

## 2005 ASSEMBLY BILL 1073

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.

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*Analysis by the Legislative Reference Bureau*

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*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

**ASSEMBLY BILL 1073****SECTION 1**

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) The objective of the treatment of this section is to ensure  
7 affordable and accessible health care for all of the citizens of Wisconsin while  
8 providing adequate compensation to the victims of medical malpractice. Achieving  
9 this objective requires a balancing of many interests. Based upon documentary  
10 evidence, testimony received at legislative hearings, and other relevant information,  
11 the legislature finds that a limitation on the amount of noneconomic damages  
12 recoverable by a claimant or plaintiff for acts or omissions of a health care provider,  
13 together with mandatory liability coverage for health care providers and mandatory  
14 participation in the injured patients and families compensation fund by health care  
15 providers, while compensating victims of medical malpractice in appropriate  
16 circumstances by the availability of unlimited economic damages, ensures that these  
17 objectives are achieved. Establishing a limitation on noneconomic damage awards  
18 accomplishes the objective by doing all of the following:

19 1. Protecting access to health care services across the state and across medical  
20 specialties by limiting the disincentives for physicians to practice medicine in  
21 Wisconsin, such as the unavailability of professional liability insurance coverage,  
22 the high cost of insurance premiums, large fund assessments, and unpredictable or  
23 large noneconomic damage awards, as recognized by a 2003 U.S. congress joint  
24 economic committee report, a 2003 federal department of health and human services  
25 study, and a 2004 office of the commissioner of insurance report.

**ASSEMBLY BILL 1073**

1           2. Helping contain health care costs by limiting the incentive to practice  
2 defensive medicine, which increases the cost of patient care, as recognized by a 2002  
3 federal department of health and human services study, a 2003 U.S. congress joint  
4 economic committee report, a 2003 federal government accounting office study, and  
5 a 2005 office of the commissioner of insurance report.

6           3. Helping contain health care costs by providing more predictability in  
7 noneconomic damage awards, allowing insurers to set insurance premiums that  
8 better reflect such insurers' financial risk, as recognized by a 2003 federal  
9 department of health and human services study.

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

16           (b) The legislature further finds that the limitation of \$750,000 represents an  
17 appropriate balance between providing reasonable compensation for noneconomic  
18 damages associated with medical malpractice and ensuring affordable and  
19 accessible health care. This finding is based on actuarial studies provided to the  
20 legislature, the experiences of other states with and without limitations on  
21 noneconomic damages associated with medical malpractice, the testimony of  
22 experts, and other documentary evidence presented to the legislature.

23           (c) Based on actuarial studies, documentary evidence, testimony, and the  
24 experiences of other states, the legislature concludes there is a dollar figure so low  
25 as to deprive the injured victim of reasonable noneconomic damages, and there is a

**ASSEMBLY BILL 1073****SECTION 3**

1 dollar figure at which the cap number is so high that it fails to accomplish the goals  
2 of affordable and accessible health care. The legislature concludes that the number  
3 chosen is neither too high nor too low to accomplish the goals of affordable and  
4 accessible health care, is a reasonable and rationale response to the current medical  
5 liability situation, and is reasonably and rationally supported by the legislative  
6 record.

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

8 893.55 (2) If a health care provider conceals from a patient a prior act or  
9 omission of the provider which has resulted in injury to the patient, an action shall  
10 be commenced within one year from the date the patient discovers the concealment  
11 or, in the exercise of reasonable diligence, should have discovered the concealment  
12 or within the time limitation provided by sub. (1) (1m), whichever is later.

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

14 893.55 (3) When a foreign object which has no therapeutic or diagnostic  
15 purpose or effect has been left in a patient's body, an action shall be commenced  
16 within one year after the patient is aware or, in the exercise of reasonable care,  
17 should have been aware of the presence of the object or within the time limitation  
18 provided by sub. (1) (1m), whichever is later.

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

20 893.55 (4) (b) The total noneconomic damages recoverable for bodily injury or  
21 death, including any action or proceeding based on contribution or indemnification  
22 and any action for a claim by a person other than the injured person for noneconomic  
23 damages recoverable for bodily injury, may not exceed the limit under par. (d) for  
24 each occurrence on or after ~~May 25, 1995~~ the effective date of this paragraph ....  
25 [revisor inserts date], from all health care providers and all employees of health care

**ASSEMBLY BILL 1073**

1 providers acting within the scope of their employment and providing health care  
2 services who are found negligent and from the injured patients and families  
3 compensation fund.

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

6 893.55 (4) (d) 1. The limit on total noneconomic damages for each occurrence  
7 under par. (b) on or after ~~May 25, 1995~~ the effective date of this paragraph ... [revisor  
8 inserts date], shall be \$350,000 and shall be adjusted by the director of state courts  
9 to reflect changes in the consumer price index for all urban consumers, U.S. city  
10 average, as determined by the U.S. department of labor, at least annually thereafter,  
11 with the adjusted limit to apply to awards subsequent to such adjustments \$750,000.

12 **SECTION 8.** 893.55 (4) (d) 2. of the statutes is created to read:

13 893.55 (4) (d) 2. The board of governors created under s. 619.04 (3) shall submit  
14 a report to the legislature as provided under s. 13.172 (2) by January 1 of every odd  
15 numbered year of any recommended changes to the limits on noneconomic damages  
16 established in subd. 1. The report shall include the reasons why the changes are  
17 necessary to meet the intent of the legislative findings under sub. (1d).

18

(END)