

SPONSORS MEMO:

**NEW YORK STATE SENATE
INTRODUCER'S MEMORANDUM IN SUPPORT
submitted in accordance with Senate Rule VI. Sec 1**

BILL NUMBER: S4149

SPONSOR: VOLKER

TITLE OF BILL:

An act to amend the civil practice law and rules and the education law, in relation to the use of expert medical testimony; and to amend the civil practice law and rules, in relation to creating the health care courts pilot program

PURPOSE:

The purpose of the bill is to make revisions to the manner by which medical liability claims are adjudicated.

SUMMARY OF PROVISIONS:

Section 1 of the bill would amend the Section 3101(d)(1)(i) of the Civil Practice Law and Rules to remove the current provision in law that prohibits the disclosure of the identity of a medical expert witness who intends to testify in a medical liability action, Section 1 would also require that an individual may not serve as expert witness in an action for medical, dental or podiatric malpractice unless that individual has appropriate qualifications, including board certification in the same specialty as the defendant health care provider (if applicable) and experience in treating the clinical area of expertise that is the subject of the dispute.

Section 2 of the bill would create a new Article 44-A of the Civil Practice Law and Rules to establish a pilot program to authorize the Office of Court Administration to set up specialized "medical courts" to adjudicate medical liability actions within five counties across New York State. Such courts would use specially trained judges and objective independent medical expert witnesses, but would otherwise not interfere with the statutory process for adjudicating an action for medical, dental or podiatric malpractice.

Section 3 would amend section 6530 of the education law to create a new element of professional misconduct for providing medical expert witness testimony that is without reasonable medical foundation,

JUSTIFICATION:

The cost of medical liability insurance has risen steadily over the last several years. Most New York physicians, who were already paying enormously high liability premiums to begin with, are now paying 30-47% more for liability insurance than they were in 2003, For many physician specialists practicing in the New York City metropolitan area, the cost

for such insurance over the last five years has almost doubled, A recent report by the Center for Health Workforce Studies documented that many regions all across the State have begun to see a considerable drop in the number of critically needed surgical specialists, OB-GYNs and primary care physicians A significant factor is the high cost of liability insurance in New York State.

One cause of the problem is the randomness by which verdicts in medical liability lawsuits are reached Numerous studies have concluded that the civil justice system frequently produces awards to plaintiffs in medical liability actions where there has been no negligence and, conversely, results in no payment to the plaintiff when there has been error. Often virtually the same facts will produce an award in one case but a verdict for the defendant in another. There is a lack of consistency in litigation outcome. As a result, this has led to numerous settlements in medical liability actions due to concern that the severity of an injury will result in a jury verdict for the plaintiff even if no negligence has been committed, with the effect that medical liability insurance costs are driven up substantially.

This legislation would begin to take steps to facilitate a more objective analysis of medical liability disputes. Like statutes already passed in many other states in the country, this bill would assure that an expert witness who testifies in a medical liability action has a similar educational and treating background as the defendant health care provider, The bill would also remove a provision that currently exists under New York law that prohibits the disclosure of the identity of an expert witness who is to testify at a medical liability trial. This rule applies to no other type of action in New York State, and runs completely contrary to the whole premise of modern jurisprudence which seeks the early and complete exchange of information between litigants.

Moreover, this legislation would permit the creation of special courts to hear medical malpractice cases in up to 5 counties in New York State, Such courts would use specially trained judges who could call independent expert witnesses to provide greater clarity to the jury regarding the specific care that is the subject of the lawsuit. Such courts hold the promise of improving the reliability of the system of resolving medical liability disputes, which could ultimately result in reducing the cost of medical liability insurance for physicians and hospitals. Importantly for injured plaintiffs, the bill would not impact upon the damages that such plaintiff could receive.

This bill would take important first steps to reduce the increasingly unaffordable cost of medical liability insurance by better facilitating an objective analysis of medical liability disputes without limiting the ability of a plaintiff to bring an action or to be compensated for negligent actions on the part of health care providers,

LEGISLATIVE HISTORY:

New bill.

FISCAL IMPLICATIONS:

Undetermined.

EFFECTIVE DATE:

This act shall take effect on the ninetieth day after it shall have become a law.
