



WISCONSIN LEGISLATIVE COUNCIL ACT MEMO

2011 Wisconsin Act 2
[January 2011 Special Session
Senate Bill 1]

**Civil Actions and Health Care
Provider Records**

2011 Wisconsin Act 2 makes various changes relating to civil actions, expert testimony, health care provider records, and applicability of certain criminal penalties to health care providers.

- The Act requires a claimant in a *product liability* action to prove that a manufacturer, distributor, seller, or promoter of a product manufactured, distributed, sold, or promoted the specific product alleged to have caused the claimant's injury or harm. If the claimant cannot prove this, the Act specifies the circumstances under which a claimant may recover from a manufacturer, distributor, seller, or promoter that manufactured, distributed, sold, or promoted a chemically and physically identical product during the period, and in the geographic area, of the claimant's injury. In general, liability is limited to a period of 25 years. These changes apply to actions commenced on or after the effective date of the Act.
- The Act creates specific requirements for bringing a product liability action under the theory of *strict liability* against manufacturers and against sellers and distributors and includes defenses and exceptions to strict liability for these types of parties. Under the bill, such an action is generally barred if the product was manufactured 15 years or more before the claim accrues. The bill specifies how damages are apportioned based upon the injured party's level of contributory negligence. These changes apply to actions commenced on or after the effective date of the Act.
- The Act places a cap on *punitive damages*. Under the Act, punitive damages received by a plaintiff may not exceed twice the amount of any compensatory damages recovered by the plaintiff or \$200,000, whichever is greater. The cap does not apply, however, to a plaintiff seeking punitive damages from a defendant whose actions included the operation of a vehicle while under the influence of an intoxicant to a degree that rendered the defendant incapable of safe operation of the vehicle. This change applies to actions commenced on or after the effective date of the Act.

This memo provides a brief description of the Act. For more detailed information, consult the text of the law and related legislative documents at the Legislature's Web site at: <http://www.legis.state.wi.us/>.

- The Act creates specific provisions that permit the court to hold a party or a party's attorney liable for costs for *frivolous claims* at the trial and appellate level. These provisions apply to actions or special proceedings that are commenced on the effective date of the Act.
- The Act applies provisions limiting *noneconomic damages* for medical malpractice and wrongful death awards and placing *time limits* to commence medical malpractice actions to medical malpractice and wrongful death actions brought against *long-term care providers*. These changes apply to actions commenced on or after the effective date of the Act.
- The Act limits *testimony of lay witnesses* in the form of opinions or inferences to opinions and inferences that are not based on scientific, technical, or other specialized knowledge within the scope of an expert witness. The Act requires *expert testimony* to be based upon sufficient facts or data and the product of reliable principles and methods. In addition, the expert witness must have applied the principles and methods reliably to the facts of the case. These changes apply to actions that are commenced on or after the effective date of the Act.
- The Act makes various changes to statutes under which *health care provider quality review information* is generally confidential. The Act also creates a definition of "incident or occurrence report" for health care providers. These reports are generally confidential under the Act. These changes apply to use of records or information and disclosures or releases occurring on or after the effective date of the Act.
- The Act prohibits using as *evidence in a civil or criminal action against a health care provider* reports that the Department of Regulation and Licensing or the quality assurance division of the Department of Health Services requires a health care provider to give to the agency and statements of employees of a health care provider related to the regulation of the health care provider obtained by one of those agencies. These changes apply to health care provider reports received, and statements of, or records of interviews with, employees of a health care provider obtained, on or after the effective date of the Act.
- The Act allows the entity with which the Department of Administration contracts to collect health care information to report *quality indicators* that identify individual hospitals.
- Under the Act, the *crime of causing death or bodily harm by the negligent operation or handling of a dangerous weapon, explosives, or fire* does not apply to a health care provider acting within the scope of his or her practice or employment. In addition, the *crime of abusing, with negligence, or neglecting a patient or resident in a facility* does not apply to health care providers acting within the scope of his or her practice or employment under certain conditions. An exception is not created for intentional or reckless abuse of a patient or resident, however. These changes apply to acts or omissions committed on or after the effective date of the Act.

Effective date: Act 2 takes effect on February 1, 2011.

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