

SENATE, No. 262

STATE OF NEW JERSEY
219th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2020 SESSION

Sponsored by:

Senator THOMAS H. KEAN, JR.

District 21 (Morris, Somerset and Union)

SYNOPSIS

Establishes a Medical Malpractice Court.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel.



1 **AN ACT** establishing a Medical Malpractice Court and
2 supplementing Title 2B of the New Jersey Statutes.

3

4 **BE IT ENACTED** *by the Senate and General Assembly of the State*
5 *of New Jersey:*

6

7 1. The Legislature of the State of New Jersey finds and
8 declares that:

9 a. The resolution of disputes in cases involving medical
10 malpractice issues should be improved to assure litigants that the
11 process is an equitable and just one; and

12 b. Improving quality in these cases leads to efficient allocation
13 of judicial resources; and

14 c. A Medical Malpractice Court would provide these litigants
15 with access to the courts and efficient resolution of the disputes;
16 and

17 d. Medical Malpractice Courts should be created in such
18 locations as provided by the Rules of the Supreme Court, in order to
19 afford accessible and efficient access throughout the State of New
20 Jersey, with appropriate consideration of the geographic distribution
21 of cases coming within the jurisdiction of the Medical Malpractice
22 Court and of the efficient allocation of judicial resources; and

23 e. The appointment of persons to sit as judges of the Medical
24 Malpractice Court should take into account the knowledge of the
25 law governing all aspects of medical malpractice.

26

27 2. A Medical Malpractice Court is hereby established as a court
28 of limited jurisdiction pursuant to Article VI, Section 1, paragraph 1
29 of the New Jersey Constitution.

30

31 3. The Medical Malpractice Court shall be a court of record
32 and shall have a seal.

33

34 4. The Medical Malpractice Court shall have jurisdiction with
35 respect to:

36 a. Any action where the parties have agreed in writing that any
37 matter arising out of the agreement would be resolved in Medical
38 Malpractice Court.

39 b. Any dispute concerning medical malpractice liability
40 insurance;

41 c. Any action for injury against a health care provider based on
42 negligence;

43 d. Any other medical malpractice dispute as provided by the
44 Rules of the Supreme Court;

45 e. Any action cognizable in the Superior Court which raises
46 issues as to which judicial expertise in matters involving medical
47 malpractice is desirable, which are not within the jurisdiction of the
48 Chancery Division of the Superior Court, and which have been

1 transferred to the Medical Malpractice Court pursuant to the Rules
2 of the Supreme Court; or

3 f. any other matters as may be provided by statute.
4

5 5. a. The Medical Malpractice Court, in all causes within its
6 jurisdiction, and subject to law, may grant legal and equitable relief
7 so that all matters in controversy between the parties may be
8 completely determined.

9 b. Judgments of the Medical Malpractice Court may be
10 appealed to the Appellate Division of the Superior Court pursuant
11 to Rules of the Supreme Court.
12

13 6. a. The filing fee for commencement of proceedings in the
14 Medical Malpractice Court shall be the same as proceedings in the
15 Superior Court, Law Division.

16 b. Additional fees and the reduction or waiver of fees for
17 particular classes of cases shall be established by the Rules of the
18 Supreme Court.

19 c. No proceeding shall be heard by the Medical Malpractice
20 Court unless the fees are paid or waived.

21 d. All fees shall be payable to the clerk of the Medical
22 Malpractice Court for the use of the State, and shall not be
23 refundable except as specifically provided by the Rules of the
24 Supreme Court.

25 e. Practice and procedure in the Medical Malpractice Court
26 shall be as provided by the Rules of the Supreme Court.

27 f. Decisions of the Medical Malpractice Court shall be
28 published in the manner directed by the Supreme Court.
29

30 7. a. The Medical Malpractice Court shall maintain permanent
31 locations in Trenton and Newark and may hold sessions at other
32 locations throughout the State.

33 b. The State shall provide courtrooms, chambers and offices for
34 the Medical Malpractice Court at the required permanent locations
35 in Trenton and Newark and shall arrange for courtrooms, chambers
36 and offices or other appropriate facilities at other locations
37 throughout the State.
38

39 8. a. The Governor shall nominate and appoint, with the advice
40 and consent of the Senate, the judges of the Medical Malpractice
41 Court.

42 b. All appointments to such judgeships shall be made in such
43 manner that the appointees shall be, as nearly as possible, in equal
44 numbers, members of different political parties so as to constitute
45 the Medical Malpractice Court bipartisan in character.

46 The words "political parties" mean such political parties as shall
47 have cast the largest and next to the largest number of votes,
48 respectively, for members of the General Assembly at the last

1 preceding general election held for the election of all the members
2 of the General Assembly prior to the making of any such
3 appointments.

4
5 9. a. The Medical Malpractice Court shall consist of no less
6 than six, nor more than 12 judges, each of whom shall exercise the
7 powers of the court, subject to the Rules of the Supreme Court.

8 b. The judges of the Medical Malpractice Court shall have been
9 admitted to the practice of law in the State for at least 10 years prior
10 to appointment and shall be chosen for their special qualifications,
11 knowledge and experience in matters involving all aspects of
12 medical malpractice.

13
14 10. a. The judges of the Medical Malpractice Court shall hold
15 their offices for initial terms of seven years and until their
16 successors are appointed and qualified, and upon reappointment
17 shall hold their offices during good behavior.

18 b. The judges of the Medical Malpractice Court shall be retired
19 upon attaining the age of 70 years, upon the same terms and
20 conditions as judges of the Superior Court, and shall have the same
21 pension rights and other benefits as judges of the Superior Court.

22
23 11. a. Each judge of the Medical Malpractice Court shall
24 receive annual compensation and other benefits equal to that of a
25 judge of the Superior Court and which shall not be diminished
26 during the term of appointment.

27 b. The judges of the Medical Malpractice Court shall not
28 engage in the practice of law or other gainful pursuit nor shall they
29 hold other office or position of profit under this State, any other
30 State or the United States.

31
32 12. a. The judges of the Medical Malpractice Court shall be
33 subject to impeachment, and upon impeachment shall not exercise
34 judicial office until acquitted. The judges of the Medical
35 Malpractice Court shall also be subject to removal from office by
36 the Supreme Court for the causes and in the manner as is provided
37 by law for the removal of judges of the Superior Court.

38 b. Whenever the Supreme Court certifies to the Governor that a
39 judge of the Medical Malpractice Court appears to be substantially
40 unable to perform the duties of office, the Governor shall appoint a
41 commission of three persons to inquire into the circumstances.
42 Upon the recommendation of the commission, the Governor may
43 retire the judge from office, on pension, as may be provided by law.

44
45 13. The Chief Justice shall assign one of the judges of the
46 Medical Malpractice Court to be the presiding judge of the Medical
47 Malpractice Court. The presiding judge shall, subject to the
48 supervision of the Chief Justice and the Administrative Director of

1 the Courts, be responsible for the administration of the Medical
2 Malpractice Court.

3
4 14. The presiding judge shall submit a report to the Chief Justice
5 of the Supreme Court annually. The report shall be published as
6 part of the Annual Report of the Administrative Director of the
7 Courts. The report shall contain information and statistics for the
8 previous fiscal year concerning the operation of the Medical
9 Malpractice Court. The report may also contain recommendations
10 by the presiding judge regarding the clarification or revision of
11 legislation, rules and regulations relating to medical malpractice, or
12 the practice and procedure in the Medical Malpractice Court.

13
14 15. The Chief Justice may assign judges of the Medical
15 Malpractice Court to the Superior Court or to any other court as the
16 need appears, and any judge so assigned shall exercise all of the
17 powers of a judge of that court.

18
19 16. The Supreme Court shall appoint to serve at its pleasure a
20 Clerk and a Deputy Clerk of the Medical Malpractice Court, neither
21 of whom shall be subject to the provisions of Title 11A, Civil
22 Service, of the New Jersey Statutes.

23
24 17. This act shall take effect on the 180th day after the date of
25 enactment.

26 27 28 STATEMENT

29
30 This bill would establish a Medical Malpractice Court as a court
31 of limited jurisdiction similar to the current Tax Court. The
32 Medical Malpractice Court would have jurisdiction with respect to:
33 (1) any dispute concerning medical malpractice liability insurance;
34 (2) any action where the parties have agreed in writing that any
35 matter arising out of the agreement would be resolved in Medical
36 Malpractice Court; (3) any action for injury against a health care
37 provider based on negligence; (4) any other medical malpractice
38 dispute as provided by the Rules of the Supreme Court; (5) any
39 action cognizable in the Superior Court which raise issues as to
40 which judicial expertise in matters involving medical malpractice is
41 desirable, which are not within the jurisdiction of the Chancery
42 Division of the Superior Court, and which have been transferred to
43 the Medical Malpractice Court pursuant to the Rules of the Supreme
44 Court; or (6) any other matters as may be provided by statute

45 The Governor would nominate and appoint, with the advice and
46 consent of the Senate, the judges of the Medical Malpractice Court.
47 The court would consist of not less than six judges and not more
48 than 12 judges. The judges of this court would be required to have

1 been admitted to the practice of law in this State for at least 10
2 years prior to appointment. Judges of the Medical Malpractice
3 Court would hold their offices for initial terms of seven years and
4 until their successors are appointed and qualified, and upon
5 reappointment would hold their offices during good behavior. The
6 judges would be required to retire at the age of 70 years, upon the
7 same terms and conditions as judges of the Superior Court, and
8 would have the same pension rights and other benefits as judges of
9 the Superior Court. Each judge would receive an annual
10 compensation and other benefits equal to that of a judge of the
11 Superior Court. The judges would be subject to impeachment and
12 removal from office by the Supreme Court as is provided by law.

13 The Chief Justice would assign one of the judges of the Medical
14 Malpractice Court to be the presiding judge. The presiding judge
15 would, subject to the supervision of the Chief Justice and the
16 Administrative Director of the Courts, be responsible for the
17 administration of the court.