

Committee Name:
Senate Committee –
Judiciary, Corrections and Privacy
(SC–JCP)

Appointments

03hr_SC–JCP_Appt_pt00

Committee Hearings

03hr_SC–JCP_CH_pt00

Committee Reports

03hr_SC–JCP_CR_pt00

Clearinghouse Rules

03hr_SC–JCP_CRule_03–

Executive Sessions

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Hearing Records

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03hr_sb0070

Misc.

03hr_SC–JCP_Misc_pt00

Record of Committee Proceedings

03hr_SC–JCP_RCP_pt00



**WISCONSIN
LAWYERS**
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MEMORANDUM

To: Members of the Senate Committee on Judiciary, Corrections and Privacy
From: State Bar of Wisconsin
Date: February 17, 2004
Re: Senate Bill 70 - SUPPORT

The State Bar of Wisconsin supports Senate Bill 70, relating to the notification of the state regarding a medical malpractice claim.

SB 70 removes the requirement that a person must serve a notice of a claim for medical malpractice involving a state officer, employee, or agent on the attorney general within 180 days after the injury. *Instead*, the bill requires a person who was injured as the result of medical malpractice by a state officer, employee, or agent to commence that action within the same time period that is required when the claim is against a private medical provider.

SB 70 not only creates parity with other medical malpractice claims, but it also eliminates the possible confusion caused by two different timelines.

By way of background, malpractice litigation is complex trial work. Generally speaking, an injured party may not know for several months of the adverse consequences of medical negligence. Once they have made that determination and sought out legal help, all of the medical records must be obtained. This project may take several weeks. After the medical records have been obtained, expert opinions must be solicited from outside medical sources to determine whether or not a claim can be made.

Under these circumstances, it is almost impossible to pursue a claim against a state-employed physician who has the protection of the 180 days rule as a bar to commence actions against him/her. As more physicians fall under the state umbrella for medical coverage, fewer and fewer potential claimants will have the ability to have their case properly evaluated under the state guidelines.

To provide parity and eliminate confusion, the State Bar of Wisconsin urges your support for SB 70.

If you have any questions, please feel free to contact Deb Sybell, Government Relations Coordinator for the State Bar of Wisconsin, at (608) 250-6128.

State Bar of Wisconsin

5302 Eastpark Blvd. ♦ P.O. Box 7158 ♦ Madison, WI 53707-7158
(800) 728-7788 ♦ (608) 257-3838 ♦ Fax (608) 257-5502 ♦ Internet: www.wisbar.org ♦ Email: service@wisbar.org

TO: Members of the Senate Judiciary, Corrections and Privacy Committee
FROM: Lisa Maroney, UW Madison Health Sciences Legislative Liaison
DATE: February 17, 2004
RE: Senate Bill 70

SB 70 is poor public policy. By removing the requirement that the state be notified of medical malpractice claims within 180 days of injury or discovery of injury, this bill would have undesirable consequences for the UW Medical School and its physician faculty.

- **Costs will increase.**

A Longer filing period will undoubtedly result in the filing of additional claims, although the number cannot be estimated. The University's legal services office investigate all notices of claims and would need to hire additional Legal staff. This is in addition to the staffing increases identified by the Department of Justice in its fiscal note.

In addition to the expected increase in the claims, the process of investigating claims will become much more difficult. As the Department of Administration indicated in its fiscal note from last session, "longer filing periods make it more difficult for the involved parties to recollect the procedures that led to the incident, thus making defense more difficult." Investigating claims long after their occurrence is particularly difficult at an academic health center, such as the UW-Madison, because our faculty and staff are highly mobile.

- In addition to patient care, academic health centers have the multiple missions of health professions education, research and patient care. The need to increase spending for medical malpractice could well require some diversion of resources from these other missions that are so important to the current and future health of Wisconsin's population.
- University physicians serve an important state mission - the education of future generations of doctors and other health professionals, the conducting of research into the causes, prevention and treatment of disease and disability, and outreach into underserved communities. In this way, they are different from physicians in private practice who focus primarily, if not exclusively, on patient care.
- The current statute is only a notification requirement. Patients and their attorney have much more time to file the actual suit.
- The State Claims Board provides another option in those instances where the 180 day notification period has been missed. Such claims have been brought to the Board in past years, albeit not very recently.
- The Liability program for state-employed physicians has functioned well. Rather than SB 70, consideration should be given to making changes in the statutes governing insurance for non-state-employed physicians to incorporate some of the prudent provisions of the program for state-employed physicians.

PRESIDENT

Bruce R. Bachhuber, Green Bay

PRESIDENT-ELECT

David M. Skoglund, Milwaukee

VICE-PRESIDENT

Daniel A. Rottier, Madison

SECRETARY

Robert L. Jaskulski, Milwaukee

TREASURER

Christine A. Bremer, Wausau

IMMEDIATE PAST PRESIDENT

Lynn R. Laufenberg, Milwaukee



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EXECUTIVE DIRECTOR

Jane E. Garrott

44 E. Mifflin Street, Suite 103
Madison, Wisconsin 53703-2897

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**THE WISCONSIN STATE SENATE
COMMITTEE ON JUDICIARY, CORRECTIONS AND PRIVACY
SENATOR DAVE ZIEN, CHAIR**

**PUBLIC HEARING ON
SENATE BILL 70
FEBRUARY 17, 2004**

**TESTIMONY OF
ROBERT L. JASKULSKI
ON BEHALF OF THE
WISCONSIN ACADEMY OF TRIAL LAWYERS**

Good morning, Senator Zien and members of the Committee. My name is Robert L. Jaskulski. I am a partner in the Milwaukee law firm, Domnitz, Mawicke and Goisman, S.C., where I currently serve as Secretary of the organization. On behalf of WATL, I thank you for the opportunity to appear today to testify in favor to Senate Bill 70.

WATL, established as a voluntary trial bar, is a non-profit corporation with approximately 1,000 members located throughout the state. The objectives and goals of WATL are the preservation of the civil jury trial system, the improvement of the administration of justice, the provision of facts and information for legislative action, and the training of lawyers in all fields and phases of advocacy.

Senate Bill 70 eliminates the 180-day notice requirement for medical malpractice claims filed against state employees. In medical malpractice cases, the 180-day notice requirement is particularly harsh. It takes many

patients longer than six months to recover before they even begin to think about contacting a lawyer. Having to explain this harsh rule to families is one of the saddest situations our lawyers confront.

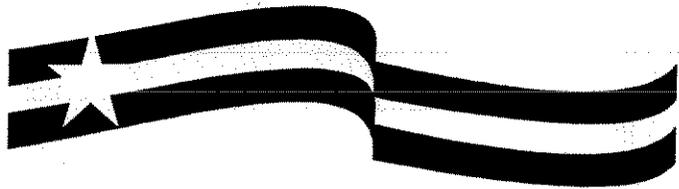
Here in Dane County, there is a confusing maze of coverages, which can lead to a trap for the unwary. Two things have occurred in the last seven years to complicate the situation. First, the UW Hospital was privatized. The physicians practicing at the UW Hospital, however, remain state employees and are covered by the 180-day notice requirement. Add to this the additional situation that most medical residents are not considered state employees and must buy malpractice insurance, including Fund coverage. Now the UW-Hospital Authority is claiming it falls under the municipal cap of \$50,000. It is a dangerous maze for the unwary.

Second, the 200 doctors of Physicians Plus Medical Group merged with UW Medical Foundation on February 1, 1998, and became state employees. This means patients with a potential claim have less time to file a medical malpractice action against a Physician Plus doctor. Once again, the non-physician staffs at UW Health Physician Plus Clinics are not considered state employees.

Trying to sort out this quagmire is not easy, especially within 180 days. Added to this burden is the difficulty in getting the patient's records. It can take months to receive the patient's medical records from the UW Hospital, which leaves little time to properly evaluate the potential malpractice claim.

As a patient, this situation is wrought with confusion. Patients have no idea when they are being treated, who's a state employee or who isn't. What appears to be private — the UW Health Physician Plus Clinics — may really be more public than private and what appears to be public — the UW Hospital — may really be more private than public. Patients shouldn't be penalized by losing their right to proceed in court for failure to navigate through this quagmire in 180 days. We urge the passage of Senate Bill 70.

WISCONSIN CITIZEN ACTION



Senate Judiciary Committee
February 17, 2004

SB 187 and SB 70

By
Carolyn Castore
Wisconsin Citizen Action

Thank you for holding this hearing. Wisconsin Citizen Action is the state's largest citizen advocacy organization with over 75,000 individual members and over 200 affiliated organizations. We strongly support SB 187 and SB 70.

Our court system is designed to provide remedies to those who believe that they have suffered an injustice. A person can present evidence and have their case heard before an impartial judge. Our system of justice may not be perfect, but it has at its core the notion that everyone is treated fairly.

There can be no greater pain than believing that a loved one has died as the result of medical negligence or incompetence. To then find out that you can take no action against the doctor because you live in one of only six states that prohibit such action is a great injustice. To find out that the only reason that you cannot seek justice in our court system is because your child is over 18 denies the ties of family and sets aside the concept of equality before the law.

We support SB 187 and SB 70 because how or where a person dies needlessly should not be the basis for determining whether a lawsuit can be brought. The age should not be the critical factor. A parent who loses an adult child does not feel less pain nor do they feel less pain if the child dies in the University Hospital.

Making our system of justice work for all families will not unduly burden our court system. The actual number of wrongful death claims is very small, with minimal overall cost impact. But passage of these two bills would send a very important message to families and to the medical profession. Families would understand that the state of Wisconsin values the life of each family member. The small portion of the medical profession that needs reminding will understand that each patient is valued and the trust that the patient puts in a doctor must be honored.

Wisconsin Citizen Action urges passage of these two bills.



STATE SENATOR DAVE ZIEN

ASSISTANT MAJORITY LEADER

CHAIRPERSON
 COMMITTEE ON JUDICIARY, CORRECTIONS AND PRIVACY
 VICE CHAIRPERSON
 COMMITTEE ON HOMELAND SECURITY, VETERANS AND MILITARY AFFAIRS AND GOVERNMENT REFORM
 MEMBER
 COMMITTEE ON SENATE ORGANIZATION
 COMMITTEE ON ENVIRONMENT AND NATURAL RESOURCES
 COMMITTEE ON LABOR, SMALL BUSINESS DEVELOPMENT AND CONSUMER AFFAIRS
 SENTENCING COMMISSION
 COUNCIL ON TOURISM
 JUDICIAL COUNCIL

SB 70

MEMORANDUM

TO: Senator Scott Fitzgerald, Member, Senate Committee on Judiciary, Corrections & Privacy

FR: Senator Dave Zien, Chair, Senate Committee on Judiciary, Corrections & Privacy

DT: February 23, 2004 (hand delivered 11:00am)

RE: Paper Ballot (5 pages)

Please consider the following items and vote on the motions below. **Return this ballot to Senator Dave Zien, Room 15 South, no later than 1:00pm Tuesday, February 24, 2004.** Committee members' ballots not received by the deadline will be marked as not voting.

Senate Bill 70

Relating to: notification of the state regarding a medical malpractice claim.

By Senator Risser; cosponsored by Representatives Johnsrud, Berceau, J. Lehman, Boyle and Colon.

Please consider the following motion:

- Moved by Senator Zien that SENATE BILL 70 be recommended for PASSAGE:

Aye No

Senate Bill 364

Relating to: appellate procedure.

By Senator Zien, by request of Wisconsin Judicial Council.

Please consider the following motion:



- Moved by Senator Zien that SENATE BILL 364 be recommended for PASSAGE:

Aye X No _____

Senate Bill 416

Relating to: failure to pay for tickets at recreational attractions and providing penalties.

By Senators Welch and Kanavas; cosponsored by Representatives Hines, Musser, Krawczyk, Ladwig, Townsend, Stone, Albers, Bies and Gunderson.

Please consider the following motion:

- Moved by Senator Zien that SENATE BILL 416 be recommended for PASSAGE:

Aye X No _____

Assembly Bill 294

Relating to: using digital recordings of a child's testimony.
By Representatives Boyle, Bies, Musser, Turner, Berceau, Lassa and Albers; cosponsored by Senator Jauch.

Please consider the following motion:

- Moved by Senator Zien that ASSEMBLY BILL 294 be recommended for CONCURRENCE:

Aye X No _____

Assembly Bill 651

Relating to: parental liability for acts of their minor child, recovery of damages for certain criminal actions, increasing the jurisdictional amount in small claims court, garnishment, attorney fees, exemption from execution of accounts, civil actions by collection agencies, earnings garnishment, retail theft, recovery in actions involving worthless checks, and revocation of fish and game approvals for which payment is made by worthless checks.

By Representatives Montgomery, Olsen, Musser, Hines, LeMahieu, Hahn, Gard, Vrakas, Rhoades, Grothman, Bies, Townsend, McCormick, Hundertmark, Owens, Krawczyk, J. Fitzgerald, Kestell, Suder, Albers, Powers, Gunderson and Gielow; cosponsored by Senators Stepp, Kanavas, Schultz, Lassa, Welch, Breske, Hansen, Roessler and Cowles.

Please consider the following motion:

- Moved by Senator Zien that ASSEMBLY BILL 651 be recommended for CONCURRENCE:

Aye X No _____

Berkos, Daniel

Of Mauston, as a member of the Public Defender Board, to serve for the term ending May 1, 2005.

Please consider the following motion:

- Moved by Senator Zien that the appointment of DANIEL BERKOS be recommended for CONFIRMATION:

Aye X No _____

Brennan, James

Of Milwaukee, as a member of the Public Defender Board, to serve for the term ending May 1, 2004.

Please consider the following motion:

- Moved by Senator Zien that the appointment of JAMES BRENNAN be recommended for CONFIRMATION:

Aye X No _____

Hogan, John

Of Rhinelander, as a member of the Public Defender Board, to serve for the term ending May 1, 2005.

Please consider the following motion:

- Moved by Senator Zien that the appointment of JOHN HOGAN be recommended for CONFIRMATION:

Aye X No _____

Miller, Michael R.

Of West Bend, as a member of the Judicial Commission, to serve for the term ending August 1, 2005.

Please consider the following motion:

- Moved by Senator Zien that the appointment of MICHAEL R. MILLER be recommended for CONFIRMATION:

Aye X No _____

Morales, Joe

Of Racine, as a member of the Public Defender Board, to serve for the term ending May 1, 2006.

Please consider the following motion:

- Moved by Senator Zien that the appointment of JOE MORALES be recommended for CONFIRMATION:

Aye X No _____

Neville, Dallas S.

Of Eau Claire, as a member of the Judicial Commission, to serve for the term ending August 1, 2004.

Please consider the following motion:

- Moved by Senator Zien that the appointment of DALLAS S. NEVILLE be recommended for CONFIRMATION:

Aye X No _____

Pepper, Pamela

Of Shorewood, as a member of the Public Defender Board, to serve for the term ending May 1, 2006.

Please consider the following motion:

- Moved by Senator Zien that the appointment of PAMELA PEPPER be recommended for CONFIRMATION:

Aye X No _____

Thorn, Ellen

Of West Salem as a member of the Public Defender Board, to serve for the term ending May 1, 2004.

Please consider the following motion:

- Moved by Senator Zien that the appointment of ELLEN THORN be recommended for CONFIRMATION:

Aye X No _____

Wettersten, Nancy

Of Madison, as a member of the Public Defender Board, to serve for the term ending May 1, 2005.

Please consider the following motion:

- Moved by Senator Zien that the appointment of NANCY WETTERSTEN be recommended for CONFIRMATION:

Aye X No _____

Xiong, Mai Neng

Of Wausau, as a member of the Public Defender Board, to serve for the term ending May 1, 2006.

Please consider the following motion:

- Moved by Senator Zien that the appointment of MAI NENG XIONG be recommended for CONFIRMATION:

Aye X No _____

Signature Scott Fitzgerald
Senator Scott Fitzgerald



STATE SENATOR DAVE ZIEN

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VICE CHAIRPERSON
COMMITTEE ON HOMELAND SECURITY, VETERANS AND MILITARY AFFAIRS AND GOVERNMENT REFORM
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SENTENCING COMMISSION
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JUDICIAL COUNCIL

ASSISTANT MAJORITY LEADER

MEMORANDUM

TO: Senator Tim Carpenter, Member, Senate Committee on Judiciary,
Corrections & Privacy

FR: Senator Dave Zien, Chair, Senate Committee on Judiciary, Corrections
& Privacy

DT: February 23, 2004 (hand delivered 11:00am)

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Please consider the following motion:

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Aye No

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Aye ✓ No

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Aye ✓ No

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By Representatives Montgomery, Olsen, Musser, Hines, LeMahieu, Hahn, Gard, Vrakas, Rhoades, Grothman, Bies, Townsend, McCormick, Hundertmark, Owens, Krawczyk, J. Fitzgerald, Kestell, Suder, Albers, Powers, Gunderson and Gielow; cosponsored by Senators Stepp, Kanavas, Schultz, Lassa, Welch, Breske, Hansen, Roessler and Cowles.

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Aye ✓ No

Signature Tim Carpenter
Senator Tim Carpenter



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MEMORANDUM

TO: Senator Spencer Coggs, Member, Senate Committee on Judiciary, Corrections & Privacy

FR: Senator Dave Zien, Chair, Senate Committee on Judiciary, Corrections & Privacy

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Signature *Spencer Coggs*
Senator Spencer Coggs



STATE SENATOR DAVE ZIEN

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MEMORANDUM

TO: Senator Cathy Stepp, Member, Senate Committee on Judiciary, Corrections & Privacy

FR: Senator Dave Zien, Chair, Senate Committee on Judiciary, Corrections & Privacy

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Aye No

Senate Bill 364

Relating to: appellate procedure.

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Aye ✓ No

Senate Bill 416

Relating to: failure to pay for tickets at recreational attractions and providing penalties.

By Senators Welch and Kanavas; cosponsored by Representatives Hines, Musser, Krawczyk, Ladwig, Townsend, Stone, Albers, Bies and Gunderson.

Please consider the following motion:

- Moved by Senator Zien that SENATE BILL 416 be recommended for PASSAGE:

Aye ✓ No

Assembly Bill 294

Relating to: using digital recordings of a child's testimony.
By Representatives Boyle, Bies, Musser, Turner, Berceau, Lassa and Albers; cosponsored by Senator Jauch.

Please consider the following motion:

- Moved by Senator Zien that ASSEMBLY BILL 294 be recommended for CONCURRENCE:

Aye ✓ No

Assembly Bill 651

Relating to: parental liability for acts of their minor child, recovery of damages for certain criminal actions, increasing the jurisdictional amount in small claims court, garnishment, attorney fees, exemption from execution of accounts, civil actions by collection agencies, earnings garnishment, retail theft, recovery in actions involving worthless checks, and revocation of fish and game approvals for which payment is made by worthless checks.

By Representatives Montgomery, Olsen, Musser, Hines, LeMahieu, Hahn, Gard, Vrakas, Rhoades, Grothman, Bies, Townsend, McCormick, Hundertmark, Owens, Krawczyk, J. Fitzgerald, Kestell, Suder, Albers, Powers, Gunderson and Gielow; cosponsored by Senators Stepp, Kanavas, Schultz, Lassa, Welch, Breske, Hansen, Roessler and Cowles.

Please consider the following motion:

- Moved by Senator Zien that ASSEMBLY BILL 651 be recommended for CONCURRENCE:

Aye ✓ No

Berkos, Daniel

Of Mauston, as a member of the Public Defender Board, to serve for the term ending May 1, 2005.

Please consider the following motion:

- Moved by Senator Zien that the appointment of DANIEL BERKOS be recommended for CONFIRMATION:

Aye ✓ No

Brennan, James

Of Milwaukee, as a member of the Public Defender Board, to serve for the term ending May 1, 2004.

Please consider the following motion:

- Moved by Senator Zien that the appointment of JAMES BRENNAN be recommended for CONFIRMATION:

Aye ✓ No

Hogan, John

Of Rhinelander, as a member of the Public Defender Board, to serve for the term ending May 1, 2005.

Please consider the following motion:

- Moved by Senator Zien that the appointment of JOHN HOGAN be recommended for CONFIRMATION:

Aye ✓ No

Miller, Michael R.

Of West Bend, as a member of the Judicial Commission, to serve for the term ending August 1, 2005.

Please consider the following motion:

- Moved by Senator Zien that the appointment of MICHAEL R. MILLER be recommended for CONFIRMATION:

Aye ✓ No

Morales, Joe

Of Racine, as a member of the Public Defender Board, to serve for the term ending May 1, 2006.

Please consider the following motion:

- Moved by Senator Zien that the appointment of JOE MORALES be recommended for CONFIRMATION:

Aye ✓ No

Neville, Dallas S.

Of Eau Claire, as a member of the Judicial Commission, to serve for the term ending August 1, 2004.

Please consider the following motion:

- Moved by Senator Zien that the appointment of DALLAS S. NEVILLE be recommended for CONFIRMATION:

Aye ✓ No

Pepper, Pamela

Of Shorewood, as a member of the Public Defender Board, to serve for the term ending May 1, 2006.

Please consider the following motion:

- Moved by Senator Zien that the appointment of PAMELA PEPPER be recommended for CONFIRMATION:

Aye ✓ No

Thorn, Ellen

Of West Salem as a member of the Public Defender Board, to serve for the term ending May 1, 2004.

Please consider the following motion:

- Moved by Senator Zien that the appointment of ELLEN THORN be recommended for CONFIRMATION:

Aye ✓ No

Wettersten, Nancy

Of Madison, as a member of the Public Defender Board, to serve for the term ending May 1, 2005.

Please consider the following motion:

- Moved by Senator Zien that the appointment of NANCY WETTERSTEN be recommended for CONFIRMATION:

Aye ✓ No

Xiong, Mai Neng

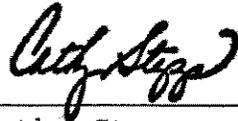
Of Wausau, as a member of the Public Defender Board, to serve for the term ending May 1, 2006.

Please consider the following motion:

- Moved by Senator Zien that the appointment of MAI NENG XIONG be recommended for CONFIRMATION:

Aye ✓ No

Signature _____



Senator Cathy Stepp