

A285-A Weinstein (MS)   Same as **S**
6596 DEFRANCISCO  **OLD BILL: A 1056-A OF 2014** [Add Alert](#) [Voting](#)

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**NEW YORK STATE ASSEMBLY
MEMORANDUM IN SUPPORT OF LEGISLATION
submitted in accordance with Assembly Rule III, Sec 1(f)**

BILL NUMBER: A285A

SPONSOR: Weinstein (MS)

TITLE OF BILL:

An act to amend the civil practice law and rules, in relation to accrual of causes of action for medical, dental and podiatric malpractice

PURPOSE OF BILL:

To amend the statute of limitations for medical, dental or podiatric malpractice to include a discovery of injury rule, allowing the current two and half year statute of limitations to run from the date an injured patient discovers, or should have discovered, that their injury was caused by malpractice. However, in no event shall a malpractice action be filed more than ten years after the date of the alleged malpractice.

SUMMARY OF PROVISIONS OF BILL:

Amends Section 214-a of the Civil Practice Law and Rules to accomplish the above purpose.

JUSTIFICATION:

New York's current statute of limitations as to medical malpractice is two and one half years from the date of the act, omission or failure complained of or last treatment where there is continuous treatment. It is not only the shortest negligence statute in the State of New York, except for claims against municipalities, but works undue hardship in its application and interpretation.

The courts in this State have consistently interpreted the accrual of a cause of action for negligence as occurring at the time the act complained of occurred. In medical malpractice cases, arising out of a misdiagnosis or the failure to diagnose, the injury suffered by the victim of such a tort is often discovered until the well after the statute of limitation has expired.

This injustice is sometimes seen when a patient discovers the growth of a cancerous tumor. For example, a patient is seen by a physician for

rather general complaints and a series of tests are ordered, including an x-ray. The patient is diagnosed as having no illness. Several years later the patient is diagnosed as having a spot on the lung by a different physician. Review of the original x-ray films show the presence of a spot on the earlier film. Time is of the essence in the treatment of cancer if one is to get a favorable chance at long term survival. If more than two and one half years have passed from the date of the original x-ray (assuming no continuous course of treatment), the patient's claim is time barred, despite the fact that the patient could not have reasonably known of the existence of the medical misconduct.

Another example of this type of injustice occurs when a patient has been exposed to inadequate hygienic conditions, i.e. is infected with hepatitis-C or HIV by an inadequately sterilized, reused, or otherwise "dirty" syringe. The infected patient may in fact be totally asymptomatic for years after the two and one half year statute of limitations has expired. However, if symptoms (and hence discovery of the medical misconduct) become apparent only after the expiration of the statute, the patient nevertheless has no legal recourse.

The current statute of limitations is based upon an archaic rule that a cause of action sounding in negligence accrues at the time of the negligent act. The better rule and the one most widely adopted in other jurisdictions, such as New Jersey, North Carolina, and claims against the United States of America arising under the Federal Tort Claims Act, is one which recognizes that some injuries do not manifest themselves at the time of the negligent act, and which permits a victim of medical malpractice to discover his or her injury before their statutory period to begin suit runs. New York has dealt with this problem in the field of Toxic Torts. In 1986 the Legislature enacted CPLR Section 214-c. That section set forth a discovery rule for injuries suffered as a result of exposure and implantation (1992 amendment) of foreign substances. The justification for the passage of 214-c was that individuals who were exposed to toxic substances did not show any adverse health effects until after the three (3) year general negligence statute of limitations had run. The issue was revisited in 1992 when that act was amended to include implantation within "exposure" to remedy an injustice to victims of breast implants.

This bill would remove this gaping loophole in the law, which allows a patient's rights to expire prior to the patient even knowing that she had any rights in the first place. The bill would certainly not mandate that any claim be deemed meritorious - instead, the bill would merely prevent the statute of limitations from being used as an unfair and inequitable shield front professionally negligent medical misconduct.

LEGISLATIVE HISTORY:

2014: A.1056-A/S.7130 - A. Calendar/S. Judi
2013: A.1056-A - A. Calendar
2011-12: A.4852/S.5242 - A. Codes/ S. Judi
2010: A.4627-B/S.1729-A - A. Codes/S. Codes
2009: A.4627-A/S.1729 - A. Rules/S. Rules
2008: A.6416 - A. Rules
2007: A.6416 - Rules Report 732
2005: A.5946/S.962 - A. Codes/S. Codes
2003-04: A.6544/S.2588 A. Codes/S. Codes

2002: A.7793/S.7454 - A. Codes/ S. Rules
2001: A.7793 - A. Codes 2000: A.6559-A - A. Codes
1999: A.6559-A - A. Calendar
1998: A.5344 - A. Rules
1997: A.5344 A. Codes
1995-96: A.6041 - A. Codes

FISCAL IMPLICATIONS FOR STATE AND LOCAL GOVERNMENTS:

Undetermined.

EFFECTIVE DATE:

Immediately.