

SENATE, No. 2253

STATE OF NEW JERSEY

INTRODUCED NOVEMBER 17, 1997

By Senators CARDINALE, Kyrillos, Inverso,  
McNamara and Schluter

1 AN ACT concerning the verbal threshold in the automobile insurance  
2 no-fault law and amending P.L.1972, c.70.

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

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

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

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

14 a. Every owner, registrant, operator or occupant of an automobile  
15 to which section 4 of P.L.1972, c.70 (C.39:6A-4), personal injury  
16 protection coverage, regardless of fault, applies, and every person or  
17 organization legally responsible for his acts or omissions, is hereby  
18 exempted from tort liability for noneconomic loss to a person who is  
19 subject to this subsection and who is either a person who is required  
20 to maintain the coverage mandated by this act, or is a person who has  
21 a right to receive benefits under section 4 of P.L.1972, c.70  
22 (C.39:6A-4), as a result of **bodily** injury, arising out of the ownership,  
23 operation, maintenance or use of such automobile in this State, unless  
24 that person has sustained a [personal] bodily injury which results in  
25 death [; dismemberment; significant disfigurement; a fracture; loss of  
26 a fetus; permanent loss of use of a body organ, member, function or  
27 system; permanent consequential limitation of use of a body organ or  
28 member; significant limitation of use of a body function or system; or  
29 a medically determined injury or impairment of a non-permanent  
30 nature which prevents the injured person from performing substantially  
31 all of the material acts which constitute that person's usual and  
32 customary daily activities for not less than 90 days during the 180 days  
33 immediately following the occurrence of the injury or impairment].

**EXPLANATION** - Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and intended to be omitted in the law.

Matter underlined thus is new matter.

1 serious impairment of body function or permanent serious  
2 disfigurement; or

3 b. As an alternative to the basic tort option specified in subsection  
4 a. of this section, every owner, registrant, operator, or occupant of an  
5 automobile to which section 4 of P.L.1972, c.70 (C.39:6A-4) applies,  
6 and every person or organization legally responsible for his acts or  
7 omissions, shall be liable for noneconomic loss to a person who is  
8 subject to this subsection and who is either a person who is required  
9 to maintain the coverage mandated by P.L.1972, c.70 (C.39:6A-1 et  
10 seq.) or is a person who has a right to receive benefits under section  
11 4 of that act (C.39:6A-4), as a result of bodily injury, arising out of the  
12 ownership, operation, maintenance or use of such automobile in this  
13 State.

14 For purposes of this section, "serious impairment of body function"  
15 means an objectively manifested impairment of an important body  
16 function that affects the person's general ability to lead his normal life.

17 The issue of whether an injured person has suffered serious  
18 impairment of body function or permanent serious disfigurement is a  
19 question of law for the court if the court finds either of the following:

20 (1) There is no factual dispute concerning the nature and extent of  
21 the person's injuries; or

22 (2) There is a factual dispute concerning the nature and extent of  
23 the person's injuries, but the dispute is not material to the  
24 determination as to whether the person has suffered a serious  
25 impairment of body function or permanent serious disfigurement.  
26 However, for a closed-head injury, a question of fact for the jury is  
27 created if a licensed allopathic or osteopathic physician who regularly  
28 diagnoses or treats closed-head injuries testifies under oath that there  
29 may be a serious neurological injury.

30 The tort option provisions of subsection b. of this section shall also  
31 apply to the right to recover for noneconomic loss of any person  
32 eligible for benefits pursuant to section 4 of P.L.1972, c.70  
33 (C.39:6A-4) but who is not required to maintain personal injury  
34 protection coverage and is not an immediate family member, as defined  
35 in section 14.1 of P.L.1983, c.362 (C.39:6A-8.1), under an automobile  
36 insurance policy.

37 The tort option provisions of subsection a. of this section shall also  
38 apply to any person subject to section 14 of P.L.1985, c.520  
39 (C.39:6A-4.5).

40 [The tort option provisions of subsections a. and b. of this section  
41 as provided in this 1988 amendatory and supplementary act shall apply  
42 to automobile insurance policies issued or renewed on or after  
43 January 1, 1989 and as otherwise provided by law.]

44 (cf: P.L.1990, c.8, s.9)

1       2. This act shall take effect on the 90th day following enactment  
2 and shall apply to automobile insurance policies issued or renewed on  
3 or after the effective date.

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STATEMENT

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8       This bill amends the no-fault automobile insurance law to replace  
9 the current verbal threshold with a verbal threshold that provides that  
10 a person may only sue for noneconomic loss if he sustains a bodily  
11 injury which results in death, serious impairment of body function or  
12 permanent serious disfigurement. The bill also provides that the issue  
13 of whether an injured person has suffered serious impairment of body  
14 function or permanent serious disfigurement is a question of law for  
15 the court, with certain exceptions.

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20 Establishes a new verbal threshold for pain and suffering suits under  
21 the no-fault automobile insurance law.