

2A:53A-26

LEGISLATIVE HISTORY CHECKLIST  
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(Civil & criminal justice--  
negligence--malpractice actions)

NJSA: 2A:53A-26

LAWS OF: 1995 CHAPTER: 139

BILL NO: S1493

SPONSOR(S): Kyrillos and others

DATE INTRODUCED: October 3, 1994

COMMITTEE: ASSEMBLY: Insurance

SENATE: Commerce

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

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 A. FLOOR AMENDS.  
W. STMT. (6-26-95)

SENATE: Yes S. FLOOR AMENDS.  
W. STMT. (6-22-95)

FISCAL NOTE: No

VETO MESSAGE: No

MESSAGE ON SIGNING: Yes

FOLLOWING WERE PRINTED:

REPORTS: Yes

HEARINGS: No

See newspaper clippings ~~\_\_\_\_\_~~

"Whitman oks tort reforms," 6-30-95, Courier News.

"Lawsuit reform now law," 6-30-95, Home News.

"Whitman signs lawsuit reform laws," 6-30-95, Atlantic City Press.

974.90 Verniero, Peter.

L514 Report to the governor on the subject of tort reform.

1994a September 13, 1994. Office of the Governor, 1994.

KBG:pp

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P.L.1995, CHAPTER 139, *approved June 29, 1995*  
1994 Senate No. 1493 (*Fourth Reprint*)

1 AN ACT concerning tort reform and the negligence or  
2 malpractice of certain licensed <sup>2</sup>[, registered or certified]<sup>2</sup>  
3 persons and supplementing Title 2A of the New Jersey Statutes.  
4

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

7 1. As used in this act, "licensed person" means any person who  
8 is licensed <sup>2</sup>[, registered or certified by the Director of the  
9 Division of Consumer Affairs in the Department of Law and  
10 Public Safety or by one of the boards prescribed in section 2 of  
11 P.L.1978, c.73 (C.45:1-15) ] as:

12 a. an accountant pursuant to P.L.1977, c.144 (C.45:2B-1 et  
13 seq.);

14 b. an architect pursuant to R.S.45:3-1 et seq.;

15 c. an attorney admitted to practice law in New Jersey;

16 d. a dentist pursuant to R.S.45:6-1 et seq.;

17 e. an engineer pursuant to P.L.1938, c.342 (C.45:8-27 et seq.);

18 f. a physician in the practice of medicine or surgery pursuant  
19 to R.S.45:9-1 et seq.;<sup>2</sup> <sup>3</sup>[and]<sup>3</sup> <sup>2</sup>[includes]

20 g.<sup>2</sup> <sup>3</sup>a podiatrist pursuant to R.S. 45:5-1 et seq.;

21 h. a chiropractor pursuant to P.L. 1989, c. 153 (C. 45:9-41.17  
22 et seq.);

23 i. a registered professional nurse pursuant to P.L. 1947, c. 262  
24 (C. 45:11-23 et seq.); and

25 j.<sup>3</sup> a health care facility as defined in section 2 of P.L.1971,  
26 c.136 (C.26:2H-2).

27 2. In any action for damages for personal injuries, wrongful  
28 death or property damage resulting from an alleged act of  
29 malpractice or negligence by a licensed person in his profession  
30 or occupation, the plaintiff shall, within 60 days following the  
31 date of <sup>1</sup>[filing of the action] <sup>2</sup>[service of the complaint on the  
32 defendant<sup>1</sup>] filing of the answer to the complaint by the  
33 defendant<sup>2</sup>, provide each defendant with an affidavit of an  
34 appropriate licensed person that there exists a reasonable  
35 probability that the care, skill or knowledge exercised or  
36 exhibited in the treatment, practice or work that is the subject of  
37 the complaint, fell outside acceptable professional or  
38 occupational standards or treatment practices. <sup>2</sup>The court may  
39 grant no more than one additional period, not to exceed 60 days,  
40 to file the affidavit pursuant to this section, upon a finding of  
41 good cause.<sup>2</sup> The person executing the affidavit shall be licensed  
42 <sup>2</sup>[, registered or certified, as appropriate,]<sup>2</sup> in this or any other

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:

<sup>1</sup> Senate SCM committee amendments adopted November 10, 1994.

<sup>2</sup> Assembly AIN committee amendments adopted June 1, 1995.

<sup>3</sup> Senate floor amendments adopted June 22, 1995.

<sup>4</sup> Assembly floor amendments adopted June 26, 1995.

1 state; have particular expertise in the general area or specialty  
2 involved in the action, as evidenced by board certification or by  
3 devotion of the person's practice substantially to the general  
4 area or specialty involved in the action for a period of at least  
5 five years <sup>2</sup>; and be actively engaged in the practice of his  
6 profession or occupation, to which at least 80% of the person's  
7 professional or occupational time shall be devoted or, if on the  
8 faculty of an accredited college, university or professional or  
9 occupational school, to which at least 30% of the person's  
10 professional or occupational time shall be devoted and at least  
11 50% of the person's time shall be devoted to teaching, for a total  
12 of at least 80%, and the] <sup>4</sup><sup>3</sup>; and be actively engaged in the  
13 practice of his profession or occupation, to which at least 80% of  
14 the person's professional or occupational time shall be devoted  
15 or, if on the faculty of an accredited college, university or  
16 professional or occupational school, to which at least 30% of the  
17 person's professional or occupational time shall be devoted and  
18 at least 50% of the person's time shall be devoted to teaching,  
19 for a total of at least 80%<sup>3</sup><sup>4</sup> . The<sup>2</sup> person shall have no  
20 financial interest in the <sup>2</sup>outcome of the<sup>2</sup> case under review, but  
21 this prohibition shall not exclude the person from being an expert  
22 witness in the case.

23 3. An affidavit shall not be required pursuant to section 2 of  
24 this act if the plaintiff provides a sworn statement in lieu of the  
25 affidavit setting forth that: the defendant has failed to provide  
26 plaintiff with medical records or other records or information  
27 having a substantial bearing on preparation of the affidavit; a  
28 written request therefor along with, if necessary, a signed  
29 authorization by the plaintiff for release of the medical records  
30 or other records or information requested, has been made by  
31 certified mail or personal service; and at least 45 days have  
32 elapsed since the defendant received the request.

33 4. If the plaintiff fails to provide an affidavit or a statement  
34 in lieu thereof, pursuant to section 2 or 3 of this act, it shall be  
35 deemed a failure to state a cause of action.

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

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42  
43 Requires affidavit for malpractice actions by a neutral licensed  
44 person showing that treatment, practice or work was  
45 unacceptable.

SENATE, No. 1493  
STATE OF NEW JERSEY

INTRODUCED OCTOBER 3, 1994

By Senators KYRILLOS and CARDINALE

1 AN ACT concerning tort reform and the negligence or  
2 malpractice of certain licensed, registered or certified persons  
3 and supplementing Title 2A of the New Jersey Statutes.

4  
5 BE IT ENACTED by the Senate and General Assembly of the  
6 State of New Jersey:

7 1. As used in this act, "licensed person" means any person who  
8 is licensed, registered or certified by the Director of the Division  
9 of Consumer Affairs in the Department of Law and Public Safety  
10 or by one of the boards prescribed in section 2 of P.L.1978, c.73  
11 (C.45:1-15) and includes a health care facility as defined in  
12 section 2 of P.L.1971, c.136 (C.26:2H-2).

13 2. In any action for damages for personal injuries, wrongful  
14 death or property damage resulting from an alleged act of  
15 malpractice or negligence by a licensed person in his profession  
16 or occupation, the plaintiff shall, within 60 days following the  
17 date of filing of the action, provide each defendant with an  
18 affidavit of an appropriate licensed person that there exists a  
19 reasonable probability that the care, skill or knowledge exercised  
20 or exhibited in the treatment, practice or work that is the subject  
21 of the complaint, fell outside acceptable professional or  
22 occupational standards or treatment practices. The person  
23 executing the affidavit shall be licensed, registered or certified,  
24 as appropriate, in this or any other state; have particular  
25 expertise in the general area or specialty involved in the action,  
26 as evidenced by board certification or by devotion of the person's  
27 practice substantially to the general area or specialty involved in  
28 the action for a period of at least five years; and be actively  
29 engaged in the practice of his profession or occupation, to which  
30 at least 80% of the person's professional or occupational time  
31 shall be devoted or, if on the faculty of an accredited college,  
32 university or professional or occupational school, to which at  
33 least 30% of the person's professional or occupational time shall  
34 be devoted and at least 50% of the person's time shall be devoted  
35 to teaching, for a total of at least 80%, and the person shall have  
36 no financial interest in the case under review, but this prohibition  
37 shall not exclude the person from being an expert witness in the  
38 case.

39 3. An affidavit shall not be required pursuant to section 2 of  
40 this act if the plaintiff provides a sworn statement in lieu of the  
41 affidavit setting forth that: the defendant has failed to provide  
42 plaintiff with medical records or other records or information  
43 having a substantial bearing on preparation of the affidavit; a  
44 written request therefor along with, if necessary, a signed  
45 authorization by the plaintiff for release of the medical records

(1994)

1 or other records or information requested, has been made by  
2 certified mail or personal service; and at least 45 days have  
3 elapsed since the defendant received the request.

4 4. If the plaintiff fails to provide an affidavit or a statement  
5 in lieu thereof, pursuant to section 2 or 3 of this act, it shall be  
6 deemed a failure to state a cause of action.

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

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*Sponsors*

## STATEMENT

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This bill would establish new procedures with regard to the filing of malpractice or negligence actions concerning licensed persons. Under the provisions of the bill the plaintiff would be required within 60 days after the filing of a malpractice or negligence complaint to provide to each defendant an affidavit of a qualified person that there exists a reasonable probability that the care, skill or knowledge provided fell below acceptable professional or occupational standards or a statement in lieu of the affidavit which states that the defendant failed to provide the necessary information for completion of the affidavit. The bill provides that failure to provide either an affidavit or a statement in lieu of an affidavit would be deemed a failure to state a cause of action.

Licensed persons include those persons licensed pursuant to Title 45 of the Revised Statutes and licensed health care facilities.

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Requires affidavit for malpractice actions by a neutral licensed person showing that treatment was unacceptable.

ASSEMBLY INSURANCE COMMITTEE

STATEMENT TO

[FIRST REPRINT]

SENATE, No. 1493

with committee amendments

STATE OF NEW JERSEY

DATED: JUNE 1, 1995

The Assembly Insurance Committee reports favorably and with committee amendments, Senate, No. 1493(1R).

As amended by the committee, this bill establishes new procedures with regard to the filing of certain malpractice or negligence actions. The bill provides that, within 60 days after the filing of the answer to the complaint by the defendant in an action for damages for personal injuries, wrongful death or property damage resulting from an alleged act of malpractice or negligence by a licensed person, the plaintiff is required to provide to each defendant an affidavit of a qualified person that there exists a reasonable probability that the care, skill or knowledge provided fell below acceptable professional or occupational standards or treatment practices, or a statement in lieu of the affidavit, which states that the defendant failed to provide the necessary information for completion of the affidavit. The bill provides that failure to provide either an affidavit or a statement in lieu of an affidavit would be deemed a failure to state a cause of action. Under the provisions of the bill, upon a finding of good cause, the court may grant one extension period, not to exceed 60 days, to file the affidavit.

The qualified person who executes the affidavit must be appropriately licensed in this or any other state and have particular expertise in the general area or specialty involved in the action, as evidenced by board certification or by the devotion of the person's practice substantially to the general area or specialty involved in the action for at least five years. The qualified person may not have any financial interest in the outcome of the case under review, but this prohibition shall not exclude that person from being an expert witness.

A "licensed person" under this bill is a person who is licensed as an accountant pursuant to P.L.1977, c.144 (C.45:2B-1 et seq.); an architect pursuant to R.S.45:3-1 et seq.; an attorney admitted to practice law in New Jersey; a dentist pursuant to R.S.45:6-1 et seq.; an engineer pursuant to P.L.1938, c.342 (C.45:9-1 et seq.); or a physician in the practice of medicine or surgery pursuant to R.S.45:9-1 et seq. Health care facilities licensed pursuant to P.L.1971, c.136 (C.26:2H-1 et seq.) are also included within the definition of "licensed person."

The committee amendments:

- change the time frame within which an affidavit is required to be provided to each defendant, from 60 days following the service of the complaint on the defendant, to 60 days following the date of filing of the answer to the complaint by the defendant;

- provide that the court, upon a finding of good cause, may grant one extension of up to 60 additional days, for the filing of the affidavit;

- limit the professions to which the bill applies from all professions licensed under Title 45 of the Revised Statutes, to certain professions including accountants, architects, attorneys, dentists, engineers and physicians and health care facilities;

- with respect to the qualifications of expert witnesses, delete the requirement that the person be actively engaged in the practice of his profession at least 80% of his professional or occupational time, and change the requirement that the person have no financial interest in the case, to the requirement that the person have no financial interest in the outcome of the case.

The bill takes effect immediately and applies to causes of action which occur on or after the effective date of the bill.

As released by the committee, this bill is identical to Assembly No. 263(1R).

SENATE COMMERCE COMMITTEE

STATEMENT TO

**SENATE, No. 1493**

with committee amendments

**STATE OF NEW JERSEY**

DATED: NOVEMBER 10, 1994

The Senate Commerce Committee reports favorably and with committee amendments Senate, No. 1493.

This bill, as amended, establishes new procedures with regard to the filing of certain malpractice or negligence actions. The bill provides that, within 60 days after service of the complaint on the defendant in an action for damages for personal injuries, wrongful death or property damage resulting from an alleged act of malpractice or negligence by a licensed person, the plaintiff would be required to provide to each defendant an affidavit of a qualified person that there exists a reasonable probability that the care, skill or knowledge provided fell below acceptable professional or occupational standards or treatment practices, or a statement in lieu of the affidavit which states that the defendant failed to provide the necessary information for completion of the affidavit. The bill provides that failure to provide either an affidavit or a statement in lieu of an affidavit would be deemed a failure to state a cause of action.

The qualified person who executes the affidavit must: be appropriately licensed, registered or certified in this or any other state; have particular expertise in the general area or specialty involved in the action, as evidenced by board certification or at least five years of experience in the general area or specialty; be actively engaged in his profession or occupation at least 80% of his professional or occupational time or, if on a faculty, engaged in his profession or occupation at least 30% of that time and in teaching at least 50% of that time; and have no financial interest in the case under review, but this prohibition shall not exclude that person from being an expert witness.

The bill takes effect immediately and applies to causes of action which occur on or after that effective date.

A "licensed person" under this bill is a person who is licensed, registered or certified by the Director of the Division of Consumer Affairs or by one of the following boards: the New Jersey State Board of Accountancy, the New Jersey State Board of Architects, the New Jersey State Board of Cosmetology and Hairstyling, the Board of Examiners of Electrical Contractors, the New Jersey State Board of Dentistry, the State Board of Mortuary Science of New Jersey, the State Board of Professional Engineers and Land Surveyors, the State Board of Marriage Counselor Examiners, the State Board of Medical Examiners, the New Jersey Board of Nursing, the New Jersey State Board of Optometrists, the State

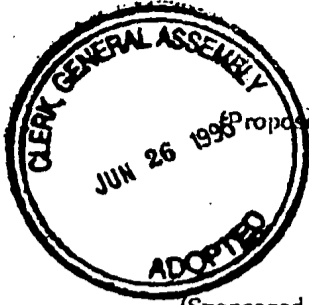


Board of Examiners of Ophthalmic Dispensers and Ophthalmic Technicians, the Board of Pharmacy, the State Board of Professional Planners, the State Board of Psychological Examiners, the State Board of Examiners of Master Plumbers, the State Board of Shorthand Reporting, the State Board of Veterinary Medical Examiners, the Acupuncture Examining Board, the State Board of Chiropractic Examiners, the State Board of Respiratory Care, the State Real Estate Appraiser Board, and the State Board of Social Work Examiners, and includes all health care facilities.

195 JUN 26 PM 4:15

CL110/1946

SR XXXX 0017  
TR XXXX 0143 ✓



Assembly Amendments  
Proposed by Assemblywoman VANDERVALK)

to

Senate, No. 1493 (3R)

(Sponsored by Senators KYRILLOS and CARDINALE)

- \_\_\_\_\_ Speaker
- \_\_\_\_\_ Clerk (3)
- \_\_\_\_\_ Majority Leader
- \_\_\_\_\_ Minority Leader
- \_\_\_\_\_ Sponsor of Aa
- \_\_\_\_\_ Sponsor of Bill

REPLACE SECTION 2 TO READ:

2. In any action for damages for personal injuries, wrongful death or property damage resulting from an alleged act of malpractice or negligence by a licensed person in his profession or occupation, the plaintiff shall, within 60 days following the date of <sup>1</sup>[filing of the action] <sup>2</sup>[service of the complaint on the defendant<sup>1</sup>] filing of the answer to the complaint by the defendant<sup>2</sup>, provide each defendant with an affidavit of an appropriate licensed person that there exists a reasonable probability that the care, skill or knowledge exercised or exhibited in the treatment, practice or work that is the subject of the complaint, fell outside acceptable professional or occupational standards or treatment practices. <sup>2</sup>The court may grant no more than one additional period, not to exceed 60 days, to file the affidavit pursuant to this section, upon a finding of good cause.<sup>2</sup> The person executing the affidavit shall be licensed <sup>2</sup>[. registered or certified, as appropriate.]<sup>2</sup> in this or any other state; have particular expertise in the general area or specialty involved in the action, as evidenced by board certification or by devotion of the person's practice substantially to the general area or specialty involved in the action for a period of at least five years <sup>2</sup>]; and be actively engaged in the practice of his profession or occupation, to which at least 80% of the person's professional or occupational time shall be devoted or, if on the faculty of an accredited college, university or professional or occupational school, to which at least 30% of the person's professional or occupational time shall be devoted and at least 50% of the person's time shall be devoted to teaching, for a total of at least 80%, and the] <sup>4</sup>[<sup>3</sup>; and be actively engaged in the practice of his profession or occupation, to which at least 80% of the person's professional or occupational time shall be devoted or, if on the faculty of an accredited college, university or professional or occupational school, to which at least 30% of the person's professional or occupational time shall be devoted and at least 50% of the person's time shall be devoted to teaching, for a total of at least 80%<sup>3</sup>]<sup>4</sup>. The<sup>2</sup> person shall have no financial interest in the <sup>2</sup>outcome of the<sup>2</sup> case under review, but this prohibition shall not exclude the person from being an expert witness in the case.

**STATEMENT**

This amendment removes the requirement that the qualified person who executes the affidavit must be actively engaged in his profession or occupation at least 80% of his professional or occupational time or, if on a faculty, engaged in his profession or occupation at least 30% of that time and in teaching at least 50% of that time.

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SENATE Amendments  
(Proposed by Senators Cardinale and Rice)

to

**SENATE, No. 1493 (2R)**

(Sponsored by Senators KYRILLOS and CARDINALE)

REPLACE SECTION 1 TO READ:

1. As used in this act, "licensed person" means any person who is licensed <sup>2</sup>[, registered or certified by the Director of the Division of Consumer Affairs in the Department of Law and Public Safety or by one of the boards prescribed in section 2 of P.L.1978, c.73 (C.45:1-15)] as:

a. an accountant pursuant to P.L.1977, c.144 (C.45:23-1 et seq.); OK

b. an architect pursuant to R.S.45:3-1 et seq.; OK

c. an attorney admitted to practice law in New Jersey;

d. a dentist pursuant to R.S.45:6-1 et seq.; OK

e. an engineer pursuant to P.L.1938, c.342 (C.45:8-27 et seq.);

f. a physician in the practice of medicine or surgery pursuant to R.S.45:9-1 et seq.; <sup>2</sup> <sup>3</sup>[and] <sup>2</sup>[includes]

g. <sup>2</sup> <sup>3</sup>a podiatrist pursuant to R.S. 45:5-1 et seq.; OK

h. a chiropractor pursuant to P.L. 1989, c. 153 (C. 45:9-41.17 et seq.);

i. a registered professional nurse pursuant to P.L. 1947, c. 262 (C. 45:11-23 et seq.); and

j. <sup>3</sup> a health care facility as defined in section 2 of P.L.1971, c.136 (C.26:211-2).

REPLACE SECTION 2 TO READ:

2. In any action for damages for personal injuries, wrongful death or property damage resulting from an alleged act of malpractice or negligence by a licensed person in his profession or occupation, the plaintiff shall, within 60 days following the date of <sup>1</sup>[filing of the action] <sup>2</sup>[service of the complaint on the defendant<sup>1</sup>] filing of the answer to the complaint by the defendant<sup>2</sup>, provide each defendant with an affidavit of an appropriate licensed person that there exists a reasonable probability that the care, skill or knowledge exercised or exhibited in the treatment, practice or work that is the subject of the complaint, fell outside acceptable professional or occupational standards or treatment practices. <sup>2</sup>The court may grant no more than one additional period, not to exceed 60 days, to file the affidavit pursuant to this section, upon a finding of good cause. <sup>2</sup> The person executing the affidavit shall be licensed <sup>2</sup>[, registered or certified, as appropriate.]<sup>2</sup> in this or any other state; have particular expertise in the general area or specialty involved in the action, as evidenced by board certification or by devotion of the person's practice substantially to the general area or specialty involved in the action for a period of at least five years <sup>2</sup>{}; and be actively engaged in the practice of his profession or occupation, to which at least 80% of the person's professional or occupational time shall be devoted or, if on the faculty of an accredited college, university or professional or occupational school, to which at least 30% of the person's professional or occupational time shall be devoted and at least

50% of the person's time shall be devoted to teaching, for a total of at least 80%, and the] <sup>3</sup>; and be actively engaged in the practice of his profession or occupation, to which at least 80% of the person's professional or occupational time shall be devoted or, if on the faculty of an accredited college, university or professional or occupational school, to which at least 30% of the person's professional or occupational time shall be devoted and at least 50% of the person's time shall be devoted to teaching, for a total of at least 80%<sup>3</sup>. The<sup>2</sup> person shall have no financial interest in the <sup>2</sup>outcome of the<sup>2</sup> case under review, but this prohibition shall not exclude the person from being an expert witness in the case.

#### STATEMENT

This amendment expands the provisions of the bill to include registered professional nurses, chiropractors and podiatrists. It also provides that the qualified person who executes the affidavit must be actively engaged in his profession or occupation at least 80% of his professional or occupational time or, if on a faculty, engaged in his profession or occupation at least 30% of that time and in teaching at least 50% of that time.



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## 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.

Carl Golden/Becky Taylor  
Thursday - 6/29/95

Page Two.

**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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