



## Legislation Text

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**File #:** Res 1682-2008, **Version:** \*

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### Res. No. 1682

Resolution calling upon the New York State Legislature to pass S.4164/A.2989, an act to amend the civil practice law and rules, in relation to equalizing the treatment of collateral sources in tort actions against public defendants by applying the same standard used in cases against private defendants.

By Council Members Felder, Vallone Jr., Brewer, Comrie and Seabrook

Whereas, The New York State Legislature is considering S.4164/A.2989, an act to amend the Civil Practice Law and Rules, in relation to equalizing the treatment of collateral sources in tort actions against public defendants by applying the same standard used in cases against private defendants; and

Whereas, S.4164/A.2989 would amend Section 4545 of the Civil Practice Law and Rules by repealing subdivisions (a) and (b), which govern the offset of damages for collateral sources in medical malpractice actions and against public defendants, respectively; and

Whereas, S.4164/A.2989 would standardize the treatment of collateral sources by leaving in effect subdivision (c) of such section, which governs "any action for personal injury, injury to property or wrongful death," and allows all defendants in such actions to offset against awards for past and future costs and expenses any amounts which have been or will be replaced by past or future payments from collateral sources, such as insurance; and

Whereas, Currently, while past and future awards in cases against private defendants may be reduced by collateral sources, in cases against public employers, under subdivision (b) only past awards may be so reduced; and

Whereas, S.4164/A.2989 would standardize the treatment of collateral sources not only by requiring that they be offset against past and future awards regardless of the identity of the defendant, but in certain other

respects as well; and

Whereas, Currently, personal injury awards in actions against public defendants are offset under subdivision (b) only by collateral sources "provided or paid for, in whole or in part, by the public employer;" and

Whereas, The offset for collateral sources is reduced in such actions by the amount of any contributions made by the public employee for the collateral source benefit; and

Whereas, Such treatment would be replaced by the approach taken for all other defendants under the current subdivision (c), which requires an offset for the most common sources of collateral sources, whether or not funded by the employer, and reduces the offset by the amount paid by the plaintiff for premiums for the two-year period immediately prior to the accrual of the action; and

Whereas, S.4164/A.2989 would also make clear that Section 4545 applies in wrongful death actions alleging medical malpractice and would repeal other provisions which currently differentiate among medical malpractice actions, actions against public employers and other tort actions in prescribing the requirements for itemized verdicts and judicial decisions; and

Whereas, By equalizing the treatment of collateral sources in tort actions against public defendants with the treatment of such sources for private defendants, the bill would eliminate the practice commonly known as "double-dipping," whereby plaintiffs are compensated twice for the same loss from two different sources; and

Whereas, According to the New York City Law Department, double dipping carries a potential liability of nearly \$164 million in pending cases in New York City and the passage of S.4164/A.2989 could save taxpayers at least \$11 million per year; now, therefore, be it

Resolved, That the Council of the City of New York calls upon the New York State Legislature to pass S.4164/A.2989, an act to amend the civil practice law and rules, in relation to equalizing the treatment of collateral sources in tort actions against public defendants by applying the same standard used in cases against

private defendants.

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