

SENATE, No. 783

STATE OF NEW JERSEY 219th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2020 SESSION

Sponsored by:

Senator NICHOLAS P. SCUTARI

District 22 (Middlesex, Somerset and Union)

Senator NELLIE POU

District 35 (Bergen and Passaic)

SYNOPSIS

Provides that limitation on lawsuit option does not apply in accidents caused by drunk or reckless drivers.

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:
7

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

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

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

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

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