2A:58C-1

LEGISLATIVE HISTORY CHECKLIST
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(Liability of health care providers for harm by medical devices)

NJSA: 2A:58C-1

LAWS OF: 1995 **CHAPTER:** 143

BILL NO: S1497

SPONSOR(S): Cardinale and Kyrillos

DATE INTRODUCED: October 3, 1994

COMMITTEE: **ASSEMBLY:** Insurance

SENATE: Commerce

AMENDED DURING PASSAGE: Yes Amendments during passage denoted by superscript numbers
First reprint enacted

DATE OF PASSAGE: **ASSEMBLY:** June 12, 1995

SENATE: December 15, 1994

DATE OF APPROVAL: June 29, 1995

FOLLOWING STATEMENTS ARE ATTACHED IF AVAILABLE:
SPONSOR STATEMENT: Yes

COMMITTEE STATEMENT: **ASSEMBLY:** Yes

SENATE: Yes

FISCAL NOTE: No

VETO MESSAGE: No

MESSAGE ON SIGNING: Yes

FOLLOWING WERE PRINTED:
REPORTS: Yes
HEARINGS: No

974.90 Verniero, Peter
L514 Report to the governor on the subject of tort reform.
1994a Office of the Governor, 1994.

KBG:pp

P.L.1995, CHAPTER 143, *approved June 29, 1995*

1994 Senate No. 1497 *(First Reprint)*

AN ACT concerning tort reform and the liability of certain health care providers under certain circumstances and supplementing P.L.1987, c.197 (C.2A:58C-1 et seq.).

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

1. As used in this act:

"Health care provider" or "provider" means a provider of health care services and includes, but is not limited to, health care professionals, hospitals, nursing homes and other health care facilities.

"Health care service" means a service or product sold by a health care provider and includes, but is not limited to, hospital, medical, surgical, dental, hearing and vision services or products.

"Medical device" or "device" means a "device" as defined in subsection (h) of section 201 of the "Federal Food, Drug and Cosmetic Act," 52 Stat. 1040, (21 U.S.C. §321).

2. In any product liability action against a health care provider for harm allegedly caused by a medical device that was manufactured or designed in a defective manner, or for harm caused by a failure to warn of a danger related to the use of a medical device, the provider shall not be liable unless: (1) the provider has exercised some significant control over the design, manufacture, packaging or labeling of the medical device relative to the alleged defect in the device which caused the injury, death or damage; or (2) the provider [1][had actual knowledge] knew or should have known[1] of the defect in the medical device which caused the injury, death or damage, or the plaintiff can affirmatively demonstrate that the provider was in possession of facts from which a reasonable person would conclude that the provider had or should have had knowledge of the alleged defect in the medical device which caused the injury, death or damage; or (3) the provider created the defect in the medical device which caused the injury, death or damage.

3. This act shall take effect immediately and shall apply to causes of action which occur on or after the effective date of this act.

Concerns the liability of certain health care providers for harm caused by certain medical devices.

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.
Matter enclosed in superscript numerals has been adopted as follows:
[1] Senate SCM committee amendments adopted October 13, 1994.

SENATE, No. 1497

STATE OF NEW JERSEY

INTRODUCED OCTOBER 3, 1994

By Senators CARDINALE and KYRILLOS

AN ACT concerning tort reform and the liability of certain health care providers under certain circumstances and supplementing P.L.1987, c.197 (C.2A:58C-1 et seq.).

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

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"Medical device" or "device" means a "device" as defined in subsection (h) of section 201 of the "Federal Food, Drug and Cosmetic Act," 52 Stat. 1040, (21 U.S.C. §321).

2. In any product liability action against a health care provider for harm allegedly caused by a medical device that was manufactured or designed in a defective manner, or for harm caused by a failure to warn of a danger related to the use of a medical device, the provider shall not be liable unless: (1) the provider has exercised some significant control over the design, manufacture, packaging or labeling of the medical device relative to the alleged defect in the device which caused the injury, death or damage; or (2) the provider had actual knowledge of the defect in the medical device which caused the injury, death or damage, or the plaintiff can affirmatively demonstrate that the provider was in possession of facts from which a reasonable person would conclude that the provider had or should have had knowledge of the alleged defect in the medical device which caused the injury, death or damage; or (3) the provider created the defect in the medical device which caused the injury, death or damage.

3. This act shall take effect immediately and shall apply to causes of action which occur on or after the effective date of this act.

STATEMENT

This bill provides that health care providers shall not be liable in product liability actions for damages caused by medical devices which they provide, unless: (1) the provider exercised some significant control over the design, manufacture, packaging

or labeling of the medical device relative to the defect in the device which caused the injury, death or damage; or (2) the provider had actual knowledge of the defect in the medical device which caused the injury, death or damage, or the plaintiff can affirmatively demonstrate that the provider was in possession of facts from which a reasonable person would conclude that the provider knew or should have known of the defect in the medical device which caused the injury, death or damage; or (3) the provider created the defect in the medical device which caused the injury, death or damage.

The bill defines health care provider as any health care professionals, hospitals, health care facilities or nursing homes which provide health care services. The bill defines health care service as a service or product sold by a health care provider which includes, but is not limited to, hospital, medical, surgical, dental, hearing and vision services or products. The bill defines medical device as that term is used in subsection (h) of section 321 of the "Federal Food, Drug and Cosmetic Act," 21 U.S.C. §301 et seq.

Concerns the liability of certain health care providers for harm caused by certain medical devices.

ASSEMBLY INSURANCE COMMITTEE

STATEMENT TO

[FIRST REPRINT]

SENATE, No. 1497

STATE OF NEW JERSEY

DATED: JUNE 1, 1995

The Assembly Insurance Committee reports favorably Senate, No. 1497(1R).

This bill provides that health care providers shall not be liable in product liability actions for damages caused by medical devices which they provide unless: (1) the provider exercised some significant control over the design, manufacture, packaging or labeling of the medical device relative to the alleged defect in the device which caused the injury, death or damage; or (2) the provider knew or should have known of the defect in the medical device which caused the injury, death or damage or the plaintiff can affirmatively demonstrate that the provider was in possession of facts from which a reasonable person would conclude that the provider knew or should have known of the defect in the medical device which caused the injury, death or damage; or (3) the provider created the defect in the medical device which caused the injury, death or damage.

The bill defines: "health care provider" as any health care professionals, hospitals, health care facilities or nursing homes which provide health care services; "health care service" as a service or product sold by a health care provider which includes, but is not limited to, hospital, medical, surgical, dental, hearing and vision services or products; and "medical device" as that term is used in the "Federal Food, Drug and Cosmetic Act."

The provisions of the bill take effect immediately and apply to causes of action which occur on or after that effective date.

This bill is identical to Assembly, No. 716(1R).

SENATE COMMERCE COMMITTEE

STATEMENT TO

SENATE, No. 1497

with committee amendments

STATE OF NEW JERSEY

DATED: OCTOBER 13, 1994

The Senate Commerce Committee reports favorably and with committee amendments Senate, No. 1497.

This bill, as amended by the committee, provides that health care providers shall not be liable in product liability actions for damages caused by medical devices which they provide, unless: (1) the provider exercised some significant control over the design, manufacture, packaging or labeling of the medical device relative to the defect in the device which caused the injury, death or damage; or (2) the provider knew or should have known of the defect in the medical device which caused the injury, death or damage or the plaintiff can affirmatively demonstrate that the provider was in possession of facts from which a reasonable person would conclude that the provider knew or should have known of the defect in the medical device which caused the injury, death or damage; or (3) the provider created the defect in the medical device which caused the injury, death or damage.

The bill defines: "health care provider" as any health care professionals, hospitals, health care facilities or nursing homes which provide health care services; "health care service" as a service or product sold by a health care provider which includes, but is not limited to, hospital, medical, surgical, dental, hearing and vision services or products; and "medical device" as that term is used in subsection (h) of section 321 of the "Federal Food, Drug and Cosmetic Act," 21 U.S.C. §301 et seq.

The provisions of the bill take effect immediately and apply to causes of action which occur on or after that effective date.

OFFICE OF THE GOVERNOR
NEWS RELEASE

CN-001 CARL GOLDEN
Contact: BECKY TAYLOR
609-777-2600

TRENTON, N.J. 08625
Release: THURSDAY
JUNE 29, 1995

Governor Christie Whitman signed a package of five tort reform bills today that bring common sense and equity to the state's civil litigation system. The laws fulfill the Governor's 1994 promise to revamp the system and provide more access to the courts.

"The legislation enacted today strikes a fair balance between preserving a person's right to sue and controlling nuisance suits that drive up the cost of doing business in New Jersey" said Governor Whitman. "Both consumers and businesses will benefit from these reforms."

Sponsors of the following tort reform bills are **Senators Joseph Kyrillos, Jr. (R-Monmouth)** and **Gerald Cardinale (R-Bergen):**

1. Certificate of Merit - Senate Bill No. 1493

This bill establishes new procedures with regard to the filing of malpractice or other professional-negligence actions against certain certified professionals in which damages are sought for personal injuries, wrongful death, or property damage. That list includes accountants, architects, attorneys, dentists, engineers, physicians, chiropractors, podiatrists, and nurses and health care facilities.

The bill requires that within 60 days after a complaint has been filed, the plaintiff must provide the defendant with an affidavit from another professional supporting the claim that the care, knowledge or treatment provided by the defendant was not up to professional standards.

2. Joint-And-Several Liability - Senate Bill No. 1494

The bill provides that a defendant who is less than 60% responsible for the plaintiff's injury is liable only for that percent of the total award that corresponds to his or her percent of fault. A party that is 60% or more responsible is jointly and severally liable for the entire award.

The bill also modifies the "environmental exception." The bill provides that pure joint-and-several liability shall apply in environmental-tort cases, but only if the negligence or fault of the parties in the case cannot be apportioned.

3. Retail-Sellers' Liability - Senate Bill No. 1495

This bill immunizes product sellers from liability for injuries caused by manufacturer's defects in products that they have sold.

4. The Punitive Damages Act - Senate Bill No. 1496

The bill provides for a cap on punitive damages. A punitive-damage award may not exceed $350,000 or five times compensatory damages, whichever is greater. In addition, there is an exclusion from the cap for the following causes of action: bias crimes, the Law Against Discrimination, AIDS testing disclosure, sexual abuse, and civil actions against defendants who were convicted of drunk-driving violations.

5. Health-Care Providers' Liability -- Medical Devices - Senate Bill No. 1497

This bill holds health-care providers responsible for defective medical devices that they provide, based only on their own negligence.

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