

2005 Assembly Bill 1073

Date of enactment: **March 22, 2006**

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2005 WISCONSIN ACT 183

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

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

SECTION 1. 655.017 of the statutes is amended to read:

655.017 Limitation on noneconomic damages.

The amount of noneconomic damages recoverable by a claimant or plaintiff under this chapter for acts or omissions of a health care provider if the act or omission occurs on or after ~~May 25, 1995~~ the effective date of this section [revisor inserts date], and for acts or omissions of an employee of a health care provider, acting within the scope of his or her employment and providing health care services, for acts or omissions occurring on or after ~~May 25, 1995~~ the effective date of this section [revisor inserts date], is subject to the limits under s. 893.55 (4) (d) and (f).

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

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

893.55 (1d) (a) The objective of the treatment of this section is to ensure affordable and accessible health care for all of the citizens of Wisconsin while providing adequate compensation to the victims of medical malpractice. Achieving this objective requires a balancing of many interests. Based upon documentary evidence, testimony received at legislative hearings, and other relevant

information, the legislature finds that a limitation on the amount of noneconomic damages recoverable by a claimant or plaintiff for acts or omissions of a health care provider, together with mandatory liability coverage for health care providers and mandatory participation in the injured patients and families compensation fund by health care providers, while compensating victims of medical malpractice in appropriate circumstances by the availability of unlimited economic damages, ensures that these objectives are achieved. Establishing a limitation on noneconomic damage awards accomplishes the objective by doing all of the following:

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

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

* Section 991.11, WISCONSIN STATUTES 2003-04 : Effective date of acts. "Every act and every portion of an act enacted by the legislature over the governor's partial veto which does not expressly prescribe the time when it takes effect shall take effect on the day after its date of publication as designated" by the secretary of state [the date of publication may not be more than 10 working days after the date of enactment].

a 2003 federal government accounting office study, and a 2005 office of the commissioner of insurance report.

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

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

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

(c) Based on actuarial studies, documentary evidence, testimony, and the experiences of other states, the legislature concludes there is a dollar figure so low as to deprive the injured victim of reasonable noneconomic damages, and there is a dollar figure at which the cap number is so high that it fails to accomplish the goals of affordable and accessible health care. The legislature concludes that the number chosen is neither too high nor too low to accomplish the goals of affordable and accessible health care, is a reasonable and rationale response to the current medical liability situation, and is reasonably and rationally supported by the legislative record.

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

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

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

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

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

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

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

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

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

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