

2005 DRAFTING REQUEST

Assembly Substitute Amendment (ASA-AB1021)

Received: 03/01/2006

Received By: rnelson2

Wanted: Today

Identical to LRB:

For: Tony Staskunas (608) 266-0620

By/Representing: Adrienne

This file may be shown to any legislator: NO

Drafter: rnelson2

May Contact:

Addl. Drafters:

Subject: Courts - evidence

Extra Copies:

Submit via email: YES

Requester's email: Rep.Staskunas@legis.state.wi.us

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Evidence or condolences by health care provider

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>
/?	rnelson2 03/01/2006	kfollett 03/01/2006		_____			
/1			rschlue 03/01/2006	_____	lnorthro 03/01/2006	lnorthro 03/01/2006	
/2	rnelson2 03/02/2006	kfollett 03/02/2006	jfrantze 03/02/2006	_____	lnorthro 03/02/2006	lnorthro 03/02/2006	

FE Sent For:

<END>

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Jg
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END

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/?	rnelson2	1/1/gf 3/1/P	<i>[Signature]</i>	<i>[Signature]</i>			

FE Sent For:

<END>

Nelson, Robert P.

From: Ramirez, Adrienne
Sent: Wednesday, March 01, 2006 9:44 AM
To: Nelson, Robert P.
Subject: AB 1021 Substitute

Missouri Revised Statutes

Chapter 538

Tort Actions Based on Improper Health Care

Bob -

Could you please draft a substitute amendment to AB 1021 to reflect language in the Missouri Statutes. As you may know, this bill is scheduled for the Assembly on Thursday.

I have copied the Missouri language below.

Thanks for all your work this week.

Adrienne

Office of Rep. Tony Staskunas

Certain statements, writings, and benevolent gestures inadmissible, when--definitions.

538.229. 1. The portion of statements, writings, or benevolent gestures expressing sympathy or a general sense of benevolence relating to the pain, suffering, or death of a person and made to that person or to the family of that person shall be inadmissible as evidence of an admission of liability in a civil action. However, nothing in this section shall prohibit admission of a statement of fault.

2. For the purposes of this section, the following terms mean:

- (1) "Benevolent gestures", actions which convey a sense of compassion or commiseration emanating from humane impulses;
- (2) "Family", the spouse, parent, grandparent, stepmother, stepfather, child, grandchild, brother, sister, half brother, half sister, adopted children of a parent, or spouse's parents of an injured party.

(L. 2005 H.B. 393)

CROSS REFERENCE: Applicability of statute changes to cases filed after August 28, 2005, RSMo 538.305

50612/1

Assembly substitute amendment
to

2005 ASSEMBLY BILL 1021

LPS:
FIX request
sheet pls.

Wanted 3/1 Pxx

February 14, 2006 - Introduced by Representatives GIELOW, ALBERS, BIES, HAHN, KRAWCZYK, JESKEWITZ, SHILLING, STRACHOTA, VAN ROY, VOS and GUNDRUM, cosponsored by Senators ROESSLER, GROTHMAN, A. LASEE, OLSEN and REYNOLDS. Referred to Committee on Judiciary.

Regen

1 AN ACT to create 904.14 of the statutes; relating to: inadmissibility of a
2 statement of apology or condolence by a health care provider.

Analysis by the Legislative Reference Bureau

Under current law, certain types of evidence are not allowed to be admitted in a court action for various policy reasons. For example, evidence of measure taken after damage occurred that would have made the damage less likely is not admissible to prove negligence or culpable conduct in connection with the damage. As another example, no written or oral communication relating to a dispute in mediation is admissible or subject to discovery in any judicial proceeding or administrative action.

of benevolence

Substitute amendment

This bill provides that a statement or conduct of a health care provider that expresses apology, condolence, or sympathy to a patient or patient's relative or representative is not admissible into evidence or subject to discovery in any civil action or administrative hearing regarding the health care provider as evidence of liability or as an admission against interest.

family

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

3 SECTION 1. 904.14 of the statutes is created to read:

4 **904.14 Inadmissibility of statement by health care provider of apology**

5 or condolence. (1) In this section:

of sympathy

ASSEMBLY BILL 1021

SECTION 1

pain, suffering, or death of a person to

1 (a) "Health care provider" has the meaning given in s. 153.01 (4t).

2 (b) ~~"Relative" has the meaning given in s. 146.34 (1) (j).~~

3 (2) ~~A statement, gesture, or conduct of a health care provider or a health care~~
4 ~~provider's employee or agent that expresses apology, benevolence, compassion,~~
5 ~~condolence, fault, liability, responsibility, or sympathy to a patient or to his or her~~
6 ~~relative or representative is not admissible into evidence or subject to discovery in~~
7 ~~any civil action or administrative hearing regarding the health care provider as~~
8 ~~evidence of liability or as an admission against interest.~~

The portion of a writing, or benevolent or a general sense of benevolence relating to the the family of that person

However, this subsection does prohibit the admission of a statement of fault.

9 SECTION 2. Initial applicability.

writings, or benevolent

10 (1) This act first applies to statements, gestures, or conduct that occur on the
11 effective date of this subsection.

12 (END)

→ (a) "Family" means a spouse, parent, grandparent, stepmother, stepfather, child, grandchild, brother, sister, half brother, half sister, adopted child, or a spouse's parents.

Nelson, Robert P.

From: Ramirez, Adrienne
Sent: Thursday, March 02, 2006 11:41 AM
To: Nelson, Robert P.
Subject: AB 1021 Sub

Bob -

Sorry, I'm probably the last person you want to hear from today. However, Tony was like a redraft of the Sub to AB 1021. Rather than the Missouri Language, he would like it to include statutory language from Oklahoma.

I have attached the link to this language <http://www.lsb.state.ok.us/>

I am sending the stripes back to you.

Thanks for your help.

Adrienne
Office of Rep. Tony Staskunas



State of Wisconsin
2005 - 2006 LEGISLATURE

LRBs0612/1

RPN:kjf/ls

2

3/2 1:30

ASSEMBLY SUBSTITUTE AMENDMENT,
TO 2005 ASSEMBLY BILL 1021

Regen

1 AN ACT *to create* 904.14 of the statutes; **relating to:** inadmissibility of a
2 statement of *apology or* sympathy by a health care provider.

Analysis by the Legislative Reference Bureau

Under current law, certain types of evidence are not allowed to be admitted in a court action for various policy reasons. For example, evidence of measure taken after damage occurred that would have made the damage less likely is not admissible to prove negligence or culpable conduct in connection with the damage. As another example, no written or oral communication relating to a dispute in mediation is admissible or subject to discovery in any judicial proceeding or administrative action.

This substitute amendment provides that the portion of a statement, writing, or benevolent gesture of a health care provider that expresses sympathy or a general sense of benevolence to a patient or patient's family is not admissible into evidence in any civil action.

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

3 SECTION 1. 904.14 of the statutes is created to read:

60 (insert 2-6)

1 **904.14 Inadmissibility of statement of sympathy by health care**
2 **provider. (1) In this section:**

3 47.02 (15) (a) ^{Relative} "Family" means a spouse, parent, grandparent, stepmother, stepfather,
4 child, grandchild, brother, sister, half brother, half sister, adopted child, or spouse's
5 parents. *This relationship may be by blood, marriage, or adoption.*

move
6 up

(a) (b) "Health care provider" has the meaning given in s. 153.01 (4t). *move*

7 *steps* → (2) The portion of a statement, writing, or benevolent gesture of a health care
8 provider or a health care provider's employee or agent that expresses sympathy or
9 a general sense of benevolence relating to the pain, suffering, or death of a person
10 to the family of that person is not admissible into evidence in any civil action. This
11 subsection does prohibit the admission of a statement of fault.

12 **SECTION 2. Initial applicability.**

13 (1) This act first applies to statements, writings, or benevolent gestures that
14 occur on the effective date of this subsection.

15 (END)

insert 2-4

Nelson, Robert P.

From: Ramirez, Adrienne
Sent: Thursday, March 02, 2006 12:12 PM
To: Nelson, Robert P.
Subject: FW: AB 1021 Sub

Sorry Bob -

Here is the language...

§63-1-1708.1H. Statements, conduct, etc. expressing apology, sympathy, etc. - Admissibility - Definitions.

insert 2-11

A. In any medical liability action, any and all statements, affirmations, gestures, or conduct expressing apology, sympathy, commiseration, condolence, compassion, or a general sense of benevolence which are made by a health care provider or an employee of a health care provider to the plaintiff, a relative of the plaintiff, or a representative of the plaintiff and which relate solely to discomfort, pain, suffering, injury, or death as the result of the unanticipated outcome of the medical care shall be inadmissible as evidence of an admission of liability or as evidence of an admission against interest.

B. For purposes of this section, unless context otherwise requires, "relative" means a spouse, parent, grandparent, stepfather, child, grandchild, brother, sister, half-brother, half-sister or spouse's parents. The term includes said relationships that are created as a result of adoption. "Representative" means a legal guardian, attorney, person designated to make decisions on behalf of a patient under a durable power of attorney or health care proxy, or any person recognized in law or custom as an agent for the plaintiff.

Added by Laws 2004, c. 368, § 23, eff. Nov. 1, 2004.

From: Ramirez, Adrienne
Sent: Thursday, March 02, 2006 11:41 AM
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insert 2-6

Bob -

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