

2005 DRAFTING REQUEST

Bill

Received: 01/13/2006

Received By: rnelson2

Wanted: Soon

Identical to LRB:

For: Curtis Gielow (608) 266-0486

By/Representing:

This file may be shown to any legislator: NO

Drafter: rnelson2

May Contact:

Addl. Drafters:

Subject: Courts - immunity liability

Extra Copies:

Submit via email: YES

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

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Medical malpractice caps

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 01/16/2006	lkunkel 01/17/2006		_____			
/1			jfrantze 01/17/2006	_____	sbasford 01/17/2006		
/2	rnelson2 02/20/2006	jdyer 02/21/2006	pgreensl 02/21/2006	_____	lnorthro 02/21/2006		
/3	rnelson2	lkunkel	jfrantze	_____	lnorthro	lnorthro	

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
	02/21/2006	02/21/2006	02/21/2006 _____		02/21/2006	02/24/2006	

FE Sent For: *none*

<END>

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/1			jfrantze 01/17/2006	_____	sbasford 01/17/2006		
/2	rnelson2 02/20/2006	jdyer 02/21/2006	pgreensl 02/21/2006	_____	lnorthro 02/21/2006		

1/3/mk 2/21
 Jo Selb
 2/21

EE Sent For:

<END>

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Drafter: **rnelson2**

May Contact:

Addl. Drafters:

Subject: **Courts - immunity liability**

Extra Copies:

Submit via email: **YES**

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

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/1		1/2 1/21 jld	jfrantze 01/17/2006	_____	sbasford 01/17/2006		

FE Sent For:

*of
P8* *of
P8*
<END>

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/?	rnelson2	1/1mk 1/10	JG/1/17	JG/1/17			

FE Sent For:

<END>

Nelson, Robert P.

From: Barman, Mike
Sent: Friday, January 13, 2006 12:37 PM
To: Nelson, Robert P.
Cc: Kahler, Pam; Reinemann, John
Subject: FW: Medical Malpractice Clarification -- Drafting Request

Attachments: Med Mal Round 2 Draft.doc



Med Mal Round 2
Draft.doc (25 ...)

Mike Barman (Senior Program Assistant)
State of Wisconsin - Legislative Reference Bureau Legal Section - Front Office
1 East Main Street, Suite 200
Madison, WI 53703
(608) 266-3561 / mike.barman@legis.state.wi.us

-----Original Message-----

From: Reinemann, John
Sent: Friday, January 13, 2006 12:31 PM
To: LRB.Legal
Cc: Michaelson, Mark
Subject: FW: Medical Malpractice Clarification

Please draft the attached as a bill for introduction by Rep. Gielow.

Please call if you have any questions. Thank you.

John Reinemann
Aide to Rep. Curt Gielow
608-266-0486
Cell 608-770-1298

Section 1. Declaration of Legislative Purpose, Findings and Conclusions. The objective of this Act 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 has determined that a limitation on the amount of non-economic 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 non-economic damage awards accomplishes the objective by 1) protecting access to health care services across the state and across medical specialties by limiting disincentives for physicians to practice medicine in Wisconsin such as the unavailability of professional liability insurance coverage, high cost of insurance premiums, large fund assessments, or unpredictable or large non-economic damage awards as recognized by a 2003 U.S. congress joint economic committee report, a 2003 U.S. 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 U.S. department of health and human services study and a 2003 U.S. congress joint economic committee report, a 2003 U.S. 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 non-economic damage awards allowing insurers to set insurance premiums that better reflect such insurers' financial risk as recognized by a 2003 U.S. department of health and

human services; 4) helping contain health care costs by providing more predictability in non-economic 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 the 2005 legislative fiscal bureau memo, a 2001 legislative audit bureau report, and a 2005 office of commissioner of insurance report.

The legislature further determines that a limitation of \$750,000 for the amount of non-economic damages recoverable by a claimant or plaintiff for acts or omissions of a health care provider represents an appropriate balance between providing reasonable compensation for non-economic damages associated with medical malpractice and ensuring affordable and accessible health care. This determination is based on actuarial studies provided to the legislature, the experiences of other states with limitations on non-economic damages associated with medical malpractice, the testimony of experts, and other documentary evidence presented to the legislature.

Section 2. 655.017 of the statutes is amended to read:

655.017 Limitation on non-economic damages. The amount of non-economic 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 3. 893.55(4)(b) of the statutes is amended to read:

893.55(4)(b) The total non-economic 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 non-economic damages resulting in bodily injury, may not exceed the limit under par. (d) for each occurrence on or after ~~May 25, 1995~~the effective date of this section ... [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 injury patients and families compensation fund.

Section 4. 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 non-economic damages for each occurrence under par. (b) on or after ~~May 25, 1995~~the effective date of this section ... [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 customers, 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 5. 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 non-economic 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 Section 1.

Section 6. Initial applicability.

(1) This act first applies to medical malpractice acts or omissions occurring on the effective date of this subsection.

*not
needed -
in the
statutes*

2005-2006 LEGISLATURE

CORRECTIONS IN:

2005 ASSEMBLY BILL 766

Prepared by the Legislative Reference Bureau
(October 28, 2005)

- ✓ 1. Page 4, line 16: delete "renumbered 893.55 (4) (b) 2. and".
- ✓ 2. Page 4, line 18: delete "2."

(END)

4409/1
Stays

1/18

2005 ASSEMBLY BILL 766

October 17, 2005 - Introduced by Representatives GIELOW, HUEBSCH, NISCHKE, GARD, FREESE, GOTTLIEB, GUNDRUM, HAHN, HONADEL, HUNDERTMARK, JENSEN, JESKEWITZ, KERKMAN, KESTELL, KREIBICH, LAMB, LOEFFELHOLZ, MCCORMICK, MOULTON, MURSAU, RHOADES, STRACHOTA, VAN ROY, VOS, M. WILLIAMS, WIECKERT, NERISON, UNDERHEIM, SUBER, FRISKE, OWENS and PETROWSKI, cosponsored by Senators S. FITZGERALD, KAPANKE, BROWN, DARLING, ELLIS, GROTHMAN, KANAVAS, KEDZIE, A. LASEE, LAZICH, LEIBHAM, OLSEN, REYNOLDS, ROESSLER, SCHULTZ, STEPP and ZIEN. Referred to Committee on Insurance.

regen

✓

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

Analysis by the Legislative Reference Bureau

Under current law, if a defendant in a medical malpractice case is required to pay noneconomic damages, such as for pain and suffering or for loss of society and companionship, the amount of those damages are limited. The current limit on those damages for each occurrence of medical malpractice is \$445,755, and that limit is adjusted annually for inflation. In *Ferdon v. Wisconsin Patients Compensation Fund*, 2005 WI 125 (2005), the Wisconsin Supreme Court found that limit to be unconstitutional because the limit violated the equal protection provision of the Wisconsin Constitution.

This bill creates a limit on noneconomic damages for each occurrence of medical malpractice of ~~\$550,000 for persons under the age of 18, and \$450,000 for persons age 18 and over~~. The bill requires the board of governors that approves any fee changes to the Injured Patients and Families Compensation Fund to report to the legislature

\$ 750,000

ASSEMBLY BILL 766

every two years any suggested changes to these noneconomic damage limits and the reasons why the changes are necessary to meet the intent of the legislature.

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

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

2 **655.017 Limitation on noneconomic damages.** The amount of
3 noneconomic damages recoverable by a claimant or plaintiff under this chapter for
4 acts or omissions of a health care provider if the act or omission occurs on or after ~~May~~
5 ~~25, 1995~~ the effective date of this section [revisor inserts date], and for acts or
6 omissions of an employee of a health care provider, acting within the scope of his or
7 her employment and providing health care services, for acts or omissions occurring
8 on or after ~~May 25, 1995~~ the effective date of this section [revisor inserts date],
9 is subject to the limits under s. 893.55 (4) (d) and (f).

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

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

12 893.55 (1d) (a) In this subsection, "fund" means the injured patients and
13 families compensation fund under s. 655.27.

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

16 1. Affordable and accessible health care benefits patients and the public in
17 general.

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

20 3. A cap on noneconomic damages, together with mandatory liability insurance
21 coverage for health care providers, mandatory participation in the fund by health

ASSEMBLY BILL 766

1 care providers, and unlimited economic damage awards, ensures adequate
2 compensation for victims of medical malpractice.

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

5 1. Provide adequate compensation to victims of medical malpractice through
6 economic and noneconomic damages.

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

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

18 4. Help contain health care costs by providing more predictability in
19 noneconomic damage awards allowing insurers to set insurance premiums that
20 better reflect their financial risk as recognized by a 2003 U.S. federal department of
21 health and human services study, a 2003 government accounting office study, and a
22 2005 office of the commissioner of insurance report.

23 5. Help contain health care costs by providing more predictability in
24 noneconomic damage awards in order to protect the financial integrity of the fund
25 and allow the fund's board of governors to approve reasonable assessments for health

ASSEMBLY BILL 766

SECTION 3

1 care providers as recognized by a 2005 legislative fiscal bureau memo, a 2001
2 legislative audit bureau report, and a 2005 office of commissioner of insurance
3 report.

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

5 893.55 (2) If a health care provider conceals from a patient a prior act or
6 omission of the provider which has resulted in injury to the patient, an action shall
7 be commenced within one year from the date the patient discovers the concealment
8 or, in the exercise of reasonable diligence, should have discovered the concealment
9 or within the time limitation provided by sub. (1) (1m), whichever is later.

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

11 893.55 (3) When a foreign object which has no therapeutic or diagnostic
12 purpose or effect has been left in a patient's body, an action shall be commenced
13 within one year after the patient is aware or, in the exercise of reasonable care,
14 should have been aware of the presence of the object or within the time limitation
15 provided by sub. (1) (1m), whichever is later.

16 LPS:PLS
chg comp. SECTION 6. 893.55 (4) (b) of the statutes is ~~renumbered 893.55(4) (b) 2.~~ and
17 amended to read:

18 893.55 (4) (b) ⁶~~2~~ The total noneconomic damages recoverable for bodily injury
19 ~~or death~~, including any action or proceeding based on contribution or
20 indemnification and any action for a claim by a person other than the injured person
21 for noneconomic damages resulting in bodily injury, may not exceed the limit under
22 par. (d) for each occurrence on or after ~~May 25, 1995~~ the effective date of this
23 paragraph [revisor inserts date], from all health care providers and all employees
24 of health care providers acting within the scope of their employment and providing

ASSEMBLY BILL 766

1 health care services who are found negligent and from the injured patients and
2 families compensation fund. ✓

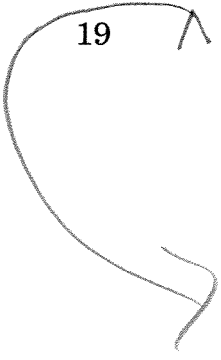
3 **SECTION 7.** 893.55 (4) (d) of the statutes is renumbered 893.55 (4) (d) 1. and
4 amended to read:

5 893.55 (4) (d) 1. The limit on total noneconomic damages for each occurrence
6 under par. (b) on or after ~~May 25, 1995~~ the effective date of this paragraph ... [revisor
7 inserts date], shall be \$350,000 ~~and shall be adjusted by the director of state courts~~
8 ~~to reflect changes in the consumer price index for all urban consumers, U.S. city~~
9 ~~average, as determined by the U.S. department of labor, at least annually thereafter,~~
10 ~~with the adjusted limit to apply to awards subsequent to such adjustments \$50,000~~
11 for a person who is under the age of 18 at the time of the injury, and shall be \$450,000.
12 for a person who is age 18 or over at the time of the injury.

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

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

19 (END)



SEC 8. Non statutory provision^s (insert 5-18)

(insert 5-18)

1 (1) (NB)

(CS)

NO (B)

(ca)

Section 1. Declaration of Legislative Purpose, Findings and Conclusions.

The objective of ~~this Act~~ ^{the treatment of section 893.55(4)(d) of the statutes} 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 ~~has determined~~ ^{finds} that a limitation on the amount of non-economic 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 non-economic 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} or unpredictable or large non-economic damage awards, as recognized by a 2003 ^{study} U.S. congress joint economic committee report, a 2003 U.S. 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 U.S. department of health and human services study ^{and} a 2003 ^{study} U.S. congress joint economic committee report, a 2003 U.S. 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 non-economic damage awards, allowing insurers to set insurance premiums that better reflect such insurers' financial risk, as recognized by a 2003 U.S. department of health and

Use 4x
Federal

(2) (P 2)

(3) (P 30)

study
OP 40

human services (4) helping contain health care costs by providing more predictability in non-economic 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 the 2005 legislative fiscal bureau memo, a 2001 legislative audit bureau report, and a 2005 office of commissioner of insurance report.

(b)

The legislature further ~~determines~~ ^{finds} that ~~a~~ ^{the} limitation of \$750,000 ~~for the amount of non-economic damages recoverable by a claimant or plaintiff for acts or omissions of a health care provider~~ represents an appropriate balance between providing reasonable compensation for non-economic damages associated with medical malpractice and ensuring affordable and accessible health care. This ~~determination~~ ^{finding} is based on actuarial studies provided to the legislature, the experiences of other states with limitations on non-economic damages associated with medical malpractice, the testimony of experts, and other documentary evidence presented to the legislature.

in section 893.55 (4) (d) of the statute as affected by this act

(end of insert)

Section 2. 655.017 of the statutes is amended to read:

655.017 Limitation on non-economic damages. The amount of non-economic 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 3. 893.55(4)(b) of the statutes is amended to read:

893.55(4)(b) The total non-economic damages recoverable for bodily injury ~~or death~~, including any action or proceeding based on contribution or indemnification and any action for a

Nelson, Robert P.

From: Leitch, Laura [LLeitch@wha.org]
Sent: Monday, February 20, 2006 3:32 PM
To: Nelson, Robert P.
Subject: MEDICAL MALPRACTICE LEGISLATION

Attachments: medmalamendtoRG.doc



medmalamendtoRG.
doc (26 KB)

Bob,

Attached is some additional language for the purpose section as well as a change on page 2, line 11 of the most recent draft.

Folks agreed with your suggestion that the purpose language should be added to the statute rather than being in the nonstatutory section.

John Reineman should be calling you shortly.

Thanks!

Laura

<<medmalamendtoRG.doc>>



State of Wisconsin
2005 - 2006 LEGISLATURE

LRB-4409/1
RPN&PJK:lmk&cs:jf

2
L + Jd

2005 BILL

2/21 10 AM

regen

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

Analysis by the Legislative Reference Bureau

Under current law, if a defendant in a medical malpractice case is required to pay noneconomic damages, such as for pain and suffering or for loss of society and companionship, the amount of those damages are limited. The current limit on those damages for each occurrence of medical malpractice is \$445,755, and that limit is adjusted annually for inflation. In *Ferdon v. Wisconsin Patients Compensation Fund*, 2005 WI 125 (2005), the Wisconsin Supreme Court found that limit to be unconstitutional because the limit violated the equal protection provision of the Wisconsin Constitution.

This bill creates a limit on noneconomic damages for each occurrence of medical malpractice of \$750,000. The bill requires the board of governors that approves any fee changes to the Injured Patients and Families Compensation Fund to report to the legislature every two years any suggested changes to these noneconomic damage limits and the reasons why the changes are necessary to meet the intent of the legislature.

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

BILL

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

2 **655.017 Limitation on noneconomic damages.** The amount of
3 noneconomic damages recoverable by a claimant or plaintiff under this chapter for
4 acts or omissions of a health care provider if the act or omission occurs on or after May
5 ~~25, 1995~~ the effective date of this section [revisor inserts date], and for acts or
6 omissions of an employee of a health care provider, acting within the scope of his or
7 her employment and providing health care services, for acts or omissions occurring
8 on or after ~~May 25, 1995~~ the effective date of this section [revisor inserts date],
9 is subject to the limits under s. 893.55 (4) (d) and (f).

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

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

20 SECTION 3. 893.55 (4) (d) of the statutes is renumbered 893.55 (4) (d) 1. and
21 amended to read:

22 893.55 (4) (d) 1. The limit on total noneconomic damages for each occurrence
23 under par. (b) on or after ~~May 25, 1995~~ the effective date of this paragraph [revisor
24 inserts date], shall be \$350,000 and shall be adjusted by the director of state courts
25 to reflect changes in the consumer price index for all urban consumers, U.S. city

SEC #. 893.55 (1) RN; 893.55 (1a) X
SEC #. 893.55 (1d) CR; (inserts 2-9a+2-9b) X
→ INSERT 2-9C ←

BILL

1 average, as determined by the U.S. department of labor, at least annually thereafter,
2 with the adjusted limit to apply to awards subsequent to such adjustments \$750,000.

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

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

9 ~~**SECTION 5. Nonstatutory provisions.**~~ (END) ✓

③
893.55 (1d)

10 ~~(1) DECLARATION OF LEGISLATIVE PURPOSE, FINDINGS AND CONCLUSIONS.~~ (a) The
11 objective of the treatment of section 893.55 (4) (d) of the statutes is to ensure
12 affordable and accessible health care for all of the citizens of Wisconsin while
13 providing adequate compensation to the victims of medical malpractice. Achieving
14 this objective requires a balancing of many interests. Based upon documentary
15 evidence, testimony received at legislative hearings, and other relevant information,
16 the legislature finds that a limitation on the amount of noneconomic damages
17 recoverable by a claimant or plaintiff for acts or omissions of a health care provider,
18 together with mandatory liability coverage for health care providers and mandatory
19 participation in the injured patients and families compensation fund by health care
20 providers, while compensating victims of medical malpractice in appropriate
21 circumstances by the availability of unlimited economic damages, ensures that these
22 objectives are achieved. Establishing a limitation on noneconomic damage awards
23 accomplishes the objective by doing all of the following:

24 1. Protecting access to health care services across the state and across medical
25 specialties by limiting the disincentives for physicians to practice medicine in

text: treat
Fix component
Insert 2-9a

Fix component
text: treat

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SECTION 5

insert 2-9a cont.

1 Wisconsin, such as the unavailability of professional liability insurance coverage,
 2 the high cost of insurance premiums, large fund assessments, and unpredictable or
 3 large non-economic damage awards, as recognized by a 2003 U.S. congress joint
 4 economic committee report, a 2003 federal department of health and human services
 5 study, and a 2004 office of the commissioner of insurance report.

6 *Fix component* 2. Helping contain health care costs by limiting the incentive to practice
 7 defensive medicine, which increases the cost of patient care, as recognized by a 2002
 8 federal department of health and human services study, a 2003 U.S. congress joint
 9 economic committee report, a 2003 federal government accounting office study, and
 10 a 2005 office of the commissioner of insurance report.

11 *text: treat* 3. Helping contain health care costs by providing more predictability in
 12 non-economic damage awards, allowing insurers to set insurance premiums that
 13 better reflect such insurers' financial risk, as recognized by a 2003 federal
 14 department of health and human services.

15 *text: treat* 4. Helping contain health care costs by providing more predictability in
 16 non-economic damage awards in order to protect the financial integrity of the fund
 17 and allow the fund's board of governors to approve reasonable assessments for health
 18 care providers, as recognized by a 2005 legislative fiscal bureau memo, a 2001
 19 legislative audit bureau report, and a 2005 office of commissioner of insurance
 20 report.

21 *text: treat* (b) The legislature further finds that the limitation of \$750,000 in ~~section~~
 22 ~~893.55 (4) (d) of the statutes, as affected by this act,~~ represents an appropriate
 23 balance between providing reasonable compensation for non-economic damages
 24 associated with medical malpractice and ensuring affordable and accessible health
 25 care. This finding is based on actuarial studies provided to the legislature, the

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and without

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1

experiences of other states with limitations on non-economic damages associated
with medical malpractice, the testimony of experts, and other documentary evidence
presented to the legislature.

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4

~~END~~ (of *end* insert 29a)

SECTION # AM; 893.55(2)

893.55(2)

(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), whichever is later.

→ SECTION # AM; 893.55(3) (1m)

893.55(3)

(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), whichever is later.

(1m)

(end ins 2-9C)

MEDICAL MALPRACTICE LEGISLATION

A(c)

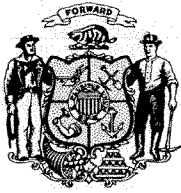
On page 2, line 11 after "limitations", add: "and without limitations"

On page 2, line 13, after "legislature", add: "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 listed above, is a reasonable and rationale response to the current medical liability situation, and is reasonably and rationally supported by the record."

Insert 7-9b

of affordable and accessible health care legislative

RPN e-mailed to Caroline



State of Wisconsin
2005 - 2006 LEGISLATURE

LRB-4409/2
RPN&PJK:lmk&cs&jd:pg

3
Keep

NOV

(see p 5)

2005 BILL

Recon

VH

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

Under current law, if a defendant in a medical malpractice case is required to pay noneconomic damages, such as for pain and suffering or for loss of society and companionship, the amount of those damages are limited. The current limit on those damages for each occurrence of medical malpractice is \$445,755, and that limit is adjusted annually for inflation. In *Ferdon v. Wisconsin Patients Compensation Fund*, 2005 WI 125 (2005), the Wisconsin Supreme Court found that limit to be unconstitutional because the limit violated the equal protection provision of the Wisconsin Constitution.

This bill creates a limit on noneconomic damages for each occurrence of medical malpractice of \$750,000. The bill requires the board of governors that approves any fee changes to the Injured Patients and Families Compensation Fund to report to the legislature every two years any suggested changes to these noneconomic damage

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limits and the reasons why the changes are necessary to meet the intent of the legislature.

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

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

2 **655.017 Limitation on noneconomic damages.** The amount of
3 noneconomic damages recoverable by a claimant or plaintiff under this chapter for
4 acts or omissions of a health care provider if the act or omission occurs on or after ~~May~~
5 ~~25, 1995~~ the effective date of this section [revisor inserts date], and for acts or
6 omissions of an employee of a health care provider, acting within the scope of his or
7 her employment and providing health care services, for acts or omissions occurring
8 on or after ~~May 25, 1995~~ the effective date of this section [revisor inserts date],
9 is subject to the limits under s. 893.55 (4) (d) and (f).

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

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

12 **893.55 (1d) (a)** The objective of the treatment of this section is to ensure
13 affordable and accessible health care for all of the citizens of Wisconsin while
14 providing adequate compensation to the victims of medical malpractice. Achieving
15 this objective requires a balancing of many interests. Based upon documentary
16 evidence, testimony received at legislative hearings, and other relevant information,
17 the legislature finds that a limitation on the amount of noneconomic damages
18 recoverable by a claimant or plaintiff for acts or omissions of a health care provider,
19 together with mandatory liability coverage for health care providers and mandatory
20 participation in the injured patients and families compensation fund by health care
21 providers, while compensating victims of medical malpractice in appropriate

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1 circumstances by the availability of unlimited economic damages, ensures that these
2 objectives are achieved. Establishing a limitation on noneconomic damage awards
3 accomplishes the objective by doing all of the following:

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

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

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

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

BILL**SECTION 3**

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

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

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

18 893.55 (2) If a health care provider conceals from a patient a prior act or
19 omission of the provider which has resulted in injury to the patient, an action shall
20 be commenced within one year from the date the patient discovers the concealment
21 or, in the exercise of reasonable diligence, should have discovered the concealment
22 or within the time limitation provided by sub. ~~(1)~~ (1m), whichever is later.

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

24 893.55 (3) When a foreign object which has no therapeutic or diagnostic
25 purpose or effect has been left in a patient's body, an action shall be commenced

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1 within one year after the patient is aware or, in the exercise of reasonable care,
2 should have been aware of the presence of the object or within the time limitation
3 provided by sub. (1) (1m), whichever is later.

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

5 893.55 (4) (b) The total noneconomic damages recoverable for bodily injury or
6 death, including any action or proceeding based on contribution or indemnification
7 and any action for a claim by a person other than the injured person for noneconomic
8 damages ~~resulting in~~ ^{recoverable for} bodily injury, may not exceed the limit under par. (d) for each
9 occurrence on or after May 25, 1995 the effective date of this paragraph ... [revisor
10 inserts date], from all health care providers and all employees of health care
11 providers acting within the scope of their employment and providing health care
12 services who are found negligent and from the injured patients and families
13 compensation fund.

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

16 893.55 (4) (d) 1. The limit on total noneconomic damages for each occurrence
17 under par. (b) on or after May 25, 1995 the effective date of this paragraph ... [revisor
18 inserts date], shall be \$350,000 and shall be adjusted by the director of state courts
19 to reflect changes in the consumer price index for all urban consumers, U.S. city
20 average, as determined by the U.S. department of labor, at least annually thereafter,
21 with the adjusted limit to apply to awards subsequent to such adjustments \$750,000.

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

23 893.55 (4) (d) 2. The board of governors created under s. 619.04 (3) shall submit
24 a report to the legislature as provided under s. 13.172 (2) by January 1 of every odd
25 numbered year of any recommended changes to the limits on noneconomic damages

BILL

1 established in subd. 1. The report shall include the reasons why the changes are
2 necessary to meet the intent of the legislative findings under sub. (1d).

3 (END)

Please jacket
LRB 4409/3. I will
pick up. Thank you.
John Penman
24 Feb 06



STATE REPRESENTATIVE
CURT GIELOW

State of Wisconsin's Twenty-Third Assembly District

John Reinemann

Senior Legislative Staff

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