

2001 DRAFTING REQUEST

Senate Amendment (SA-SB375)

Received: **03/05/2002**

Received By: **kahlepj**

Wanted: **Today**

Identical to LRB:

For: **Roger Breske (608) 266-2509**

By/Representing: **Vaughn Vance**

This file may be shown to any legislator: **NO**

Drafter: **kahlepj**

May Contact:

Addl. Drafters:

Subject: **Insurance - miscellaneous**

Extra Copies:

Submit via email: **YES**

Requester's email: **Sen.Breske@legis.state.wi.us**

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Chnages related to patients compensation fund

Instructions:

See Attached

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>
/?	kahlepj 03/06/2002	csicilia 03/07/2002		_____			
/1			chanaman 03/07/2002	_____	lrb_docadmin 03/07/2002	lrb_docadmin 03/07/2002	

03/07/2002 07:50:46 AM

Page 2

LRBa1466

FE Sent For:

<END>

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Subject: Insurance - miscellaneous

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/?	kahlepj	1 cjs 3/6 02					

FE Sent For:

<END>

Kahler, Pam

From: Vance, Vaughn
Sent: Tuesday, March 05, 2002 2:05 PM
To: Kahler, Pam
Cc: Burnett, Douglas; 'eenglund@tds.net'; Kiel, Joyce
Subject: FW: OCI AB 870 language



1669C000.tif

Joyce:

Attached is a draft copy of "compromise" language that I received from OCI related to SB375 - the technical bill. I am circulating it to interested parties so that they can take a look at it to see if there are any concerns. I will also forward a copy to the Trial Lawyers so that they can voice any concerns. In the event that the bill comes to the floor, and that there is no opposition to the change, it is possible that this would be introduced as a floor amendment.

VAUGHN L. VANCE for
Senator Roger Breske



State of Wisconsin / OFFICE OF THE COMMISSIONER OF INSURANCE

Scott McCallum, Governor
Connie L. O'Connell, Commissioner

Wisconsin.gov

121 East Wilson Street • P.O. Box 787
Madison, Wisconsin 53707-787
Phone: (608) 266-3585 • Fax: (608) 266-9933
E-Mail: information@oci.state.wi.us
http://badger.state.wi.us/agencies/oci/oci_home.htm

FAX MESSAGE

DATE: 3/5
TO: Sandy Rep Underkeim's office
FAX: 282 3654
FROM: Ellen Mallow (67943)
SUBJECT:
amendment to ARB 870
agreed to by OCT and WATZ

Pages being sent by fax (including cover sheet): 3

If any pages need to be resent, please call the sender at the number listed above. Otherwise, it is assumed that this transmittal has been completely received.

ASSEMBLY BILL 870

1 **Section 25.** 655.27 (5) (a) 1. of the statutes is amended to read:

2 655.27 (5) (a) 1. Any person may file a claim for damages arising out of the
3 rendering of medical care or services or participation in peer review activities under s.
4 146.37 within this state against a health care provider or an employee of a health care
5 provider. A person filing a claim may recover from the fund only if the health care
6 provider or the employee of the health care provider has coverage under the fund and,
7 the fund is named as a party in the action, and the action against the fund is commenced
8 within the time limitation under ss. 893.55, 893.80 or 893.82, as applicable, within
9 which the action against the health care provider or employee of the health care
10 provider must be commenced.

11 **Section 26.** 655.27 (5) (a) 2. of the statutes is amended to read:

12 655.27 (5) (a) 2. Any person may file an action for damages arising four of the
13 rendering of medical care or services or participation in peer review activities under s. 146.37
14 outside this state against a health care provider or an employee of a health care provider. A
15 person filing an action may recover from the fund only if the health care provider or the
16 employee of the health care provider has coverage under the fund and, the fund is named as
17 a party in the action, and the action against the fund is commenced within the time
18 limitation under ss. 893.55, 893.80 or 893.82, as applicable, within which the action
19 against the health care provider or employee of the health care provider must be
20 commenced. If the rules of procedure of the jurisdiction in which the action is brought
21 do not permit naming the fund as a party, the person filing the action may recover from
22 the fund only if the health care provider or the employee of the health care provider has
23 coverage under the fund and the fund is notified of the action within 60 days of service of

2001 - 2002 Legislature

ASSEMBLY BILL 870

1 process on the health care provider or the employee of the health care provider. The
2 board of governors may extend this time limit if it finds that enforcement of the time limit
3 would be prejudicial to the purposes of the fund and would benefit neither insureds nor
4 claimants.

5 Section 26a. Section 655.455 of the statutes is amended to read:

6 655.455 Notice to health care providers. The director of state courts shall serve
7 notice of a request for mediation upon all health care providers named in the request, at the
8 respective addresses provided in the request, and upon the patients compensation fund, by
9 registered mail within 7 days after the director of state courts receives the request if delivered
10 in person or within 10 days after the date of mailing of the request to the director of state courts
11 if sent by registered mail.

Kahler, Pam

From: Lonergan, Sandra
Sent: Wednesday, March 06, 2002 10:18 AM
To: Kahler, Pam
Subject: RE: AB 870 AMENDMENT FW: LRBa1459 Topic: Chnages related to patients compensation fund

ok. they are on the way.

-----Original Message-----

From: Kahler, Pam
Sent: Wednesday, March 06, 2002 10:14 AM
To: Lonergan, Sandra
Subject: RE: AB 870 AMENDMENT FW: LRBa1459 Topic: Chnages related to patients compensation fund

Yes.

-----Original Message-----

From: Lonergan, Sandra
Sent: Wednesday, March 06, 2002 10:06 AM
To: Mallow, Eileen; 'wat1'; 'Froehlke, Scott'; 'exec@wat1.org'; 'pesicula@asapnet.net'
Cc: Smyrski, Rose; Vance, Vaughn; Kahler, Pam
Subject: RE: AB 870 AMENDMENT FW: LRBa1459 Topic: Chnages related to patients compensation fund

Pam,

Apparently, the amendment for AB 870 doesn't accomplish what people had hoped. You have our permission to draft a different amendment. Do you need the stripes back?
Sandy

-----Original Message-----

From: Mallow, Eileen
Sent: Wednesday, March 06, 2002 10:03 AM
To: 'wat1'; Lonergan, Sandra; 'Froehlke, Scott'; exec@wat1.org; pesicula@asapnet.net
Cc: Smyrski, Rose; Vance, Vaughn
Subject: RE: AB 870 AMENDMENT FW: LRBa1459 Topic: Chnages related to patients compensation fund

OCI understands the tolling issue. My suggestion is to have our staff attorney, Julie Walsh, work directly with Pam Kahler on language that we can all agree to.

Sandy - if it's OK, can you let Pam know?

Eileen Mallow
Assistant Deputy Commissioner
608/266-7843
608/261-8579 FAX
email: eileen.mallow@oci.state.wi.us

-----Original Message-----

From: wat1 [mailto:wat1@mailbag.com]
Sent: Wednesday, March 06, 2002 9:43 AM
To: Lonergan, Sandra; Mallow, Eileen; 'Froehlke, Scott'; exec@wat1.org; pesicula@asapnet.net
Cc: Smyrski, Rose; Vance, Vaughn

Subject: Re: AB 870 AMENDMENT FW: LRBa1459 Topic: Chnages related to patients compensation fund

Thank you for sharing the proposed amendment and drafter's note. Unfortunately, the drafter misunderstood what OCI was trying to accomplish with the amendment and has, from our perspective, undone what was intended.

The Supreme Court has interpreted the 120-day notice provision of s. 893.80 as extending the 3-year statute of limitations. There was a portion of our February 28th memo explaining this. What the proposed amendment to this section was trying to do was recognize that whichever of the limitation periods was applicable -- s. 893.55, s. 893.80 or s. 893.82 -- that is the limitation period that must be complied with. Perhaps this can be accomplished by inserting language similar to what OCI proposed in the new section s. 655.27 (5) (a) 1. c. (page 2, lines 5-7 of LRBa1459/1).

We would be happy to work with you on this language.

Nancy Rottier, Research Director
Wisconsin Academy of Trial Lawyers
Keeping Wisconsin Families Safe
Email: contact@watl.org Visit our website at: www.watl.org
Phone: 608-257-5741 Fax: 608-255-9285
Search 80,000+ depos full text at <http://www.DepoConnect.com>
----- Original Message -----

From: "Loneragan, Sandra" <Sandra.Loneragan@legis.state.wi.us>
To: "Mallow, Eileen" <Eileen.Mallow@oci.state.wi.us>; "'Froehlke, Scott'" <froehlke@execpc.com>; <exec@watl.org>; <pesicula@asapnet.net>
Cc: "Smyrski, Rose" <Rose.Smyrski@legis.state.wi.us>; "Vance, Vaughn" <Vaughn.Vance@legis.state.wi.us>
Sent: Tuesday, March 05, 2002 6:44 PM
Subject: AB 870 AMENDMENT FW: LRBa1459 Topic: Chnages related to patients compensation fund

> Here is the amendment to AB 870 -- Please read the drafter's note.
> Unless
> I
> hear differently, this is the amendment that will be introduced in the
> Assembly.
> Thanks,
> Sandy
>
> > -----Original Message-----
> > From: Beam, Laura
> > Sent: Tuesday, March 05, 2002 5:10 PM
> > To: Rep.Underheim
> > Subject: LRBa1459 Topic: Chnages related to patients compensation
> > fund
> >
> > The attached proposal has been jacketed for introduction. <<1459>>
> <<1459
> > Drafter Note>>
>

a/455

Julie Walsh → 48101 (OCI)

by removing all specific statutory
cross-references, the intention is to
provide that whatever period of
time ^{applies} for commencing an action
against a health care provider,
that same period of time applies to
the fund — including
any tolling of the statute of
limitations (as may occur if
A. 893.80 or 893.82 applies)

By (Adding cross-references to ss. 893.80
and 893.82 did not give an indication
of what was intended, certainly not that
a tolling of a stat of lim would apply to the fund)

Kahler, Pam

From: Walsh, Julie
Sent: Wednesday, March 06, 2002 11:46 AM
To: Kahler, Pam
Subject: RE: AB 870

Pam:

I have an agreement with Nancy Rottier, WATL, to the language you proposed during our conversation (adding "same" deleting "under s. 893.55" in ss. 655.27 (5)(a) 1. and 2.). She is contacting Sandy with Rep. Underheim's office to say the same.

I am drafting a memorandum of understanding for the drafting file.

Could you forward to me a copy of the draft so that I have the correct section references cited within the memorandum of understanding? I am assuming that the sections will return to the original draft with the addition of a section number for 655.455.

Again, thank you very much for your assistance.

Julie E. Walsh
OCI Attorney
608-264-8101

-----Original Message-----

From: Kahler, Pam
Sent: Wednesday, March 06, 2002 11:34 AM
To: Walsh, Julie
Subject: RE: AB 870 AMENDMENT FW: LRBa1459 Topic: Chnages related to patients compensation fund

Thanks. I will give Julie a call.

-----Original Message-----

From: Walsh, Julie
Sent: Wednesday, March 06, 2002 11:22 AM
To: Kahler, Pam
Subject: FW: AB 870 AMENDMENT FW: LRBa1459 Topic: Chnages related to patients compensation fund

Pam:

This is the message I discussed during our conversation. Thank you for your assistance. Your effort and creative problem solving is greatly appreciated.

Julie E. Walsh
OCI Attorney
608-264-8101

-----Original Message-----

From: Vance, Vaughn
Sent: Wednesday, March 06, 2002 10:15 AM
To: Mallow, Eileen
Subject: FW: AB 870 AMENDMENT FW: LRBa1459 Topic: Chnages related to patients compensation fund

-----Original Message-----

From: Kiel, Joyce
Sent: Tuesday, March 05, 2002 3:24 PM
To: Vance, Vaughn
Cc: Offerdahl, Mary; Sweet, Richard
Subject: RE: OCI AB 870 language

Vaughn:

Sections 25 and 26 of the proposed amendment seem to have a technical problem. In both, the phrase "893.80 or 893.82, as applicable," is added to what was proposed in the bill.

The bill would require that a person may recover from the fund only if the action against the fund is commenced within the time limitation under s. 893.55 within which the action against the health care provider or employee of the health care provider must be commenced. (Section 893.55, Stats., includes the statute of limitations for medical malpractice.)

The proposed amendment would also refer to the time limitation under s. 893.80 or s. 893.82, as applicable, within which the action must be commenced. However, ss. 893.80 (claims against certain governmental bodies, officers, agents, or employees) and 893.82 (claims against state employees) do not specify a time limitation within which an action must be commenced. Instead, they require, as a condition precedent to filing an action, that notice of claim must be given by certain deadlines (for medical malpractice, within 180 days after discovery of the injury or the date the injury should have been discovered). If notice is timely filed, these statutes do not control the deadline (statute of limitations) for filing a medical malpractice action. That is still covered by s. 893.55.

Was the intent of the proposed amendment to provide that a person could not recover from the fund if they had failed to timely file the notice of claim under s. 893.80 or 893.82, as applicable? If so, the proposed amendment should be changed to reflect this, rather than referring to a time limitation under s. 893.80 or 893.82 for filing an action.

Let me know if you have questions.

Joyce L. Kiel, Senior Staff Attorney
Wisconsin Legislative Council Staff
Suite 401, One East Main Street
Madison, WI 53703
608-266-3137
608-266-3830 (fax)
Joyce.Kiel@legis.state.wi.us

-----Original Message-----

From: Lonergan, Sandra
Sent: Tuesday, March 05, 2002 6:44 PM
To: Mallow, Eileen; 'Froehke, Scott'; 'exec@watl.org'; 'pesicula@asapnet.net'
Cc: Smyrski, Rose; Vance, Vaughn
Subject: AB 870 AMENDMENT FW: LRBA1459 Topic: Chnages related to patients compensation fund
Importance: High

Here is the amendment to AB 870 -- Please read the drafter's note. Unless I hear differently, this is the amendment that will be introduced in the Assembly.

Thanks,
Sandy

-----Original Message-----

From: Beam, Laura
Sent: Tuesday, March 05, 2002 5:10 PM
To: Rep.Underheim
Subject: LRBA1459 Topic: Chnages related to patients compensation fund

The attached proposal has been jacketed for introduction. << File: 1459 >> << File: 1459 Drafter Note >>



State of Wisconsin
2001 - 2002 LEGISLATURE

1466/1
LRBa1430/2
PJK:cjs:pg

SENATE
~~ASSEMBLY~~ AMENDMENT,
TO 2001 ~~ASSEMBLY~~ BILL 870 → 375
SENATE

B:00am
J-wfe

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

2 1. Page 1, line 10: after "fund" insert "and providing notice of mediation to that
3 fund".

4 2. Page 4, line 8: on lines 8 and 18, delete "time limitation under s. 893.55"
5 and substitute "same time limitation".

6 3. Page 4, line 2: after that line insert:

7 "SECTION 655.455 of the statutes is amended to read:

8 655.455 Notice to health care providers and fund. The director of state
9 courts shall serve notice of a request for mediation upon all health care providers
10 named in the request, at the respective addresses provided in the request, and upon
11 the fund, by registered mail within 7 days after the director of state courts receives

1 the request if delivered in person or within 10 days after the date of mailing of the
2 request to the director of state courts if sent by registered mail.”.

3

(END)

D-rite

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

1466/1dn
LRBa1459/2dn
PJK:gs:kjf

stays

This amendment removes all cross-references to specific statutes of limitation to clarify that the action must be brought against the fund within the same period of time that applies to the health care provider, regardless of the statute under which the period of time is determined, including any tolling of the statute of limitations that is required or allowed outside of the statute.

Pamela J. Kahler
Senior Legislative Attorney
Phone: (608) 266-2682
E-mail: pam.kahler@legis.state.wi.us

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRBa1466/1dn
PJK:cjs:cmh

March 7, 2002

This amendment removes all cross-references to specific statutes of limitation to clarify that the action must be brought against the fund within the same period of time that applies to the health care provider, regardless of the statute under which the period of time is determined, including any tolling of the statute of limitations that is required or allowed outside of the statute.

Pamela J. Kahler
Senior Legislative Attorney
Phone: (608) 266-2682
E-mail: pam.kahler@legis.state.wi.us