

LAWS OF DELAWARE
VOLUME 84
CHAPTER 393
152nd GENERAL ASSEMBLY
FORMERLY
SENATE BILL NO. 208

AN ACT TO AMEND TITLE 18 OF THE DELAWARE CODE RELATING TO MEDICAL NEGLIGENCE INSURANCE AND LITIGATION.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend § 6801, Title 18, of the Delaware Code by making deletions as shown by making deletions as shown by strike through and insertions as shown by underline as follows and by redesignating accordingly:

§ 6801. Definitions.

For the purpose of this chapter the following terms shall have the following meanings:

(1) ~~“Association” means the joint underwriting association established pursuant to this chapter.~~

Section 2. Amend § 6802, Title 18, of the Delaware Code by making deletions as shown by strike through and insertions as shown by underlining as follows:

§ 6802. Jurisdiction of the Superior Court.

(a) The Superior Court of the State shall have exclusive jurisdiction of civil actions alleging health care medical negligence.

~~(b) In any civil action alleging medical negligence at any time after the filing of an answer or any motion filed in lieu thereof, any party shall have the right to convene a medical negligence review panel as herein provided by filing a demand therefor with the Prothonotary, all parties and the Commissioner, and the Commissioner shall promptly convene such panel upon such demand, provided that the Court may postpone the convening of such panel for good cause shown by any party.~~

Section 3. Chapter 68, Subchapter III (§§ 6803-6814), Title 18, of the Delaware Code is repealed in its entirety.

Section 4. Chapter 68, Subchapter V (§§ 6830-6841), Title 18, of the Delaware Code is repealed in its entirety.

Section 5. Amend § 6853, Title 18, of the Delaware Code by making deletions as shown by strike through and insertions as shown by underlining as follows:

§ 6853. Affidavit of Merit, expert medical testimony.

(e) No liability shall be based upon asserted negligence unless expert medical testimony is presented as to the alleged deviation from the applicable standard of care in the specific circumstances of the case and as to the causation of the alleged personal injury or death, ~~except that such expert medical testimony shall not be required if a medical negligence review panel has found negligence to have occurred and to have caused the alleged personal injury or death and the opinion of such panel is admitted into evidence;~~ provided, however, that a rebuttable inference that personal injury or death was caused by negligence shall arise where evidence is presented that the personal injury or death occurred in any 1 or more of the following circumstances:

- (1) A foreign object was unintentionally left within the body of the patient following surgery;
- (2) An explosion or fire originating in a substance used in treatment occurred in the course of treatment; or
- (3) A surgical procedure was performed on the wrong patient or the wrong organ, limb or part of the patient's body.

Except as otherwise provided herein, there shall be no inference or presumption of negligence on the part of a health-care provider.

Approved August 29, 2024