect immediately and shall apply to a
40 cause of action that accrues on or after that date.

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STATEMENT

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45 This bill provides that a person who has chosen the "verbal
46 threshold," or limitation on lawsuit option, under his private
47 passenger automobile insurance policy could nevertheless sue a
48 tortfeasor for noneconomic damages when bodily injury is sustained

1 in an accident if the tortfeasor is convicted of, or pleads guilty to,
2 drunk driving or refusing to take a breathalyzer test in relation to
3 that accident, even if the verbal threshold requirements have not
4 been met with respect to that injury.