

**SENATE, No. 2433**

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**STATE OF NEW JERSEY**  
**218th LEGISLATURE**

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INTRODUCED APRIL 5, 2018

**Sponsored by:**

**Senator NICHOLAS P. SCUTARI**

**District 22 (Middlesex, Somerset and Union)**

**Senator NELLIE POU**

**District 35 (Bergen and Passaic)**

**SYNOPSIS**

Provides that limitation on lawsuit option does not apply in accidents caused by drunk or reckless drivers.

**CURRENT VERSION OF TEXT**

As introduced.



1 AN ACT concerning liability for noneconomic loss under certain  
2 policies of automobile insurance under certain circumstances and  
3 amending P.L.1972, c.70.  
4

5 **BE IT ENACTED** by the Senate and General Assembly of the State  
6 of New Jersey:  
7

8 1. Section 8 of P.L.1972, c.70 (C.39:6A-8) is amended to read  
9 as follows:

10 8. Tort exemption; limitation on the right to noneconomic loss.

11 One of the following two tort options shall be elected, in  
12 accordance with section 14.1 of P.L.1983, c.362 (C.39:6A-8.1), by  
13 any named insured required to maintain personal injury protection  
14 coverage pursuant to section 4 of P.L.1972, c.70 (C.39:6A-4):

15 a. Limitation on lawsuit option. Every owner, registrant,  
16 operator or occupant of an automobile to which section 4 of  
17 P.L.1972, c.70 (C.39:6A-4), personal injury protection coverage,  
18 section 4 of P.L.1998, c.21 (C.39:6A-3.1), medical expense benefits  
19 coverage, or section 45 of P.L.2003, c.89 (C.39:6A-3.3) regardless  
20 of fault, applies, and every person or organization legally  
21 responsible for his acts or omissions, is hereby exempted from tort  
22 liability for noneconomic loss to a person who is subject to this  
23 subsection and who is either a person who is required to maintain  
24 personal injury protection coverage pursuant to section 4 of  
25 P.L.1972, c.70 (C.39:6A-4), medical expense benefits pursuant to  
26 section 4 of P.L.1998, c.21 (C.39:6A-3.1) or benefits pursuant to  
27 section 45 of P.L.2003, c.89 (C.39:6A-3.3), or is a person who has a  
28 right to receive benefits under section 4 of P.L.1972,  
29 c.70 (C.39:6A-4), section 4 of P.L.1998, c.21 (C.39:6A-3.1) or  
30 section 45 of P.L.2003, c.89 (C.39:6A-3.3), as a result of bodily  
31 injury, arising out of the ownership, operation, maintenance or use  
32 of such automobile in this State, unless that person has sustained a  
33 bodily injury which results in death; dismemberment; significant  
34 disfigurement or significant scarring; displaced fractures; loss of a  
35 fetus; or a permanent injury within a reasonable degree of medical  
36 probability, other than scarring or disfigurement. An injury shall be  
37 considered permanent when the body part or organ, or both, has not  
38 healed to function normally and will not heal to function normally  
39 with further medical treatment. For the purposes of this subsection,  
40 "physician" means a physician as defined in section 5 of P.L.1939,  
41 c.115 (C.45:9-5.1).

42 In order to satisfy the tort option provisions of this subsection,  
43 the plaintiff shall, within 60 days following the date of the answer  
44 to the complaint by the defendant, provide the defendant with a  
45 certification from the licensed treating physician or a board-  
46 certified licensed physician to whom the plaintiff was referred by

**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.

1 the treating physician. The certification shall state, under penalty of  
2 perjury, that the plaintiff has sustained an injury described above.  
3 The certification shall be based on and refer to objective clinical  
4 evidence, which may include medical testing, except that any such  
5 testing shall be performed in accordance with medical protocols  
6 pursuant to subsection a. of section 4 of P.L.1972, c.70 (C.39:6A-4)  
7 and the use of valid diagnostic tests administered in accordance  
8 with section 12 of P.L.1998, c.21 (C.39:6A-4.7). Such testing may  
9 not be experimental in nature or dependent entirely upon subjective  
10 patient response. The court may grant no more than one additional  
11 period not to exceed 60 days to file the certification pursuant to this  
12 subsection upon a finding of good cause.

13 A person is guilty of a crime of the fourth degree if that person  
14 purposefully or knowingly makes, or causes to be made, a false,  
15 fictitious, fraudulent, or misleading statement of material fact in, or  
16 omits a material fact from, or causes a material fact to be omitted  
17 from, any certification filed pursuant to this subsection.  
18 Notwithstanding the provisions of subsection e. of N.J.S.2C:44-1,  
19 the court shall deal with a person who has been convicted of a  
20 violation of this subsection by imposing a sentence of imprisonment  
21 unless, having regard to the character and condition of the person,  
22 the court is of the opinion that imprisonment would be a serious  
23 injustice which overrides the need to deter such conduct by others.  
24 If the court imposes a noncustodial or probationary sentence, such  
25 sentence shall not become final for 10 days in order to permit the  
26 appeal of such sentence by the prosecution. Nothing in this  
27 subsection a. shall preclude an indictment and conviction for any  
28 other offense defined by the laws of this State. In addition, any  
29 professional license held by the person shall be forfeited according  
30 to the procedures established by section 4 of P.L.1997,  
31 c.353 (C.2C:51-5); or

32 b. No limitation on lawsuit option. As an alternative to the  
33 basic tort option specified in subsection a. of this section, every  
34 owner, registrant, operator, or occupant of an automobile to which  
35 section 4 of P.L.1972, c.70 (C.39:6A-4), personal injury protection  
36 coverage, section 4 of P.L.1998, c.21 (C.39:6A-3.1), medical  
37 expense benefits coverage, or section 45 of P.L.2003,  
38 c.89 (C.39:6A-3.3), regardless of fault, applies, and every person or  
39 organization legally responsible for his acts or omissions, shall be  
40 liable for noneconomic loss to a person who is subject to this  
41 subsection and who is either a person who is required to maintain  
42 the coverage mandated by P.L.1972, c.70 (C.39:6A-1 et seq.) or is a  
43 person who has a right to receive benefits under section 4 of that act  
44 (C.39:6A-4), as a result of bodily injury, arising out of the  
45 ownership, operation, maintenance or use of such automobile in this  
46 State.

47 The tort option provisions of subsection b. of this section shall  
48 also apply to the right to recover for noneconomic loss of any

1 person eligible for benefits pursuant to section 4 of P.L.1972,  
2 c.70 (C.39:6A-4), section 4 of P.L.1998, c.21 (C.39:6A-3.1) or  
3 section 45 of P.L.2003, c.89 (C.39:6A-3.3) but who is not required  
4 to maintain personal injury protection coverage pursuant to section  
5 4 of P.L.1972, c.70 (C.39:6A-4), medical expense benefits coverage  
6 pursuant to section 4 of P.L.1998, c.21 (C.39:6A-3.1) or benefits  
7 pursuant to section 45 of P.L.2003, c.89 (C.39:6A-3.3) and is not an  
8 immediate family member, as defined in section 14.1 of P.L.1983,  
9 c.362 (C.39:6A-8.1), under a standard automobile insurance policy  
10 or basic automobile insurance policy.

11 The tort option provision of subsection b. of this section shall  
12 also apply to the right to recover for noneconomic loss of any  
13 person eligible for benefits pursuant to section 4 of P.L.1972,  
14 c.70 (C.39:6A-4), section 4 of P.L.1998, c.21 (C.39:6A-3.1) or  
15 section 45 of P.L.2003, c.89 (C.39:6A-3.3) when bodily injury is  
16 sustained in an accident caused by a person who is convicted of, or  
17 pleads guilty to, operating a motor vehicle in violation of R.S.39:4-  
18 50, section 2 of P.L.1981, c.512 (C.39:4-50.4a), or R.S.39:4-96, or  
19 a similar statute from any other jurisdiction.

20 The tort option provisions of subsection a. of this section shall  
21 also apply to any person subject to section 14 of P.L.1985,  
22 c.520 (C.39:6A-4.5) and to every named insured and any other  
23 person to whom the benefits of the special automobile insurance  
24 policy provided in section 45 of P.L.2003, c.89 (C.39:6A-3.3) or the  
25 medical expense benefits of the basic automobile insurance policy  
26 pursuant to section 4 of P.L.1998, c.21 (C.39:6A-3.1) apply whether  
27 or not the person has elected the optional \$10,000 liability coverage  
28 insuring against loss resulting from liability imposed by law for  
29 bodily injury or death provided for in subsection c. of section 4 of  
30 P.L.1998, c.21 (C.39:6A-3.1).

31 The tort option provisions of subsections a. and b. of this section  
32 as provided in this 1998 amendatory and supplementary act shall  
33 apply to automobile insurance policies issued or renewed on or after  
34 the effective date of P.L.1998, c.21 (C.39:6A-1.1 et al.) and as  
35 otherwise provided by law.

36 (cf: P.L.2003, c.89, s.52)

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38 2. This act shall take effect immediately and shall apply to a  
39 cause of action that accrues on or after that date.

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#### STATEMENT

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44 This bill provides that a person who has chosen the "verbal  
45 threshold," or limitation on lawsuit option, under his private  
46 passenger automobile insurance policy could nevertheless sue a  
47 tortfeasor for noneconomic damages when bodily injury is sustained  
48 in an accident if the tortfeasor is convicted of, or pleads guilty to,

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- 1 drunk driving, refusing to take a breathalyzer test, or reckless
- 2 driving in relation to that accident, even if the verbal threshold
- 3 requirements have not been met with respect to that injury.