

2005 ASSEMBLY BILL 766

1 AN ACT *to renumber* 893.55 (1); *to renumber and amend* 893.55 (4) (d); *to*
2 *amend* 655.017, 893.55 (2), 893.55 (3) and 893.55 (4) (b); and *to create* 893.55
3 (1d) and 893.55 (4) (d) 2. of the statutes; **relating to:** recovery of noneconomic
4 damages in medical malpractice cases.

Analysis by the Legislative Reference Bureau

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

5 SECTION 1. 655.017 of the statutes is amended to read:
6 **655.017 Limitation on noneconomic damages.** The amount of
7 noneconomic damages recoverable by a claimant or plaintiff under this chapter for
8 acts or omissions of a health care provider if the act or omission occurs on or after May
9 25, 1995 the effective date of this section [revisor inserts date], and for acts or
10 omissions of an employee of a health care provider, acting within the scope of his or

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1 her employment and providing health care services, for acts or omissions occurring
2 on or after ~~May 25, 1995~~ the effective date of this section ... [revisor inserts date],
3 is subject to the limits under s. 893.55 (4) (d) and (f).

4 **SECTION 2.** 893.55 (1) of the statutes is renumbered 893.55 (1m).

5 **SECTION 3.** 893.55 (1d) of the statutes is created to read:

6 **893.55 (1d) (a)** In this subsection, “fund” means the injured patients and
7 families compensation fund under s. 655.27.

8 (b) The legislature finds the following related to the limitation on noneconomic
9 damages in sub. (4) (d):

10 1. Affordable and accessible health care benefits patients and the public in
11 general.

12 2. A cap on noneconomic damages is one factor necessary to maintain
13 affordability and accessibility.

14 3. A cap on noneconomic damages, together with mandatory liability insurance
15 coverage for health care providers, mandatory participation in the fund by health
16 care providers, and unlimited economic damage awards, ensures adequate
17 compensation for victims of medical malpractice.

18 (c) The legislature further finds that a medical liability system should promote
19 the following objectives:

20 1. Provide adequate compensation to victims of medical malpractice through
21 economic and noneconomic damages.

22 2. Protect access to health care services across the state and across medical
23 specialities by limiting disincentives for physicians to practice medicine in Wisconsin
24 such as the unavailability of professional liability insurance coverage, high cost of
25 insurance premiums, large fund assessments, or unpredictable or large noneconomic

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1 damage awards as recognized by a 2003 U.S. congress joint economic committee
2 report, a 2003 federal department of health and human services study, and a 2004
3 office of the commissioner of insurance report.

4 3. Help contain health care costs by limiting the incentive to practice defensive
5 medicine, which increases the cost of patient care as recognized by a 2002 federal
6 department of health and human services study and a 2003 U.S. congress joint
7 economic committee report.

8 4. Help contain health care costs by providing more predictability in
9 noneconomic damage awards allowing insurers to set insurance premiums that
10 better reflect their financial risk as recognized by a 2003 U.S. federal department of
11 health and human services study, a 2003 government accounting office study, and a
12 2005 office of the commissioner of insurance report.

13 5. Help contain health care costs by providing more predictability in
14 noneconomic damage awards in order to protect the financial integrity of the fund
15 and allow the fund's board of governors to approve reasonable assessments for health
16 care providers as recognized by a 2005 legislative fiscal bureau memo, a 2001
17 legislative audit bureau report, and a 2005 office of commissioner of insurance
18 report.

19 **SECTION 4.** 893.55 (2) of the statutes is amended to read:

20 893.55 (2) If a health care provider conceals from a patient a prior act or
21 omission of the provider which has resulted in injury to the patient, an action shall
22 be commenced within one year from the date the patient discovers the concealment
23 or, in the exercise of reasonable diligence, should have discovered the concealment
24 or within the time limitation provided by sub. (1) (1m), whichever is later.

25 **SECTION 5.** 893.55 (3) of the statutes is amended to read:

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1 893.55 (3) When a foreign object which has no therapeutic or diagnostic
2 purpose or effect has been left in a patient's body, an action shall be commenced
3 within one year after the patient is aware or, in the exercise of reasonable care,
4 should have been aware of the presence of the object or within the time limitation
5 provided by sub. (1) (1m), whichever is later.

6 **SECTION 6.** 893.55 (4) (b) of the statutes is amended to read:

7 893.55 (4) (b) The total noneconomic damages recoverable for bodily injury or
8 death, including any action or proceeding based on contribution or indemnification
9 and any action for a claim by a person other than the injured person for noneconomic
10 damages resulting in bodily injury, may not exceed the limit under par. (d) for each
11 occurrence on or after ~~May 25, 1995~~ the effective date of this paragraph [revisor
12 inserts date], from all health care providers and all employees of health care
13 providers acting within the scope of their employment and providing health care
14 services who are found negligent and from the injured patients and families
15 compensation fund.

16 **SECTION 7.** 893.55 (4) (d) of the statutes is renumbered 893.55 (4) (d) 1. and
17 amended to read:

18 893.55 (4) (d) 1. The limit on total noneconomic damages for each occurrence
19 under par. (b) on or after ~~May 25, 1995~~ the effective date of this paragraph [revisor
20 inserts date], shall be ~~\$350,000~~ and shall be ~~adjusted by the director of state courts~~
21 ~~to reflect changes in the consumer price index for all urban consumers, U.S. city~~
22 ~~average, as determined by the U.S. department of labor, at least annually thereafter,~~
23 ~~with the adjusted limit to apply to awards subsequent to such adjustments~~ \$550,000
24 for a person who is under the age of 18 at the time of the injury, and shall be \$450,000
25 for a person who is age 18 or over at the time of the injury.

