

## BILL TEXT:

## STATE OF NEW YORK

2899

2005-2006 Regular Sessions

## IN ASSEMBLY

January 28, 2005

Introduced by M. of A. SEMINERIO -- read once and referred to the  
Committee on Judiciary

AN ACT to amend the civil practice law and rules, in relation to damages  
for non-economic loss in personal injury actions against public enti-  
ties

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

1 Section 1. Section 105 of the civil practice law and rules is amended  
2 by adding a new subdivision (r-1) to read as follows:

3 (r-1) Public entity. The term "public entity" means the state, a coun-  
4 ty, city, town, or village, a public university, board of education,  
5 community school board, board of cooperative educational services, or  
6 school district, a fire district, volunteer fire department or fire  
7 company, a public hospital, clinic, health center, or hospitals corpo-  
8 ration, a public authority, a public benefit corporation, or any offi-  
9 cer, agent or employee of a public entity.

10 § 2. The civil practice law and rules is amended by adding a new arti-  
11 cle 17 to read as follows:

## ARTICLE 17

## LIABILITY OF PUBLIC ENTITIES

14 Section 1700. Definitions.15 1701. Limited liability of public entities.

16 § 1700. Definitions. As used in this article the term "non-economic  
17 loss" includes but is not limited to pain and suffering, mental anguish,  
18 loss of consortium or other damages for non-economic loss.

19 § 1701. Limited liability of public entities. Notwithstanding any  
20 other provision of law, in any action against a public entity for

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

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1 personal injury, including injury resulting in death, except an action  
2 based upon an intentional tort, the following limitations shall apply:

3 1. There shall be no right to recover damages for non-economic loss  
4 for any injury, except an injury resulting in death, permanent loss of a  
5 bodily function, dismemberment or significant disfigurement, unless the  
6 fair and reasonable value of all medical services that were, or with  
7 reasonable certainty will be, rendered in treatment of and attributable  
8 to such injury equals or exceeds the sum of five thousand dollars,  
9 whether or not such sum was or will be paid by the injured person.

10 2. There shall be no right to recover damages for non-economic loss in  
11 excess of two hundred fifty thousand dollars.

12 3. Except as otherwise provided in this section, the provisions of  
13 this section shall apply to all claims brought against a public entity  
14 by or on behalf of the injured person or decedent, all derivative claims  
15 by the spouse or other family members of such injured person or decedent  
16 and all claims for contribution or common-law indemnification, whether  
17 brought in the same, or another, action; provided, however, that the  
18 total amount of damages for non-economic loss that may be recovered by  
19 all such claimants, when added together, shall not exceed the limitation  
20 set forth in subdivision two of this section.

21 § 3. This act shall take effect immediately and shall apply to all  
22 actions and proceedings pending on or commenced on or after such effec-  
23 tive date.

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**SPONSORS MEMO:**

**NEW YORK STATE ASSEMBLY**  
**MEMORANDUM IN SUPPORT OF LEGISLATION**  
**submitted in accordance with Assembly Rule III, Sec 1(e)**

**BILL NUMBER:** A2899

**SPONSOR:** Seminerio

**TITLE OF BILL:** An act to amend the civil practice law and rules, in relation to damages for non-economic loss in personal injury actions against public entities

**PURPOSE:** This bill seeks to control the burgeoning costs of personal injury suits against public entities by imposing a \$5,000 medical expense threshold that would have to be met to recover damages for non-economic loss from a public entity and limiting the amount of damages recoverable from a public entity for non-economic loss to \$250,000.

**SUMMARY OF PROVISIONS:** This bill adds a new CPLR Article 17 to bar recovery of damages for personal injury and death from a public entity for non-economic loss, except for intentional tort, or death, loss of a bodily function, dismemberment or significant disfigurement, unless the claimant incurred at least \$5,000 of medical expenses. Under existing law there is no medical-expense requirement, although the No-Fault law does impose a "serious-injury" threshold for automobile actions. The new Article 17 would also bar recovery from a public entity of damages for non-economic loss in excess of \$250,000, except in actions based upon intentional torts. Damages for economic loss would be unaffected by the provision.

**JUSTIFICATION:** Spiraling tort costs continue to have a grave impact on New York City's taxpaying public. This crisis, which led to a series of reforms in 1985 and 1986, has not lessened. Indeed, the measures adopted then have failed even to slow down the ominous growth in tort spending by New York City (the "City") and other public entities. In 1987, the first full year following enactment of such reform, the City's personal injury pay-out was \$116 million; in FY '98 the City paid approximately \$358 million, a staggering figure that represents a dramatic increase of \$70 million over the \$288 million paid in FY '97. The upward spiral continued, in FY '99, the City paid out \$374 million, in FY '00, the City paid out \$425 million and in FY '01, the City paid out \$574 million. These extraordinary increases are primarily attributable not to a greater number of cases against the City, but to exorbitant jury awards.

New York City is not the only "deep-pocket" affected by untenable jury verdicts. As the authors of a 27-state study conclude, "the size of the plaintiff's award is related most closely to litigant status rather than the type of trial, the areas of tort law, the length of time to disposition, or the locale. Knowing that the defendant is a corporation, insurance company, or governmental entity rather than an individual is the best predictor of the amount of the award."

Nevertheless, the burden on New York City residents is especially heavy. It has been estimated that the average annual cost to a New York City taxpayer is ten times that of the cost per taxpayer in the City of Denver. Moreover, that comparison does not even include the cost of verdicts against other governmental entities, such as the Transit Authority.

In FY '02, the City paid out \$484.7 million for tort claims. While a slight reduction from FY '01, the City's liability rose again in FY '03 to \$557.9 million. Tort claims cost more than twice the City's non-capital funding for the Department of Parks and more than twice the City's funding for its libraries. Indeed the City's pay-out for FY '02 could have paid the salaries and benefits of almost 10,000 new police officers, firefighters or teachers.

The greater part of this public "largesse" is accounted for by exorbitant awards for non-economic damages - intangible items such as pain and suffering, mental anguish and loss of consortium. The City's records show that, on average, half of every award or settlement over a million dollars goes for purely non-economic loss, rising to over 90% for cases of \$100,000 or less; the experience of other public entities is comparable. The extravagance of jury awards can be demonstrated by an example. In *Carl v. Daniels*, 268 A.D.2d 395 (1st Dept. 2000), a 12-year old plaintiff sustained a broken femur (thigh bone) when the car in which she was a passenger had to swerve at an intersection to miss an ambulance and ran into a tree. The jury awarded a total of \$7 million for the plaintiff's pain and suffering and \$45,000 to the infant's mother for loss of the infant's services. No award was sought for medical expenses. The trial court reduced the pain and suffering award to \$2.5 million, but the Appellate Division reinstated the award to \$4.8 million.

This bill includes two measures that would squarely address non-economic loss and thereby greatly ameliorate the burden upon the City and all other public entities covered by the proposed measures. First, it imposes a \$5,000 medical-expense threshold that would have to be met to recover any damages for non-economic loss from a public entity. Second, it limits the amount of damages recoverable from public entities for non-economic loss to the insignificant amount of \$250,000. The first of these proposals establishes as a matter of public policy that the public should not have to pay exorbitant damage awards to claimants with minor injuries entailing only minimal costs for treatment and care. We believe the most rational way to spare the public from the costs of insignif-

**RETRIEVE BILL**

icant personal injury cases is by establishing a threshold based upon the amount of the injured person's medical bills. Under this bill, claimants who have suffered death, loss of a bodily function, dismemberment or significant disfigurement would not have to meet the threshold amount, nor would it apply to intentional torts. (New Jersey and Pennsylvania both have imposed more stringent restrictions on recovery for non-economic loss from public entities, and only permit persons who sustain such injuries to recover non-economic loss provided they have met the medical-expense threshold.)

The second proposal "caps" non-economic loss damages recoverable from public entities in an amount that would allow seriously injured persons to receive ample compensation for pain-and-suffering damages. Thirty-eight states cap both economic and non-economic loss damages against public entities, and a thirty-ninth, West Virginia, limits only non-economic loss as we propose. Six more states limit non-economic loss in all cases.

**PRIOR LEGISLATIVE HISTORY:**

**FISCAL IMPLICATIONS:** New York City estimates that the savings to the City attributable to the measures set forth in this bill would be as follows:

## TORT REFORM

Projected Savings

(\$'s in millions)

	FY '04	FY '05	FY '06
Primary Tort Reform Proposals			
Cap on Pain and Suffering	\$ 99	\$111	\$114
Medical Expense Threshold	\$ 87	\$ 93	\$100
Total	\$186	\$204	\$214

**EFFECTIVE DATE:** This act shall take effect immediately and shall apply to all actions and proceedings pending on or commenced on or after such effective date.