

1999 ASSEMBLY BILL 436

August 19, 1999 – Introduced by Representatives LADWIG, PETROWSKI, PETTIS, AINSWORTH, BRANDEMUEHL, GOETSCH, HUEBSCH, HUNDERTMARK, KAUFERT, KELSO, KESTELL, KREIBICH, F. LASEE, M. LEHMAN, MUSSER, NASS, OWENS, PLALE, PORTER, SERATTI, STONE and VRAKAS, cosponsored by Senators HUELSMAN, FARROW, DARLING and DRZEWIECKI. Referred to Committee on Judiciary and Personal Privacy.

- 1 **AN ACT to create** 895.047 of the statutes; **relating to:** limits on recovery for
2 injuries from a motor vehicle accident.

Analysis by the Legislative Reference Bureau

Under current law, if a person is injured or dies as the result of another person's negligent operation of a motor vehicle, the person may recover for his or her damages. The amount recoverable depends on the amount of negligence that is attributed to each party. Damages that are recoverable include economic damages, including the cost of medical care, loss of income and compensation for expenses incurred as a result of the injury, such as the provision of child care, and noneconomic damages, including compensation for pain and suffering, humiliation, mental distress, loss of mental or physical health, loss of consortium, society and companionship and loss of love and affection.

Under this bill, a person injured or killed while operating a motor vehicle may not recover for his or her noneconomic damages from the person whose negligence resulted in the injury if the operator knew or should have known that the motor vehicle that he or she was operating was not covered by a motor vehicle insurance policy with liability limits of at least \$25,000 for bodily injury or death of one person, \$50,000 for bodily injury or death of two or more persons and \$10,000 for injury or destruction of property. These amounts are identical to the minimum insurance requirements for financial responsibility necessary to restore a driver license after being involved in an accident resulting in a judgment of over \$500. If a person operating a motor vehicle owned by another person is prohibited from recovering his or her noneconomic damages from the negligent person because the motor vehicle

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was not adequately insured, the operator may recover those noneconomic damages from the owner of the motor vehicle.

The bill also prohibits a person who is injured or killed while operating a motor vehicle from recovering his or her noneconomic damages if the incident that resulted in the injury or death also resulted in any of the following:

1. The operator's license being revoked for refusing to submit to a test to determine the amount of alcohol in his or her blood.

2. The conviction of the operator for any offense related to the operation of a motor vehicle while under the influence of an intoxicant, controlled substance or other drug.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

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

1 **SECTION 1.** 895.047 of the statutes is created to read:

2 **895.047 Recovery for motor vehicle injuries limited.** (1) In this section:

3 (a) "Motor vehicle" has the meaning given in s. 340.01 (35), but does not include
4 all-terrain vehicles or snowmobiles.

5 (b) "Motor vehicle insurance policy" means a policy of insurance that insures
6 the motor vehicle named therein, and the purchaser of the motor vehicle insurance
7 policy when using any motor vehicle with the express or implied permission of the
8 owner, against loss from the use of the motor vehicle within the United States or
9 Canada.

10 (c) "Noneconomic damages" has the meaning given in s. 893.55 (4) (a).

11 **(2)** (a) Except as provided in sub. (4), any individual who operates a motor
12 vehicle that he or she knows or should have known is not covered by any motor
13 vehicle insurance policy with liability limits of at least those listed in par. (b) may not
14 recover noneconomic damages for his or her accidental bodily injury or death caused

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1 by the negligence of another person and arising out of the operation of the motor
2 vehicle.

3 (b) The minimum liability limits for the motor vehicle insurance policy,
4 exclusive of interest and costs, shall be \$25,000 because of bodily injury to or death
5 of one person in any one accident and, subject to that limit for one person, \$50,000
6 because of bodily injury to or death of 2 or more persons in any one accident, and
7 \$10,000 because of injury to or destruction of property of others in any one accident.

8 (3) Any individual whose operating privilege is revoked under s. 343.305 (10)
9 or who is convicted of operating a motor vehicle in violation of s. 346.63 (1), a local
10 ordinance in conformity with s. 346.63 (1) or a law of a federally recognized American
11 Indian tribe or band in this state in conformity with s. 346.63 (1), 346.63 (2), 940.09
12 (1) (a), (b), (c) or (d) or 940.25 (1) (a), (b), (c) or (d) may not recover noneconomic
13 damages for his or her accidental bodily injury or death caused by the negligence of
14 another person and arising out of the operation of the motor vehicle if the injury and
15 the conviction or revocation arose out of the same incident.

16 (4) Any individual prohibited from recovering noneconomic damages under
17 sub. (2) who was operating a motor vehicle owned by another person may recover
18 those noneconomic damages from the owner of the motor vehicle if all of the following
19 conditions apply:

20 (a) The owner of the motor vehicle did not provide a motor vehicle insurance
21 policy with liability limits of at least those listed in sub. (2) (b) covering the motor
22 vehicle that the individual was operating at the time of his or her injury or death.

23 (b) The individual would have recovered noneconomic damages for his or her
24 accidental bodily injury or death caused by the negligence of another person if the
25 individual was not prohibited from doing so under sub. (2).

