

WISCONSIN STATE  
LEGISLATURE  
COMMITTEE HEARING  
RECORDS

2005-06

(session year)

Assembly

(Assembly, Senate or Joint)

Committee on  
Insurance  
(AC-In)

File Naming Example:

Record of Comm. Proceedings ... RCP

- 05hr\_AC-Ed\_RCP\_pt01a
- 05hr\_AC-Ed\_RCP\_pt01b
- 05hr\_AC-Ed\_RCP\_pt02

COMMITTEE NOTICES ...

➤ Committee Hearings ... CH (Public Hearing Announcements)

➤ \*\*

➤ Committee Reports ... CR

➤ \*\*

➤ Executive Sessions ... ES

➤ \*\*

➤ Record of Comm. Proceedings ... RCP

➤ \*\*

-----  
INFORMATION COLLECTED BY COMMITTEE  
CLERK FOR AND AGAINST PROPOSAL

➤ Appointments ... Appt

➤ \*\*

Name:

➤ Clearinghouse Rules ... CRule

➤ \*\*

➤ Hearing Records ... HR (bills and resolutions)

➤ **05hr\_ab0294\_AC-In\_pt01**

➤ Miscellaneous ... Misc

➤ \*\*

## Vote Record Committee on Insurance

Date: 6/21/05

Moved by: Nischke

Seconded by: Underheim

AB 294      SB \_\_\_\_\_      Clearinghouse Rule \_\_\_\_\_  
 AJR \_\_\_\_\_      SJR \_\_\_\_\_      Appointment \_\_\_\_\_  
 AR \_\_\_\_\_      SR \_\_\_\_\_      Other \_\_\_\_\_

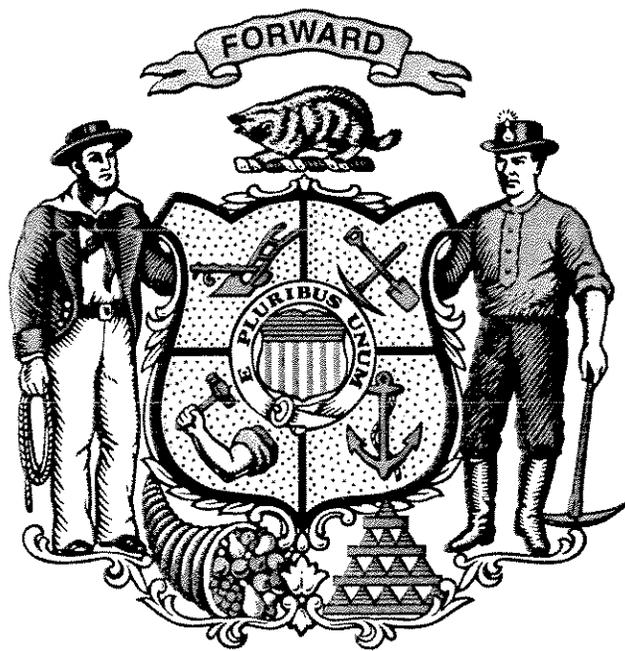
A/S Amdt \_\_\_\_\_  
 A/S Amdt \_\_\_\_\_ to A/S Amdt \_\_\_\_\_  
 A/S Sub Amdt \_\_\_\_\_  
 A/S Amdt \_\_\_\_\_ to A/S Sub Amdt \_\_\_\_\_  
 A/S Amdt \_\_\_\_\_ to A/S Amdt \_\_\_\_\_ to A/S Sub Amdt \_\_\_\_\_

Be recommended for:  
 Passage       Adoption       Confirmation       Concurrence       Indefinite Postponement  
 Introduction       Rejection       Tabling       Nonconcurrency

<u>Committee Member</u>	<u>Aye</u>	<u>No</u>	<u>Absent</u>	<u>Not Voting</u>
Representative Ann Nischke, Chair	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Representative Steve <del>Wieckert</del> <sup>Friske</sup>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Representative Gregg Underheim	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Representative Phil Montgomery	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Representative Terri McCormick	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Representative Curtis Gielow	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Representative Karl Van Roy	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Representative Joan Ballweg	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Representative Terry Moulton	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Representative David Cullen	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Representative John Lehman	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Representative Tony Staskunas	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Representative Louis Molepske	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Representative Thomas Nelson	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Representative Michael Sheridan	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Totals: 12 \_\_\_\_\_

Motion Carried       Motion Failed



# History of Assembly Bill 294

## ASSEMBLY BILL 294

An Act to renumber 655.27 (6); and to create 655.27 (6) (b) of the statutes; relating to: prohibiting legislation to change the purpose of the injured patients and families compensation fund.

2005

04-04. A. Introduced by Representatives Wieckert, Montgomery, Gard, Kreibich, Nischke, Black, Hines, Pettis, Ainsworth, Vos, Bies, Freese, Owens, F. Lasee, Musser, Davis, Pridemore, Hahn and Petrowski; cosponsored by Senators Kanavas, Stepp, Breske, Olsen, Reynolds and Grothman.

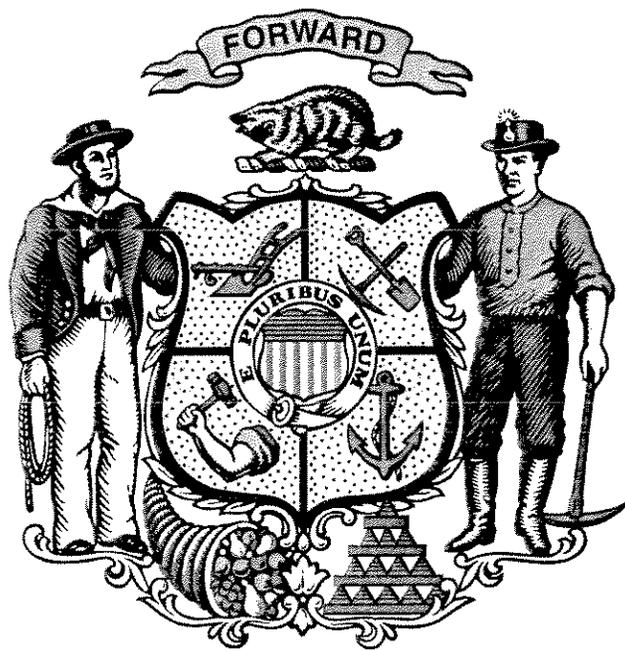
04-04. A. Read first time and referred to committee on Insurance

..... 158

### ***Analysis by the Legislative Reference Bureau***

The health care liability provisions of the statutes require certain health care providers to carry health care liability (medical malpractice) insurance with liability limits of at least \$1,000,000 for each occurrence and at least \$3,000,000 for all occurrences in a policy year. Any portion of a medical malpractice claim that exceeds the policy limits is paid by the injured patients and families compensation fund (fund) for health care providers that are subject to the health care liability provisions. Money for the fund comes from annual fees paid by those health care providers.

Current law provides that the fund is established to curb the rising costs of health care by financing part of the liability incurred by health care providers, that the fund is held in irrevocable trust for the sole benefit of health care providers and proper claimants, and that the fund may not be used for any other purpose of the state. This bill provides that, before January 1, 2020, the legislature may not enact a bill that changes the purpose of the fund.



PRESIDENT  
David M. Skoglund, Milwaukee  
PRESIDENT-ELECT  
Daniel A. Rottier, Madison  
VICE-PRESIDENT  
Robert L. Jaskulski, Milwaukee  
SECRETARY  
Christine Bremer Muggli, Wausau  
TREASURER  
Mark L. Thomsen, Brookfield  
IMMEDIATE PAST PRESIDENT  
Bruce R. Bachhuber, Green Bay



EXECUTIVE DIRECTOR  
Jane E. Garrott  
44 E. Mifflin Street, Suite 103  
Madison, Wisconsin 53703-2897  
Telephone: 608/257-5741  
Fax: 608/255-9285  
Email: exec@watl.org

**Testimony of Paul E. Sicula  
on behalf of the  
Wisconsin Academy of Trial Lawyers  
before the  
Assembly Insurance Committee  
Representative Ann Nischke, Chair  
2005 Assembly Bill 294  
May 19, 2005**

Good morning, Representative Nischke and members of the Committee. My name is Paul E. Sicula, the legislative representative of the Wisconsin Academy of Trial Lawyers (WATL). On behalf of WATL, I thank you for the opportunity to appear today to testify for information on Assembly Bill 294.

WATL, established as a voluntary trial bar, is a non-profit corporation with approximately 1,000 members located throughout the state. The objectives and goals of WATL are the preservation of the civil jury trial system, the improvement of the administration of justice, the provision of facts and information for legislative action, and the training of lawyers in all fields and phases of advocacy.

The Wisconsin Academy of Trial Lawyers (WATL) strongly supports the continuation of the Injured Patients and Families Compensation Fund (Fund). The Fund has a mission of providing injured patients and their families with compensation while holding down malpractice fees. WATL, along with Wisconsin Citizen Action, just released a new report entitled, "Justice Capped: Tilting the Scales of Justice Against Injured Patients and Their Families." (Attached to this testimony is a copy of the report.) The report reviews the impact of the state's 10-year old cap on pain and suffering in medical malpractice cases. The report exposes a fundamental contradiction: we have the Fund that is flourishing — with over \$741 million in assets — but cannot live up to its

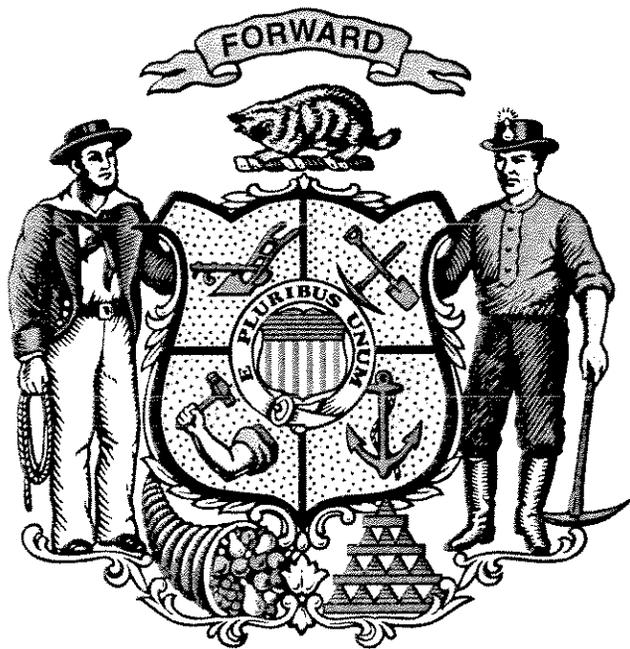
name because of the cap imposed in 1995 on pain and suffering for injured patients and their families.

The financial capacity for “making whole” the lives of injured patients could not be more obvious. With the cap, the Fund’s enormous assets are denied to patients for whom the jury has awarded compensation above the cap. Meanwhile, the Fund’s assets, while barely tapped by injured patients, have been utilized to reduce Fund malpractice fees, which have been cut in **six** of the last **seven** years, most recently by 30%. The current level of malpractice fees set by the Fund is lower than in 1986.

We believe the purpose of the Fund, while very important, is a hallow promise to injured patients and their families. If the Fund really serves injured patients and their families, then they ought to receive the full benefits of the Fund that is held in an “irrevocable trust” for them.

One other issue, we are not certain of the constitutionality or precedent that one session of the Legislature can bind the hands of a future Legislature. If that were the case, couldn’t this session of the Legislature pass legislation that binds the hands of future Legislatures on numerous contentious issues, like abortion, tax rates or school funding?

Thank you for allowing me to speak.





# Wisconsin Medical Society

Your Doctor. Your Health.

TO: Members, Assembly Committee on Insurance  
Representative Ann Nischke, Chair

FROM: Mark Grapentine, JD – Vice President, Government Relations  
Jeremy Levin – Government Relations Specialist

DATE: May 19, 2005

RE: **Support** for Assembly Bill 294

*paper 450  
St. Fin. Comm.  
Cases only on  
neurosurgeon  
damages  
" - respect  
Justice "*

On behalf of the 10,000 members of the Wisconsin Medical Society, thank you for this opportunity to testify in support of Assembly Bill 294.

The Injured Patients and Families Compensation Fund (Fund) is a critical pillar supporting Wisconsin's relatively stable medical liability insurance environment. This stable environment puts Wisconsin in a very small group of states not considered to be near or in crisis, according to the American Medical Association (see attached map).

Affordable insurance for physicians means Wisconsin patients have access to high quality physicians practicing the entire spectrum of medicine no matter where they live. This contrasts with the 44 states in turmoil – in those crisis states it is common to have emergency rooms with no neurosurgeons, or entire swaths of counties without obstetric care. A strong, stable Fund is win-win for patients and physicians alike.

That's why it is so unfortunate that AB 294 is even necessary. The last two biennial budgets have seen attempts to raid the Fund – an action previously unseen since the Fund was created in 1975. In both budgets, the Governor has attempted to pry open the Fund by changing the "Purpose" language in chapter 655 of the Wisconsin State Statutes. AB 294 would put yet another legislative line in the sand by protecting the current language outlining the purpose and integrity of the Fund.

Optimistic as we are, however, we realize AB 294 is not the perfect or ultimate solution. After the 2003 attempt on the Fund, the Society was pleased to promote that session's Assembly Bill 487, which clarified that the monies in the Fund were held in "irrevocable trust" and "may not be used for any other purpose of the state." That bill became Act 111 after gaining 92 votes in the Assembly, 29 votes in the Senate and the Governor's signature.

The Governor's latest biennial budget proposal, however, once again drove a wedge into the Fund, allowing \$180 million from that Fund to be raided for other purposes outside original Fund intent. We are deeply grateful that just two days ago, a bipartisan group of Joint Finance Committee members removed the latest raid attempt from the budget.

Phone 608.442.3800 • Toll Free 866.442.3800 • Fax 608.442.3802

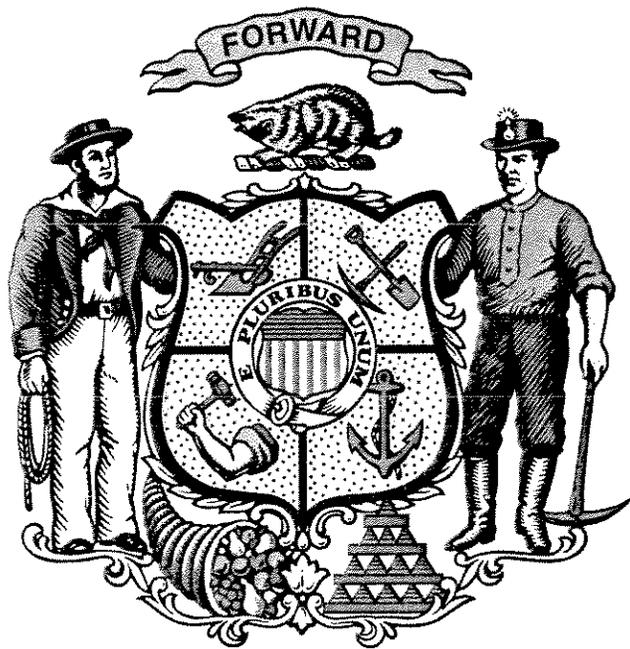
So even though a future legislature or Governor can simply strike AB 294's language in a future proposal, sometimes in politics sending the message is just as important as the message sent. Legislative intent is a powerful tool; in this case, we hope that intent will be a powerful deterrent.

We also give great weight to Senate Finance co-chair Scott Fitzgerald's call for the Society to find a way to remove the Fund from government's temptation, including exploration of privatizing the Fund. There are serious hurdles to overcome with such an endeavor, but we are already starting that exploration process.

Whether through legislation, litigation, constitutional amendment or privatization, the Society is committed to protecting the Injured Patients and Families Compensation Fund from raids, loans or other plans that would threaten its 30-year history of providing both affordable medical liability insurance to physicians and no-cap economic recovery to patients. Our thanks go out to Representative Steve Wieckert and Senator Ted Kanavas for authoring AB 294.

Thank you again for the opportunity to provide this testimony. If you have any further questions or need additional information, please feel free to contact Mark Grapentine at [markg@wismed.org](mailto:markg@wismed.org) or Jeremy Levin at [jeremyl@wismed.org](mailto:jeremyl@wismed.org). Both can be reached at 608.442.3800.

Attachment: American Medical Association Medical Liability Crisis Map, May 2005





WISCONSIN ASSOCIATION OF  
HEALTH UNDERWRITERS

*Wisconsin's Benefit Specialists*

**Assembly Committee on Insurance**

**Assembly Bill 294**

May 19, 2005

The members of the Wisconsin Association of Health Underwriters (WAHU) and National Association of Health Underwriters (NAHU) are comprised of insurance professionals involved in the sale and service of health benefits, long-term care benefits, and other related products, serving the insurance needs of over 100 million Americans. We have almost 18,000 members around the country and nearly 600 members here in Wisconsin. Our membership is primarily made up of insurance agents that work directly for and with the consumers of health care. Since our number one concern is our customers, we consider ourselves to be consumer advocates and look at how any legislation or issue will affect these customers.

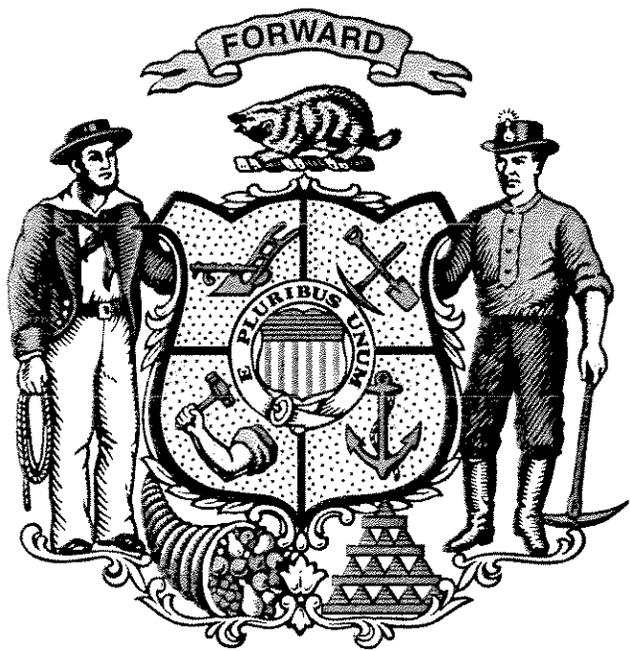
WAHU supports Assembly Bill 294. Recently, we have seen an effort to transfer money from the Injured Patients and Family Compensation Fund to help fill holes in our State Budget. WAHU has opposed these efforts to transfer funds for any purpose based on the potential effect it will have on Wisconsin's Health Care Consumers.

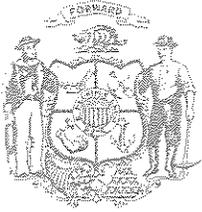
As insurance experts, we understand the purpose of reserve requirements and the concepts of claims that have been incurred, but not paid. Just like any health insurance company, if proper reserve requirements are not met, there will not be enough money to pay future claims. This concept is also critical to the success of the Injured Patients and Family Compensation Fund. While some may argue that depleting this fund would harm medical providers in the form of higher assessments and possible disruption of the medical malpractice environment we enjoy in Wisconsin, we believe the ultimate harm is to the consumer. The harm to consumers is ultimately in the form of higher health care costs passed on through by the providers who will cost shift those higher assessments or medical malpractice insurance premiums.

The fact is, consumers just can't afford one more dollar in any increase to the cost of their premiums. Health care coverage has reached the point of being unaffordable and our agents continue to talk about an increase in the number of employers simply dropping their group health coverage. Any legislative proposal that adds to this burden should be opposed, and any legislative proposal that might prevent an increase should be supported. We believe AB294 will help prevent possible increases in premium by protecting the Injured Patients and Family Compensation Fund from any future potential transfers of their reserves.

**PLEASE SUPPORT AB294**

Thank you for the opportunity to testify. If we can answer any other questions or provide any additional material, please do not hesitate to contact us.





# TED KANAVAS

## STATE SENATOR

**Date:** Thursday, May 19, 2005

**To:** Members of the Assembly Committee on Insurance

**From:** Senator Kanavas

**Re:** Testimony in support of Assembly Bill 294 - relating to prohibiting legislation to change the purpose of the injured patients and families compensation fund.

---

Chairperson Nischke and Members of the Assembly Committee on Insurance, I greatly appreciate the opportunity to submit testimony in support of Assembly bill 294, which relates to protecting the Patients Compensation Fund (PCF).

The PCF was created by statute in 1975 to provide excess medical malpractice coverage for Wisconsin health care providers. Health care providers obtain primary medical malpractice insurance from private insurance companies in an amount required by statute. As of July 1, 1997, that amount is \$1,000,000 per occurrence, and \$3,000,000 annual aggregate. Coverage in excess of the primary insurance is provided by the Fund. The funding for this program is derived from assessments from participating health care providers.

Assembly Bill 294 provides that, before January 1, 2020, the legislature may not enact a bill that changes the purpose of the fund.

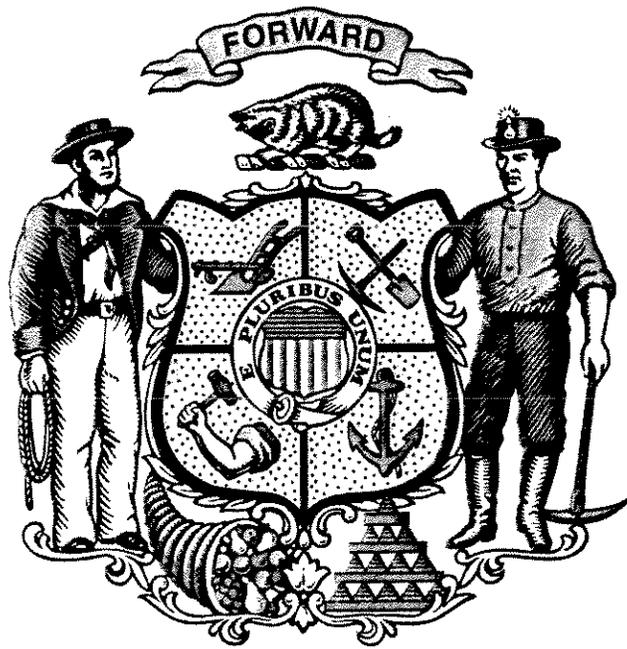
The PCF controls medical malpractice insurance costs, which in turn helps keep health care costs down. As our state struggles to control health care costs, the last thing we want is our doctors and medical professionals leaving Wisconsin because of Governor Doyle's repeated raids on the PCF. Recent media reports have shown that doctors and medical professionals from around the country are leaving states with unreliable medical malpractice protection.

The bottom line is; we need to be aggressive in preserving and protecting the PCF to help keep our doctors here and reduce the pressures that cause health care costs to increase.

Again, thank you for your consideration of this very important piece of legislation. I ask for your support of Assembly Bill 294.

STATE CAPITOL

P.O. BOX 7882 • MADISON, WISCONSIN 53707-7882  
(608) 266-9174 • (800) 863-8883 • FAX: (608) 264-6914



Protecting the Injured Patients and Families Compensation Fund  
Assembly Committee on Insurance  
Thursday, May 19, 2005  
AB 294  
Rep. Steve Wieckert

*provides  
legis. intent*

Thank you Chair Nischke and members of the committee for the opportunity to testify in support of AB-294, which I have authored.

This legislation would provide permanent, statutory protection to the Injured Patients and Families Compensation Fund by effectively preventing the Legislature and Governor from using those monies for other purposes.

The fund was established as the Patients' Compensation Fund in 1975, to help Wisconsin avoid the major medical malpractice disasters experienced in other states. The 1970's saw a national trend of massive malpractice judgments against doctors, well in excess of the private market insurance coverage then available. Premiums for this type of insurance began to climb drastically, and some doctors even began to refuse to provide certain types of high-risk medical care as the insurance became oppressively expensive. The Patients' Compensation Fund was created to provide a cushion to absorb the cost of massive malpractice awards. This has kept medical malpractice insurance premiums in Wisconsin at the lowest rates in the country – attracting physicians and freeing them to provide medical care with less fear of losing everything they own as the result of one court case. States without programs like the Patients' Compensation Fund have not fared so well.

Recently, however, the fund's large balance has proven to be irresistible to some politicians wanting to use it to balance the state budget. The last two budget proposals to come before the Joint Finance Committee have included significant diversions of funds from the PCF balance. Just this week, the Finance Committee acted to eliminate a permanent precedent for spending PCF dollars on everything from Medical Assistance to computer upgrades for hospitals.

In 2003, the national accounting firm Milliman USA suggested that the raid proposed in the last term, had it succeeded, would have driven up rates paid by doctors to the fund by 57 percent – a rate increase that would need to have been continued for *twenty-five years* to keep the fund solvent. Peter Wick and Robert Sanders, actuaries for Milliman, wrote: "We believe that removing any funds from the Wisconsin Fund could cause the system in Wisconsin to destabilize and feel it is prudent to leave the system as it is."

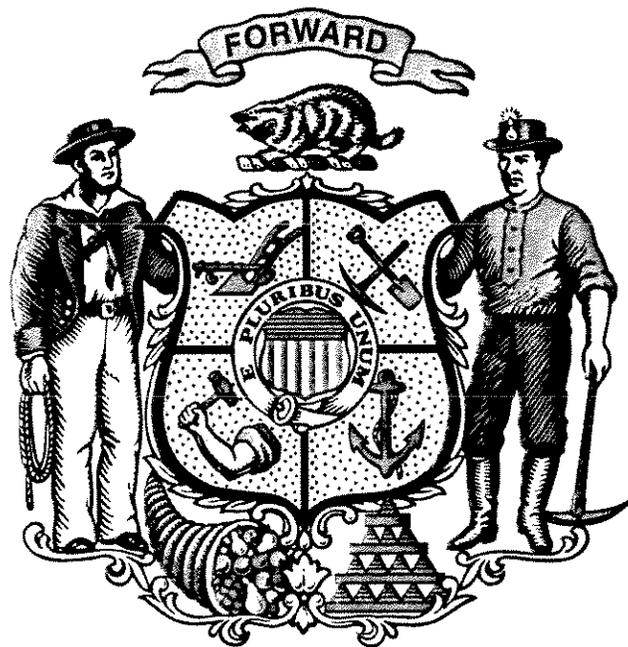
The Injured Patients and Families Compensation Fund is not designed to be a slush fund for budget balancing in lean years. It is fundamentally an actuarial reserve pool. The monies it contains are there specifically to indemnify against anticipated payouts the system might face. And the funds are not there only to protect doctors. At the end of the day, they are there to protect patients who are the legitimate victims of medical malpractice. Winning a large compensatory

judgment does little good if the doctor lacks the resources to pay it. The fund guarantees that those resources will be there – while keeping the costs of practicing medicine reasonable in Wisconsin. The PCF is an absolutely vital link in controlling health care costs in Wisconsin. Its demise due to raids and mismanagement would certainly be a huge “hidden health care tax” for us all.

The legislation before you today is supported by the Wisconsin Medical Society, the Wisconsin Association of Health Underwriters, and the Wisconsin Academy of Family Physicians. They understand how fundamentally health care in this state will be damaged if the Injured Patients and Families Compensation Fund is hobbled by short-sighted mismanagement. They know that, while disaster has been forestalled for now, the threat to the fund is real and ongoing. This legislation remedies that.

Legislation that took the first step in protecting the fund was offered last session by then-Representative Bonnie Ladwig. It received unanimous approval from this very committee two years ago. The Assembly passed it by an overwhelming and bipartisan 92 to 6, and in the Senate, thirty members supported it. This legislation takes the next step, by holding inviolate the central, fundamental mission of the Fund – the protection of Wisconsin citizens harmed by medical malpractice and the maintenance of access to high-quality health care options for every Wisconsin citizen. I urge your speedy approval of it.

If you have any questions I would be happy to answer them. Thank you for this opportunity to testify.



**Rosenak, Mary Jan**

---

**From:** Rosenak, Mary Jan  
**Sent:** Tuesday, June 21, 2005 1:01 PM  
**To:** Inabnet, Kay  
**Subject:** ComClerk Committee Report - Committee on Insurance

**Attachments:** Report20050621\_1.doc

Committee report of  
Assembly Bill 294



Report20050621\_1  
.doc (27 KB)

reported on 06/21/2005 has been sent by Committee clerks.

