

BILL TEXT:

STATE OF NEW YORK

9866

IN ASSEMBLY

February 7, 2006

Introduced by M. of A. MOSIELLO, MIRONES -- Multi-Sponsored by -- M. of A. WALKER -- read once and referred to the Committee on Insurance

AN ACT to amend the insurance law and the civil practice law and rules, in relation to allowing a cause of action for personal injury sustained in an automobile accident in cases of gross negligence

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

1 Section 1. Section 5102 of the insurance law is amended by adding a
2 new subsection (b-1) to read as follows:

3 (b-1) "Gross negligence" means a reckless disregard for the life or
4 property of others and evidence of a consciousness on the part of the
5 driver of the dangerous consequences of his or her conduct and a willful
6 continuance of the conduct regardless of such consciousness.

7 § 2. Subsection (a) of section 5104 of the insurance law is amended to
8 read as follows:

9 (a) Notwithstanding any other law, in any action by or on behalf of a
10 covered person against another covered person for personal injuries
11 arising out of negligence in the use or operation of a motor vehicle in
12 this state, there shall be no right of recovery for non-economic loss,
13 except in the case of a serious injury or in the case of gross negli-
14 gence, or for basic economic loss. The owner, operator or occupant of a
15 motorcycle which has in effect the financial security required by arti-
16 cle six or eight of the vehicle and traffic law, or which is referred to
17 in subdivision two of section three hundred twenty-one of such law,
18 shall not be subject to an action by or on behalf of a covered person
19 for recovery for non-economic loss, except in the case of a serious
20 injury or in the case of gross negligence, or for basic economic loss.

21 § 3. Subdivision (g) of rule 3016 of the civil practice law and rules,
22 as amended by chapter 805 of the laws of 1984, is amended to read as
23 follows:

24 (g) Personal injury. In an action designated in subsection (a) of
25 section five thousand one hundred four of the insurance law, for
26 personal injuries arising out of negligence in the use or operation of a
27 motor vehicle in this state, the complaint shall state that the plain-

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

LBD13588-01-5

A. 9866

2

1 tiff has sustained a serious injury, as defined in subsection (d) of
2 section five thousand one hundred two of the insurance law, or economic
3 loss greater than basic economic loss, as defined in subsection (a) of
4 section five thousand one hundred two of the insurance law, or that the
5 personal injury was the result of gross negligence of the defendant.

6 § 4. This act shall take effect on the ninetieth day after it shall
7 have become a law and shall apply to automobile accidents occurring on
8 or after such effective date.

SPONSORS MEMO:

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

BILL NUMBER: A9866

SPONSOR: Mosiello (MS)

TITLE OF BILL: An act to amend the insurance law and the civil practice law and rules, in relation to allowing a cause of action for personal injury sustained in an automobile accident in cases of gross negligence

PURPOSE OR GENERAL IDEA OF BILL: This legislation would allow a cause of action for personal injury sustained in an automobile accident in cases of gross negligence.

SUMMARY OF SPECIFIC PROVISIONS: Section 1. Section 5102 of the insurance law is amended by adding a new subsection (b-1).

Section 2. Subsection (a) of section 5104 of the insurance law

Section 3. Subdivision (g) of rule 3016 of the civil practice law and rules, as amended by chapter 805 of the laws of 1984.

JUSTIFICATION: When automobile accidents occur because of the reckless conduct of a dangerous driver, it is reasonable to expect compensation for loss of time, loss of pay and inconvenience. Too, the pain and suffering as a result of an automobile accident very often results in undiagnosed future health problems. Because these injuries are inflicted at the expense of one with gross disregard for others, this legislation would allow for a cause of action.

PRIOR LEGISLATIVE HISTORY: new bill

FISCAL IMPLICATIONS: none

EFFECTIVE DATE: This act shall take effect on the ninetieth day after it shall have become a law and shall apply to automobile accidents occurring on or after such effective date.

