

## 2009 DRAFTING REQUEST

### Bill

Received: 01/06/2009

Received By: gmalaise

Wanted: As time permits

Identical to LRB:

For: Donald Pridemore (608) 267-2367

By/Representing: Bill Savage

This file may be shown to any legislator: NO

Drafter: gmalaise

May Contact:

Addl. Drafters:

Subject: Health - miscellaneous  
Employ Priv - miscellaneous  
Occupational Reg. - misc

Extra Copies: RLR, TJD, TKK, CTS

Submit via email: YES

Requester's email: Rep.Pridemore@legis.wisconsin.gov

Carbon copy (CC:) to:

---

### Pre Topic:

No specific pre topic given

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### Topic:

Immunity from liability for reporting violations and disclosure of patient information by a health care provider

---

### Instructions:

See attached---redraft 2007 AB 224 with AA2 and AA3 to AB 224

---

### Drafting History:

| <u>Vers.</u> | <u>Drafted</u>         | <u>Reviewed</u>       | <u>Typed</u>           | <u>Proofed</u> | <u>Submitted</u>      | <u>Jacketed</u>       | <u>Required</u> |
|--------------|------------------------|-----------------------|------------------------|----------------|-----------------------|-----------------------|-----------------|
| /?           | gmalaise<br>01/06/2009 | nmatzke<br>01/19/2009 |                        | _____          |                       |                       |                 |
| /1           |                        |                       | rschluet<br>01/20/2009 | _____          | lparisi<br>01/20/2009 | lparisi<br>04/02/2009 |                 |

FE Sent For:

*None*

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| /?           | gmalaise<br>01/06/2009 | nmatzke<br>01/19/2009 |                        | _____          |                       |                 |                 |
| /1           |                        |                       | rschluet<br>01/20/2009 | _____          | lparisi<br>01/20/2009 |                 |                 |

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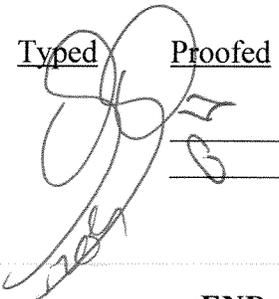
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|--------------|----------------|------------------------------|---|---|------------------|-----------------|-----------------|
| /?           | gmalaise       | 1 nwn.<br>1/8 s.<br>bjk 1/19 |  |  |                  |                 |                 |

FE Sent For:

<END>

**Malaise, Gordon**

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**From:** Savage, Bill  
**Sent:** Tuesday, January 06, 2009 12:14 PM  
**To:** Malaise, Gordon  
**Subject:** Medical liability bill  
**Attachments:** FINAL BILL WITH AA2 AND AA3 WRITTEN ON AB224.pdf

Gordon, please redraft for 2009.  
Incorporate amendments as shown below

Thanks, Bill



FINAL BILL WITH  
AA2 AND AA3 WR...

## 2007 ASSEMBLY BILL 224

March 27, 2007 - Introduced by Representatives PRIDEMORE, TOWNSEND, HINES, OWENS, HAHN, MUSSER, ALBERS, GUNDERSON and J. OTT. Referred to Committee on Judiciary and Ethics.

1 AN ACT *to create* 146.997 (5m) of the statutes; **relating to:** immunity from  
 2 *and disclosure of patient info by,* liability for a health care provider, health care facility, or employee of a health  
 3 care provider or health care facility that, in good faith, *reports, or provides information* reports a violation of the *about*  
 4 law or of a clinical or ethical standard by *unprofessional conduct, or negligence in treating a patient* another health care provider, health  
 5 care facility, *or former employee* or employee of a health care provider or health care facility.

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### ***Analysis by the Legislative Reference Bureau***

Under current law, a physician who in good faith provides the Medical Examining Board with information concerning an allegation that another physician has engaged in unprofessional conduct or acted negligently in treating a patient is immune from liability for any damage that results from any act or omission in providing the information and may not be disciplined by that board for providing the information.

Also, current law prohibits retaliation or other employment discrimination against any employee of a health care facility or of a health care provider who in good faith reports any information, the disclosure of which is not expressly prohibited by law, that would lead a reasonable person to believe that the health care facility or health care provider, or an employee of the health care facility or health care provider, has committed a violation of the law or has provided a health care service of a quality that violates any standard established by law or any clinical or ethical standard established by a professionally recognized accrediting or standard-setting body (clinical or ethical standard) and that poses a potential risk to public health or

**ASSEMBLY BILL 224**

safety: 1) to any appropriate state agency; 2) to any professionally recognized accrediting or standard-setting body that has accredited, certified, or otherwise approved the health care facility or health care provider (accrediting or standard-setting body); 3) to any officer or director of the health care facility or health care provider; or 4) to any employee of the health care facility or health care provider who is in a supervisory capacity or in a position to take corrective action (supervisor). In addition, current law prohibits retaliation or other employment discrimination against any employee of a health care facility or health care provider who initiates, participates in, or testifies in any action or proceeding in which such a violation is alleged or who provides to any legislator or legislative committee any information relating to such an alleged violation.

This bill provides for immunity from liability for any health care provider, health care facility, or employee of a health care provider or health care facility that in good faith does any of the following:

1. Reports any information, the disclosure of which is not expressly prohibited by law, relating to an allegation that another health care provider, health care facility, or employee has provided a health care service of a quality that violates any standard established by law or any health care provider or health care facility has committed a violation of the law or has provided a health care service of a quality that violates any standard established by law or any clinical or ethical standard and that poses a potential risk to public health or safety, has engaged in unprofessional conduct, or has acted negligently in treating a patient to any appropriate state agency; to any accrediting or standard-setting body; or to any officer, director, or supervisor of the health care facility or health care provider.

2. Initiates, participates in, or testifies in any action or proceeding in which it is alleged that another health care provider, health care facility, or employee of a health care provider or health care facility has committed a violation of the law or has provided a health care service of a quality that violates any standard established by law or any clinical or ethical standard and that poses a potential risk to public health or safety, has engaged in unprofessional conduct, or has acted negligently in treating a patient.

3. Provides to any legislator or legislative committee any information relating to an allegation that another health care provider, health care facility, or employee of a health care provider or health care facility has committed a violation of the law or has provided a health care service of a quality that violates any standard established by law or any clinical or ethical standard and that poses a potential risk to public health or safety, has engaged in unprofessional conduct, or has acted negligently in treating a patient.

---

***The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:***

Except as provided in par. (c), any

1 146.997 (5m) IMMUNITY FROM LIABILITY. (a) Any health care provider, health  
2 care facility, or employee of a health care provider or health care facility that in good  
3 ~~the disclosure of which is not expressly prohibited by state law or rule or federal~~ faith reports or provides any information, or that in good faith initiates, participates <sup>law or</sup>  
4 in, or testifies in any action or proceeding, is immune from all civil and criminal <sup>regulation</sup>  
5 liability that may result from any act or omission in reporting or providing that  
6 ~~the disclosure of which is not expressly prohibited by state law or rule or federal~~ information, or in initiating, participating in, or testifying in that action or <sup>law or</sup>  
7 proceeding, as follows: <sup>regulations,</sup>

8 1. Reports to a person specified in sub. (2) (a) (intro.) any <sup>information</sup> ~~information, the~~  
9 ~~disclosure of which is not expressly prohibited by any state law or rule or federal law~~  
10 ~~or regulation,~~ relating to an allegation that <sup>on</sup> another health care provider, health care  
11 facility, or employee of a health care provider or health care facility has committed  
12 a violation specified in sub. (2) (a) 1. or 2., has engaged in unprofessional conduct, or  
13 has acted negligently in treating a patient.

14 2. Initiates, participates in, or testifies in any action or proceeding in which it  
15 is alleged that <sup>a</sup> another health care provider, health care facility, or employee of a  
16 health care provider or health care facility has committed a violation specified in sub.  
17 (2) (a) 1. or 2., has engaged in unprofessional conduct, or has acted negligently in  
18 treating a patient.

19 3. Provides to any legislator or legislative committee any information relating <sup>prospective employer,</sup>  
20 to an allegation that <sup>a</sup> another health care provider, health care facility, or employee <sup>former employee,</sup>  
21 of a health care provider or health care facility has committed a violation specified  
22 in sub. (2) (a) 1. or 2., has engaged in unprofessional conduct, or has acted negligently  
23 in treating a patient.

24 (b) For purposes of par. (a), a health care provider, health care facility, or  
25 employee of a health care provider or health care facility is not acting in good faith

Insert → AA 3 page 2 line 1

ASSEMBLY BILL 224

1 if the health care provider, health care facility, or employee reports any information  
2 under par. (a) 1. that the health care provider, health care facility, or employee knows  
3 or should know is false or misleading; initiates, participates in, or testifies in any  
4 action or proceeding under par. (a) 2. based on information that the health care  
5 provider, health care facility, or employee knows or should know is false or  
6 misleading; or provides any information under par. (a) 3. that the health care  
7 provider, health care facility, or employee knows or should know is false or

8 misleading. (sr)

9 *Sec. 146.997* *Insert from AA2 to AB 224*

SECTION 2. Initial applicability.

*and the disclosure of patient info. by.*

10 (1) IMMUNITY FROM LIABILITY FOR HEALTH CARE PROVIDERS, FACILITIES, AND  
11 EMPLOYEES. This act first applies to a health care provider, health care facility, or  
12 employee of a health care provider or health care facility that reports or provides  
13 information, or that initiates, participates in, or testifies in any action or proceeding,  
14 as described in section 146.997 (5m) (a) of the statutes, as created by this act, on the  
15 effective date of this subsection.

16 (END)

*or that discloses patient information, as described in section 146.997(5r) of the statutes, as created by this act,*

*• WHA recommendations in black  
Kleefisch amendment*

*(C)  
inserted from  
LRB  
2/25/06*

-1341/1

LRB-1462/1

GMM:wj:nwn

nwn+bjk

IN 116

2007 ASSEMBLY BILL 224

LPS: Please show autonumbers

SA ✓ X-ref ✓ Inserts ← out of order

March 27, 2007 - Introduced by Representatives PRIDEMORE, TOWNSEND, HINES, OWENS, HAHN, MUSSER, ALBERS, GUNDERSON and J. OFF. Referred to Committee on Judiciary and Ethics.

↑ unprofessional conduct, or negligence in treating a patient

↑ and disclosure of patient information by

or provides information about

Regen.

- 1 AN ACT to create 146.997 (5m) of the statutes; relating to: immunity from
- 2 liability for a health care provider, health care facility, or employee of a health
- 3 care provider or health care facility that, in good faith, reports a violation of the
- 4 law or of a clinical or ethical standard by another health care provider, health
- 5 care facility, or employee of a health care provider or health care facility.

or former employee  
stat

Analysis by the Legislative Reference Bureau

Under current law, a physician who in good faith provides the Medical Examining Board with information concerning an allegation that another physician has engaged in unprofessional conduct or acted negligently in treating a patient is immune from liability for any damage that results from any act or omission in providing the information and may not be disciplined by that board for providing the information.

Also, current law prohibits retaliation or other employment discrimination against any employee of a health care facility or of a health care provider who in good faith reports any information, the disclosure of which is not expressly prohibited by law, that would lead a reasonable person to believe that the health care facility or health care provider, or an employee of the health care facility or health care provider, has committed a violation of the law or has provided a health care service of a quality that violates any standard established by law or any clinical or ethical standard established by a professionally recognized accrediting or standard-setting body (clinical or ethical standard) and that poses a potential risk to public health or

(employee)

**ASSEMBLY BILL 224**

safety: 1) to any appropriate state agency; 2) to any professionally recognized accrediting or standard-setting body that has accredited, certified, or otherwise approved the health care facility or health care provider (accrediting or standard-setting body); 3) to any officer or director of the health care facility or health care provider; or 4) to any employee ~~of the health care facility or health care provider~~ who is in a supervisory capacity or in a position to take corrective action (supervisor). In addition, current law prohibits retaliation or other employment discrimination against any employee ~~of a health care facility or health care provider~~ who initiates, participates in, or testifies in any action or proceeding in which such a violation is alleged or who provides to any legislator or legislative committee any information relating to such an alleged violation.

This bill provides for immunity from liability for any health care provider, health care facility, or employee ~~of a health care provider or health care facility~~ that in good faith does any of the following:

1. Reports any information, the disclosure of which is not expressly prohibited by law, relating to an allegation that ~~another health care provider, health care facility, or employee has provided a health care service of a quality that violates any standard established by law or any health care provider or health care facility~~ has committed a violation of the law or has provided a health care service of a quality that violates any standard established by law or any clinical or ethical standard and that poses a potential risk to public health or safety, has engaged in unprofessional conduct, or has acted negligently in treating a patient to any ~~appropriate~~ state agency; to any accrediting or standard-setting body; or to any officer, director, or supervisor of the health care facility or health care provider.

(employee)  
Violation of the law or of a clinical or ethical standard

2. Initiates, participates in, or testifies in any action or proceeding in which it is alleged that ~~another health care provider, health care facility, or employee of a health care provider or health care facility~~ has committed a violation of the law or ~~has provided a health care service of a quality that violates any standard established by law or any clinical or ethical standard and that poses a potential risk to public health or safety~~ has engaged in unprofessional conduct, or has acted negligently in treating a patient.

the disclosure of which is not expressly prohibited by law

3. Provides to any legislator or legislative committee any information relating to an allegation that ~~another health care provider, health care facility, or employee of a health care provider or health care facility~~ has committed a violation of the law or ~~has provided a health care service of a quality that violates any standard established by law or any clinical or ethical standard and that poses a potential risk to public health or safety~~ has engaged in unprofessional conduct, or has acted negligently in treating a patient.

Insert A

or to any prospective employer of an employee or former employee,

**The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:**

the disclosure of which is not expressly prohibited by state law or rule or federal law or regulation

Except as provided in par. (c), any

1 146.997 (5m) IMMUNITY FROM LIABILITY. (a) ~~any~~ health care provider, health  
2 care facility, or employee of a health care provider or health care facility that in good  
3 faith reports or provides any information, or that in good faith initiates, participates  
4 in, or testifies in any action or proceeding, is immune from all civil and criminal  
5 liability that may result from any act or omission in reporting or providing that  
6 information, or in initiating, participating in, or testifying in that action or  
7 proceeding, as follows:

8 1. Reports to a person specified in sub. (2) (a) (intro.) any information, ~~the~~  
9 ~~disclosure of which is not expressly prohibited by any state law or rule or federal law~~  
10 ~~or regulation,~~ relating to an allegation that ~~another~~ health care provider, health care  
11 facility, or employee of a health care provider or health care facility has committed  
12 a violation specified in sub. (2) (a) 1. or 2., has engaged in unprofessional conduct, or  
13 has acted negligently in treating a patient.

14 2. Initiates, participates in, or testifies in any action or proceeding in which it  
15 is alleged that ~~another~~ health care provider, health care facility, or employee of a  
16 health care provider or health care facility has committed a violation specified in sub.  
17 (2) (a) 1. or 2., has engaged in unprofessional conduct, or has acted negligently in  
18 treating a patient.

19 3. Provides to any legislator or legislative committee any information relating  
20 to an allegation that ~~another~~ health care provider, health care facility, or employee  
21 of a health care provider or health care facility has committed a violation specified  
22 in sub. (2) (a) 1. or 2., has engaged in unprofessional conduct, or has acted negligently  
23 in treating a patient.

24 (b) For purposes of par. (a), a health care provider, health care facility, or  
25 employee of a health care provider or health care facility is not acting in good faith

Insert  
3-23

**ASSEMBLY BILL 224**

**SECTION 1**

or 4.

1 if the health care provider, health care facility, or employee reports any information  
 2 under par. (a) 1. that the health care provider, health care facility, or employee knows  
 3 or should know is false or misleading; initiates, participates in, or testifies in any  
 4 action or proceeding under par. (a) 2. based on information that the health care  
 5 provider, health care facility, or employee knows or should know is false or  
 6 misleading; or provides any information under par. (a) 3. that the health care  
 7 provider, health care facility, or employee knows or should know is false or  
 8 misleading.

Insert  
4-8

AND DISCLOSURE OF PATIENT INFORMATION BY A

**SECTION 2. Initial applicability.**

10 (1) IMMUNITY FROM LIABILITY FOR HEALTH CARE PROVIDERS, FACILITIES, AND  
 11 EMPLOYEES. This act first applies to a health care provider, health care facility, or  
 12 employee of a health care provider or health care facility that reports or provides  
 13 information, or that initiates, participates in, or testifies in any action or proceeding,  
 14 as described in section 146.997 (5m) (a) of the statutes, as created by this act, on the  
 15 effective date of this subsection.

(END)

or that discloses patient information, as described in section 146.997 (5r) of the statutes, as created by this act,

Insert 3-23)

**ASSEMBLY AMENDMENT 3,  
TO 2007 ASSEMBLY BILL 224**

June 21, 2007 - Offered by Representative KLEEFISCH.

1 At the locations indicated, amend the bill as follows:

2 **1.** Page 1, line 3: after "reports" insert "or provides information about".

3 **2.** Page 1, line 4: after "standard" insert ", unprofessional conduct, or  
4 negligence in treating a patient".

5 **3.** Page 1, line 5: delete "or employee" and substitute "employee, or former  
6 employee".

7 **4.** Page 3, line 3: after "information," insert "the disclosure of which is not  
8 expressly prohibited by state law or rule or federal law or regulation,".

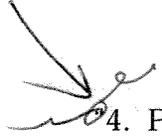
9 **5.** Page 3, line 8: delete "information, the" and substitute "information".

10 **6.** Page 3, line 9: delete that line.

11 **7.** Page 3, line 10: delete "or regulation,".

12 **8.** Page 3, line 23: after that line insert:

(Insert 3-23)

1  4. Provides to any prospective employer of an employee or former employee of  
2 a health care provider or health care facility any information relating to an allegation  
3 that the employee or former employee has committed a violation specified in sub. (2)  
4 (a) 1. or 2., has engaged in unprofessional conduct, or has acted negligently in  
5 treating a patient. 

6 **9.** Page 4, line 6: after "3." insert "or 4."

7 (END)

(end mt)

Insert 4-8

**ASSEMBLY AMENDMENT 2,  
TO 2007 ASSEMBLY BILL 224**

June 5, 2007 - Offered by Representative PRIDEMORE.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12

At the locations indicated, amend the bill as follows:

1. Page 1, line 2: after "for" insert ", and disclosure of patient information by,".
2. Page 1, line 4: delete "another" and substitute "a".
3. Page 3, line 1: delete "Any" and substitute "Except as provided in par. (c), any".
4. Page 3, line 10: delete "another" and substitute "a".
5. Page 3, line 15: delete "another" and substitute "a".
6. Page 3, line 20: delete "another" and substitute "a".
7. Page 4, line 8: after that line insert:

(c) Paragraph (a) does not apply to a health care provider, health care facility, or employee of a health care provider or health care facility that reports or provides any information or that initiates, participates in, or testifies in any action or

INS 74-8

1 proceeding concerning a violation specified in sub. (2) (a) 1. or 2., unprofessional  
2 conduct, or negligence in treating a patient by the health care provider, health care  
3 facility, or employee.

4 SECTION 1m. 146.997 (5r) of the statutes is created to read:

5 146.997 (5r) DISCLOSURE OF PATIENT INFORMATION. Notwithstanding s. 146.82  
6 (1), a health care provider, health care facility, or employee of a health care provider  
7 or health care facility reporting information as described in sub. (5m) (a) 1. to an  
8 agency <sup>of this state</sup> specified in sub. (2) (a) (intro.) that has the authority to investigate and take  
9 action against a health care provider, health care facility, or employee of a health care  
10 provider or health care facility for the type of conduct reported may disclose to that  
11 agency the name of the patient who is the subject of, and a description of the event  
12 giving rise to, the alleged violation, unprofessional conduct, or negligent act. A  
13 person receiving identifying information about a patient under this subsection shall  
14 keep the information confidential and may not disclose that information except for  
15 the purpose of investigating and taking action on the alleged violation,  
16 unprofessional conduct, or negligent act, with the informed consent of the patient or  
17 of a person authorized by the patient, or as authorized by a court of record.

18 8. Page 4, line 10: after "FOR" insert "AND DISCLOSURE OF PATIENT INFORMATION  
19 BY,".

20 9. Page 4, line 14: after "act," insert "or that discloses patient information, as  
21 described in section 146.997 (5r) of the statutes, as created by this act,".

22 (END)

**2009-2010 DRAFTING INSERT  
FROM THE  
LEGISLATIVE REFERENCE BUREAU**

LRB-1341/lins  
GMM.....

(INSERT A)

4. Provides to any prospective employer of an employee or former employee information, the disclosure of which is not expressly prohibited by law, relating to an allegation that the employee or former employee has committed a violation of the law or of a clinical or ethical standard, has engaged in unprofessional conduct, or has acted negligently in treating a patient.

The immunity provided under the bill, however, does not apply to a health care provider, health care facility, or employee that reports or provides any information, or that initiates, participates in, or testifies in any action or proceeding based on information, that the provider, facility, or employee knows or should know is false or misleading or that concerns a violation of the law or of a clinical or ethical standard, unprofessional conduct, or negligence in treating a patient by that provider, facility, or employee.

Finally, notwithstanding the confidentiality of patient health care records under current law, the bill permits a health care provider, health care facility, or employee reporting information relating to a violation of the law or of a clinical or ethical standard, unprofessional conduct, or negligence in treating a patient to a state agency that has the authority to investigate and take action against the provider, facility, or employee for the type of conduct reported to disclose to the agency the name of the patient who is the subject of, and a description of the event giving rise to, the alleged violation, unprofessional conduct, or negligent act.

(END OF INSERT)

**Parisi, Lori**

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**From:** Bowers, Jim  
**Sent:** Thursday, April 02, 2009 11:21 AM  
**To:** LRB.Legal  
**Subject:** Draft Review: LRB 09-1341/1 Topic: Immunity from liability for reporting violations and disclosure of patient information by a health care provider

Please Jacket LRB 09-1341/1 for the ASSEMBLY.