



STATE OF WISCONSIN Assembly Journal

Ninety-Seventh Regular Session

MONDAY, December 5, 2005

The Chief Clerk makes the following entries under the above date:

AMENDMENTS OFFERED

Assembly amendment 3 to Assembly amendment 2 to **Assembly Bill 21** offered by joint committee on **Finance**.

Assembly substitute amendment 1 to **Assembly Bill 243** offered by joint committee on **Finance**.

Assembly amendment 1 to **Assembly Bill 297** offered by joint committee on **Finance**.

Assembly amendment 1 to **Assembly Bill 374** offered by committee on **Transportation**.

Assembly amendment 1 to Assembly substitute amendment 1 to **Assembly Bill 678** offered by committee on **Transportation**.

Assembly amendment 1 to Assembly amendment 1 to Assembly substitute amendment 1 to **Assembly Bill 763** offered by joint committee on **Finance**.

Assembly amendment 1 to Assembly substitute amendment 1 to **Assembly Bill 763** offered by joint committee on **Finance**.

Assembly amendment 2 to Assembly substitute amendment 1 to **Assembly Bill 763** offered by joint committee on **Finance**.

Assembly amendment 3 to Assembly substitute amendment 1 to **Assembly Bill 763** offered by joint committee on **Finance**.

Assembly substitute amendment 2 to **Assembly Bill 763** offered by joint committee on **Finance**.

Assembly amendment 1 to **Assembly Bill 840** offered by joint committee on **Finance**.

Assembly amendment 2 to **Assembly Bill 840** offered by joint committee on **Finance**.

Assembly amendment 5 to Assembly substitute amendment 1 to **Assembly Bill 844** offered by joint committee on **Finance**.

INTRODUCTION AND REFERENCE OF PROPOSALS

Read first time and referred:

Assembly Bill 851

Relating to: allowing a city, town, or village to allow persons to operate a neighborhood electric vehicle on local highways.

By Representatives Albers, Gottlieb, Krawczyk, Berceau, Townsend, Petrowski, McCormick, Hahn, Ballweg and Gunderson; cosponsored by Senator Schultz.

To committee on **Urban and Local Affairs**.

Assembly Bill 852

Relating to: requiring tracer wires in the installation of private sewage systems.

By Representatives Pettis, Freese, Musser, Lothian, Ott, Hines and Ballweg.

To committee on **Urban and Local Affairs**.

Assembly Bill 853

Relating to: administering anesthesia in an office-based setting and requiring the exercise of rule-making authority.

By Representatives Gielow, Suder, Ainsworth, Berceau, Davis, Gunderson, Hahn, Lehman, Loeffelholz, Nass, Nerison, Ott, Sheridan, Towns, Vos and Wood; cosponsored by Senators Darling and Kanavas.

To committee on **Health**.

Assembly Bill 854

Relating to: limits on noise emitted from all-terrain vehicles.

By Representatives Suder, Musser, Hines, Townsend and Mursau.

To committee on **Tourism**.

COMMITTEE REPORTS

The joint committee on **Finance** reports and recommends:

Assembly Bill 21

Relating to: computing expense deductions and amortization and depreciation on property used in farming for income and franchise tax purposes.

Assembly Amendment 3 to Assembly Amendment 2 adoption:

Ayes: 14 – Representatives Kaufert, Ward, Jensen, Stone, Rhoades, Meyer and Pocan; Senators S. Fitzgerald, Lazich, Darling, Cowles, Leibham, Olsen and Decker.

Noes: 0.

Assembly Amendment 2 adoption:

Ayes: 13 – Representatives Kaufert, Ward, Jensen, Stone, Rhoades and Meyer; Senators S. Fitzgerald, Lazich, Darling, Cowles, Leibham, Olsen and Decker.

Noes: 1 – Representative Pocan.

Passage as amended:

Ayes: 11 – Representatives Kaufert, Ward, Jensen, Stone, Rhoades and Meyer; Senators S. Fitzgerald, Lazich, Darling, Leibham and Olsen.

Noes: 3 – Representative Pocan; Senators Cowles and Decker.

To committee on **Rules**.

Assembly Bill 87

Relating to: nonresident tuition exemption for dependents of certain active members of the armed forces.

Assembly Substitute Amendment 1 adoption:

Ayes: 15 – Representatives Kaufert, Ward, Jensen, Stone, Rhoades, Meyer and Pocan; Senators S. Fitzgerald, Lazich, Darling, Cowles, Leibham, Olsen, Decker and Taylor.

Noes: 0.

Passage as amended:

Ayes: 15 – Representatives Kaufert, Ward, Jensen, Stone, Rhoades, Meyer and Pocan; Senators S. Fitzgerald, Lazich, Darling, Cowles, Leibham, Olsen, Decker and Taylor.

Noes: 0.

To committee on **Rules**.

Assembly Bill 120

Relating to: restrictions on the operation of motor vehicles by persons holding instruction permits or probationary licenses and providing a penalty.

Passage:

Ayes: 10 – Representatives Kaufert, Jensen, Stone, Rhoades, Meyer and Pocan; Senators Lazich, Darling, Olsen and Taylor.

Noes: 5 – Representative Ward; Senators S. Fitzgerald, Cowles, Leibham and Decker.

To committee on **Rules**.

Assembly Bill 297

Relating to: an education tax credit for businesses.

Assembly Amendment 1 adoption:

Ayes: 14 – Representatives Kaufert, Ward, Jensen, Stone, Rhoades and Meyer; Senators S. Fitzgerald, Lazich, Darling, Cowles, Leibham, Olsen, Decker and Taylor.

Noes: 1 – Representative Pocan.

Passage as amended:

Ayes: 11 – Representatives Kaufert, Ward, Jensen, Stone, Rhoades and Meyer; Senators S. Fitzgerald, Lazich, Darling, Leibham and Olsen.

Noes: 4 – Representative Pocan; Senators Cowles, Decker and Taylor.

To committee on **Rules**.

Assembly Bill 397

Relating to: the 2003–05 Authorized State Building Program.

Assembly Substitute Amendment 1 adoption:

Ayes: 11 – Representatives Kaufert, Ward, Stone, Rhoades and Meyer; Senators S. Fitzgerald, Lazich, Darling, Cowles, Leibham and Olsen.

Noes: 4 – Representatives Jensen and Pocan; Senators Decker and Taylor.

Passage as amended:

Ayes: 11 – Representatives Kaufert, Ward, Stone, Rhoades and Meyer; Senators S. Fitzgerald, Lazich, Darling, Cowles, Leibham and Olsen.

Noes: 4 – Representatives Jensen and Pocan; Senators Decker and Taylor.

To committee on **Rules**.

Assembly Bill 763

Relating to: carrying a concealed weapon, possessing or transporting a firearm under certain circumstances, background checks for handgun purchases, photographic identification cards for retired law enforcement officers, requiring the exercise of rule-making authority, providing an exemption from rule-making authority, and providing penalties.

Assembly Substitute Amendment 2 adoption:

Ayes: 14 – Representatives Kaufert, Ward, Jensen, Stone, Rhoades, Meyer and Pocan; Senators S. Fitzgerald, Lazich, Darling, Cowles, Leibham, Olsen and Decker.

Noes: 0.

Passage as amended:

Ayes: 12 – Representatives Kaufert, Ward, Jensen, Stone, Rhoades and Meyer; Senators S. Fitzgerald, Lazich, Darling, Cowles, Leibham and Decker.

Noes: 2 – Representative Pocan; Senator Olsen.

To committee on **Rules**.

Assembly Bill 802

Relating to: supplemental Medical Assistance payments to county and municipal nursing homes and making an appropriation.

Passage:

Ayes: 14 – Representatives Kaufert, Ward, Jensen, Stone, Meyer and Pocan; Senators S. Fitzgerald, Lazich, Darling, Cowles, Leibham, Olsen, Decker and Taylor.

Noes: 1 – Representative Rhoades.

To committee on **Rules**.

Assembly Bill 840

Relating to: a speed limit for operation of snowmobiles during the hours of darkness, enforcement and safety relating to the operation of snowmobiles, and making an appropriation.

Assembly Amendment 1 adoption:

Ayes: 15 – Representatives Kaufert, Ward, Jensen, Stone, Rhoades, Meyer and Pocan; Senators S. Fitzgerald, Lazich, Darling, Cowles, Leibham, Olsen, Decker and Taylor.

Noes: 0.

Assembly Amendment 2 adoption:

Ayes: 9 – Representatives Kaufert, Ward, Jensen, Stone, Rhoades and Meyer; Senators S. Fitzgerald, Darling and Leibham.

Noes: 6 – Representative Pocan; Senators Lazich, Cowles, Olsen, Decker and Taylor.

Passage as amended:

Ayes: 13 – Representatives Kaufert, Ward, Jensen, Stone, Rhoades, Meyer and Pocan; Senators S. Fitzgerald, Darling, Leibham, Olsen, Decker and Taylor.

Noes: 2 – Senators Lazich and Cowles.

To committee on **Rules**.

DEAN KAUFERT
Assembly Chairperson
Joint Committee on Finance

The committee on **Insurance** reports and recommends:

Assembly Bill 617

Relating to: coverage of certain health care costs in cancer clinical trials.

Assembly Substitute Amendment 1 adoption:

Ayes: 15 – Representatives Nischke, Wieckert, Underheim, Montgomery, McCormick, Gielow, Van Roy, Ballweg, Moulton, Cullen, Lehman, Staskunas, Berceau, Nelson and Sheridan.

Noes: 0.

Passage as amended:

Ayes: 15 – Representatives Nischke, Wieckert, Underheim, Montgomery, McCormick, Gielow, Van Roy, Ballweg, Moulton, Cullen, Lehman, Staskunas, Berceau, Nelson and Sheridan.

Noes: 0.

To committee on **Rules**.

Senate Bill 288

Relating to: coverage of certain health care costs in cancer clinical trials.

Concurrence:

Ayes: 15 – Representatives Nischke, Wieckert, Underheim, Montgomery, McCormick, Gielow, Van Roy, Ballweg, Moulton, Cullen, Lehman, Staskunas, Berceau, Nelson and Sheridan.

Noes: 0.

To committee on **Rules**.

ANN NISCHKE
Chairperson
Committee on Insurance

The committee on **Judiciary** reports and recommends:

Assembly Bill 376

Relating to: immunity from civil liability for providing safety services related to the inspection and installation of child safety restraint systems in motor vehicles.

Passage:

Ayes: 7 – Representatives Gundrum, McCormick, Pridemore, Kerkman, Kleefisch, Staskunas and Turner.

Noes: 1 – Representative Kessler.

To committee on **Rules**.

Senate Bill 386

Relating to: immunity from civil liability for providing safety services related to the inspection and installation of child safety restraint systems in motor vehicles.

Concurrence:

Ayes: 7 – Representatives Gundrum, McCormick, Pridemore, Kerkman, Kleefisch, Staskunas and Turner.

Noes: 1 – Representative Kessler.

To committee on **Rules**.

MARK GUNDRUM
Chairperson
Committee on Judiciary

The committee on **Property Rights and Land Management** reports and recommends:

Assembly Bill 675

Relating to: compensation for the reduction in the fair market value of private real property.

Assembly Substitute Amendment 1 adoption:

Ayes: 4 – Representatives Albers, Nass, Musser and Wood.

Noes: 2 – Representatives Hebl and Staskunas.

Passage as amended:

Ayes: 4 – Representatives Albers, Nass, Musser and Wood.

Noes: 2 – Representatives Hebl and Staskunas.

To committee on **Rules**.

Assembly Bill 713

Relating to: subjecting a county development plan to town board approval.

Passage:

Ayes: 4 – Representatives Albers, Nass, Musser and Wood.

Noes: 2 – Representatives Hebl and Staskunas.

To committee on **Rules**.

Assembly Bill 734

Relating to: limiting rules regarding the placement of riprap.

Assembly Substitute Amendment 1 adoption:

Ayes: 4 – Representatives Albers, Nass, Musser and Wood.

Noes: 2 – Representatives Hebl and Staskunas.

Passage as amended:

Ayes: 4 – Representatives Albers, Nass, Musser and Wood.

Noes: 2 – Representatives Hebl and Staskunas.

To committee on **Rules**.

SHERYL ALBERS
Chairperson
Committee on Property Rights and Land Management

The committee on **Public Health** reports and recommends:

Assembly Bill 733

Relating to: chelation therapy.

Passage:

Ayes: 4 – Representatives Hines, Underheim, Townsend and McCormick.

Noes: 3 – Representatives Wasserman, Grigsby and Benedict.

To committee on **Rules**.

Assembly Bill 750

Relating to: the assessment of forfeitures by the Department of Commerce for violating certain licensing requirements and granting rule-making authority.

Assembly Substitute Amendment 1 adoption:

Ayes: 7 – Representatives Hines, Underheim, Townsend, McCormick, Wasserman, Grigsby and Benedict.

Noes: 0.

Passage as amended:

Ayes: 6 – Representatives Hines, Townsend, McCormick, Wasserman, Grigsby and Benedict.

Noes: 1 – Representative Underheim.

To committee on **Rules**.

J.A. HINES
Chairperson
Committee on Public Health

The committee on **Transportation** reports and recommends:

Assembly Bill 741

Relating to: review of Department of Transportation decisions related to outdoor advertising signs.

Assembly Amendment 1 adoption:

Ayes: 13 – Representatives Ainsworth, Petrowski, Hahn, Suder, Friske, Ott, Van Roy, Davis, Steinbrink, Sherman, Vruwink, Molepske and Nelson.

Noes: 0.

Passage as amended:

Ayes: 9 – Representatives Ainsworth, Petrowski, Hahn, Suder, Friske, Ott, Van Roy, Davis and Nelson.

Noes: 4 – Representatives Steinbrink, Sherman, Vruwink and Molepske.

To committee on **Rules**.

Assembly Bill 753

Relating to: car pool vehicle lanes.

Passage:

Ayes: 10 – Representatives Ainsworth, Petrowski, Hahn, Friske, Ott, Davis, Sherman, Vruwink, Molepske and Nelson.

Noes: 3 – Representatives Suder, Van Roy and Steinbrink.

To committee on **Rules**.

JOHN AINSWORTH
Chairperson
Committee on Transportation

EXECUTIVE COMMUNICATIONS

State of Wisconsin
Office of the Governor
Madison

December 2, 2005

To the Honorable Members of the Assembly:

The following bill, originating in the Assembly, has been approved, signed and deposited in the office of the Secretary of State:

Bill Number Act Number Date Approved
Assembly Bill 765 51 December 2, 2005

Respectfully submitted,
JIM DOYLE
Governor

GOVERNOR'S VETO MESSAGE

December 2, 2005

To the Honorable Members of the Assembly:

I am vetoing **Assembly Bill 764** in its entirety. This bill would require courts in medical malpractice cases to reduce the amount of damages awarded to an injured claimant, by the amount an injured claimant receives from other "collateral sources" in compensation for injuries sustained as a result of medical malpractice.

I am vetoing this bill because it unfairly allows those who commit medical malpractice to profit from health benefit payments that injured patients may receive from outside sources. Laws governing medical malpractice are supposed to deter wrongful conduct and reduce the occurrence of malpractice. **Assembly Bill 764** has the opposite effect: it relieves those legally responsible for medical malpractice from their obligations to pay for malpractice damages, in cases where injured patients had the foresight, or good fortune, to obtain health care benefits. That isn't fair.

Furthermore, **Assembly Bill 764** is unnecessary. Injured claimants very rarely benefit from "double payments," and most third-party payers, such as private and public health insurers, require claimants to repay any benefits they receive from their insurer when they also receive damages from a defendant in a medical malpractice action.

The Legislature should be focused on ways to protect victims from wrongful and harmful conduct, rather than relieving the legal obligations of those who commit medical malpractice. I therefore must veto this bill.

Respectfully submitted,

JIM DOYLE

Governor

December 2, 2005

To the Honorable Members of the Assembly:

I am vetoing **Assembly Bill 766** in its entirety. This bill is the Legislature's response to *Ferdon v. Wisconsin Patients Compensation Fund*, the recent Wisconsin Supreme Court decision that struck down an unconstitutional Wisconsin's preexisting cap on noneconomic damages in medical malpractice cases. This bill creates new caps on noneconomic damages for persons injured as a result of medical malpractice: \$450,000 for persons age eighteen and older, and \$550,000 for persons under age eighteen.

I am vetoing **Assembly Bill 766** because it is very unlikely that the Wisconsin Supreme Court would uphold it. While I've always said that caps could be structured to address the concerns of the Wisconsin Supreme Court, **Assembly Bill 766** would almost certainly be struck down and, as a result, does not represent a real solution.

The bill's primary failing is that it ignores one of the Court's major concerns - that caps "cannot be set

unreasonably low." The Court has already struck down a \$445,775 cap. Passing what is virtually the same cap - \$450,000 - and including a nominal increase for persons under age eighteen does not represent a serious effort to address the concerns of the Wisconsin Supreme Court.

Moreover, the amount of the caps in **Assembly Bill 766** would likely be considered arbitrary and lacking a rational basis by the Wisconsin Supreme Court. Before this bill was drafted, a legislative task force was created and charged with studying the issue of medical malpractice caps. The task force heard testimony and gathered evidence, but in making its final recommendations, did not select an actual cap amount or an appropriate range. The task force left the cap amount blank, for legislators to later fill in. It seems terribly unlikely that the Wisconsin Supreme Court would find that the caps in **Assembly Bill 766** have a rational basis when the task force process that ultimately led to their passage left the most crucial element of the caps-the amounts-blank.

Distinguished constitutional law experts who have studied this issue agree. My office recently sought the opinion of University of Wisconsin Law School faculty members regarding the constitutionality of **Assembly Bill 766**. Their conclusions were unequivocal. In their letter responding to my inquiry, they state that "**Assembly Bill 766** at most half-heartedly attempts to address only one of the several constitutional problems of its predecessor, and clearly fails in that attempt." The letter concludes: "there is no rational basis for [**Assembly Bill 766**]."

Legal experts agree that a Court which found a \$445,775 cap unconstitutional would most certainly strike down a cap not even \$5000 higher. Approving a law that would be quickly overturned doesn't do anyone any good. Instead, I encourage all the interested parties on all sides of this issue to get together and figure out a responsible and lasting solution that has a real chance of being upheld by the Wisconsin Supreme Court.

Respectfully submitted,

JIM DOYLE

Governor

COMMUNICATIONS

November 29, 2005

Patrick Fuller
Assembly Chief Clerk
17 West Main Street, Suite 208
Madison, WI 53708

Dear Chief Clerk Fuller:

I respectfully ask to be recorded as voting with the majority on the following bills considered by the Wisconsin State Assembly on Wednesday, November 9, 2005:

Assembly Bill 456 relating to prepayment penalties on variable rate residential mortgage loans: and

Assembly Bill 591 relating to global positioning system tracking for certain sex offenders while on probation,

extended supervision, parole, supervised release, or conditional release and providing a penalty.

December 2, 2005

Thank you in advance for your prompt attention to this matter. If you have further questions or need additional information please let me know.

Sincerely,
SCOTT R. JENSEN
State Representative
98th District

November 29, 2005

Patrick Fuller
Assembly Chief Clerk
17 West Main Street, Suite 208
Madison, WI 53708

Dear Chief Clerk Fuller:

I respectfully ask to be recorded as voting with the majority on the following bills considered by the Wisconsin State Assembly on Thursday, November 10, 2005:

Assembly Bill 788 relating to posting of information relating to certain pending state contracts and orders on the Internet.

Thank you in advance for your prompt attention to this matter. If you have further questions or need additional information please let me know.

Sincerely,
SCOTT R. JENSEN
State Representative
98th District

Patrick Fuller
Assembly Chief Clerk
17 West Main Street, Suite 208
Madison, WI 53708

Dear Chief Clerk Fuller:

Would you please add me as a co-sponsor of Assembly Joint Resolution 68, Representative Friske's constitutional amendment about line item vetoes? I would appreciate it.

I apologize for any inconvenience. Thank you for your help.

Sincerely,
JOE LEIBHAM
State Senator
9th Senate District

December 5, 2005

Patrick Fuller
Assembly Chief Clerk
17 West Main Street, Suite 208
Madison, WI 53708

Dear Chief Clerk Fuller:

Please add my name as a co-sponsor on Assembly Bill 850. Thank you.

Sincerely,
MARK GUNDRUM
State Representative
84th Assembly District