

2009 DRAFTING REQUEST

Bill

Received: 09/02/2008

Received By: rnelson2

Wanted: As time permits

Identical to LRB:

For: Fred Risser (608) 266-1627

By/Representing: Sarah B

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: Sen.Risser@legis.wisconsin.gov

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

State medical malpractice claim notification

Instructions:

See Attached 07 SB 126 and sub amd.

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>
/?				_____			State
/P1	rnelson2 09/04/2008	bkraft 09/09/2008	rschlue 09/10/2008	_____	cduerst 09/10/2008		State
/1	rnelson2 01/15/2009	bkraft 01/16/2009	rschlue 01/16/2009	_____	cduerst 01/16/2009	cduerst 02/06/2009	

FE Sent For:

at
intro

<END>

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State medical malpractice claim notification

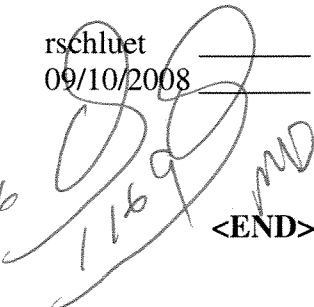
Instructions:

See Attached 07 SB 126 and sub amd.

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/?							State
/P1	rnelson2 09/04/2008	bkraft 09/09/2008	rschluet 09/10/2008		cduerst 09/10/2008		

FE Sent For:

1 bjk 1/16

 1169 MD
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Topic:

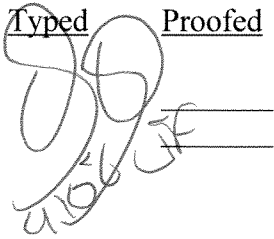
State medical malpractice claim notification

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/?	rnelson2	11 bjk 9/9					
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FE Sent For:

<END>

Nelson, Robert P.

From: Briganti, Sarah
Sent: Wednesday, July 30, 2008 4:44 PM
To: Nelson, Robert P.
Subject: Drafting Request

Attachments: 07-18641.pdf; 07s01181.pdf

Bob,

Senator Risser has requested that 2007 Senate Bill 126 be redrafted for introduction during the 2009 Legislative Session.

This bill relates to notification of the state regarding a medical malpractice claim.

Please draft the bill to include the substitute amendment adopted by the Senate.

Thank you.

Sarah



07-18641.pdf (15
KB)



07s01181.pdf (11
KB)

Sarah Briganti
Legislative Assistant
Office of State Senator Fred Risser
220 South, State Capitol
PO Box 7882
Madison, WI 53707
(608)266-1627

-0061/1
e
e
bjk

SENATE SUBSTITUTE AMENDMENT,
TO 2007 SENATE BILL 126

PWF

SA ✓
X-ref ✓

regen. cont.

1 AN ACT *to amend* 893.80 (1m) and 893.82 (5m) of the statutes; **relating to:**
2 notification to the state and certain public agencies regarding a medical
3 malpractice claim.

✓
insert
and 1.

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

4 SECTION 1. 893.80 (1m) of the statutes is amended to read:

5 ✓ 893.80 (1m) With regard to a claim to recover damages for medical malpractice,
6 the time period under provisions of sub. (1) (a) shall be 180 days after discovery of
7 the injury or the date on which, in the exercise of reasonable diligence, the injury
8 should have been discovered, rather than 120 days after the happening of the event
9 giving rise to the claim do not apply. The time periods that apply for commencing an
10 action under this section for damages for medical malpractice are the time periods
11 under ss. 893.55 (1m), (2), and (3) and 893.56.

12 SECTION 2. 893.82 (5m) of the statutes is amended to read:

2007 BILL

1 AN ACT *to amend* 893.82 (5m) of the statutes; **relating to:** notification of the
 2 state regarding a medical malpractice claim.

Analysis by the Legislative Reference Bureau

Under current law, if a person is injured as the result of medical malpractice, he or she must commence an action to recover his or her damages within three years from the date of the injury or within one year from the date that the injury was discovered or should have been discovered, but not more than five years after the date of the injury. Currently, if a health care provider conceals an act from the patient that resulted in the injury, the injured patient must commence the action within one year from the date that the concealment was discovered or should have been discovered, within three years from the date of the injury, or within one year from the date that the injury was discovered, whichever is later. Currently, if a foreign object is left in a patient's body, the patient must commence the medical malpractice action within one year from the date that the person was aware of the object or should have been aware, within three years from the date of the injury, or within one year from the date that the injury was discovered, whichever is later.

Also under current law, if a person wants to bring a civil action against an officer, employee, or agent of the state for an act committed in the course of the officer's, employee's, or agent's duties, the person must first serve a notice of the claim with the attorney general within 120 days after the date of the act. The claim must include the time, date, location, and circumstances of the act that gave rise to the claim, plus the names of the persons involved in the act. If the claim is to recover damages for medical malpractice, the 120-day period is extended to 180 days after the injury was discovered or should have been discovered.

persons
Insert and l.
person
include line in insert
In addition under current law
act or omission that caused the injury
Including
to serve the notice of a claim
or on the fire company or subdivision, or a volunteer fire company, political corporation, governmental subdivision or its officers, employees, or agents

or on the fire company or subdivision, or a volunteer fire company, political corporation, governmental subdivision or its officers, employees, or agents

BILL

subdivision
or on a volunteer fire company or a political corporation
or a governmental subdivision and its officers or employees or agents
 This bill removes the requirement that a person must serve a notice of a claim for medical malpractice involving a state officer, employee, or agent on the attorney general within 180 days after the injury. Instead, the bill requires a person who was injured as the result of medical malpractice by a state officer, employee, or agent to commence that action within the same time period that is required when the claim is against a private medical provider. *the health care*

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

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

SECTION 1. 893.82 (5m) of the statutes is amended to read:
 893.82 (5m) With regard to a claim to recover damages for medical malpractice, the time periods under subs. (3), (3m), and (4) shall be 180 days after discovery of the injury or the date on which, in the exercise of reasonable diligence, the injury should have been discovered, rather than 120 days after the event causing the injury for serving a notice of a claim upon the attorney general do not apply. The time periods that apply to commencing an action against a state officer, employee, or agent for damages for medical malpractice are the time periods under s. 893.55 (1m), (2), and (3).

(END)

end of insert and 1.

Insert and 1. cont.

include line in insert

Nelson, Robert P.

From: Briganti, Sarah
Sent: Wednesday, January 14, 2009 2:24 PM
To: Nelson, Robert P.
Subject: Re-draft of LRB 0061

Attachments: PRELIMINARY DRAFT of 180 days.doc



PRELIMINARY
RAFT of 180 days...

Bob,

Senator Risser has requested that LRB 0061 be redrafted according to the attached.

If you have any questions, please let me know.

Sarah

Sarah Briganti
Legislative Assistant
Office of State Senator Fred Risser
220 South, State Capitol
PO Box 7882
Madison, WI 53707
(608)266-1627

PRELIMINARY DRAFT – NOT READY FOR INTRODUCTION

AN ACT to amend 893.80 (1m) and 893.82 (5m) of the statutes; relating to: notification to the state and certain public agencies regarding a medical malpractice claim.

Analysis by the Legislative Reference Bureau

Under current law, if a person is injured as the result of medical malpractice, he or she must commence an action to recover his or her damages within three years from the date of the injury or within one year from the date that the injury was discovered or should have been discovered, but not more than five years after the date of the act or omission that caused the injury. However, if a health care provider conceals an act from the person that resulted in the injury, the injured person must commence the action within one year from the date that the concealment was discovered or should have been discovered, within three years from the date of the injury, or within one year from the date that the injury was discovered, whichever is later. In addition, under current law, if a foreign object is left in a person's body, the person must commence the medical malpractice action within one year from the date that the person was aware of the object or should have been aware, within three years from the date of the injury, or within one year from the date that the injury was discovered, whichever is later.

Also under current law, if a person wants to bring a civil action against an officer, employee, or agent of the state or against a volunteer fire company, political corporation, or governmental subdivision or its officers, employees, or agents for an act committed in the course of the officer's, employee's, or agent's duties, the person must first serve a notice of the claim with the attorney general or on the fire company, corporation, or subdivision, and on their officer, employee, or agent within 120 days after the date of the act. If the claim is to recover damages for medical malpractice, the period to serve the notice of a claim is extended to 180 days after the injury was discovered or should have been discovered.

This bill removes the requirement that a person must serve the notice of a claim for medical malpractice on the attorney general or on a volunteer fire company, political corporation, or governmental subdivision and its officers, employees, or agents within 180 days after the injury. Instead, the bill requires a person who was injured as the result of the medical malpractice to commence that action within the same time period that is required when the claim is against a private health care provider.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

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

SECTION 1. 893.80 (1m) of the statutes is amended to read:

893.80 (1m) With regard to a claim to recover damages for medical malpractice, the ~~time period under provisions of~~ sub. (1) (a) shall be 180 days after discovery of the injury or the date on which, in the exercise of reasonable diligence, the injury should have been

discovered, rather than 120 days after the happening of the event giving rise to the claim do not apply. The time periods that apply for commencing an action under this section for damages for medical malpractice are the time periods under ss. 893.55 (1m), (2), and (3) and 893.56.

Section 2: 893.80 (3m) is created to read:

Notwithstanding the limits under subsection (3), damages recoverable against health care providers and an employee of a health care provider, acting within the scope of his or her employment and providing health care services covered under this subsection, shall be governed by the limits of s.893.82(6).

SECTION 2. 893.82 (5m) of the statutes is amended to read:

893.82 (5m) With regard to a claim to recover damages for medical malpractice, the time periods under provisions of subs. (3), (3m), and (4) shall be 180 days after discovery of the injury or the date on which, in the exercise of reasonable diligence, the injury should have been discovered, rather than 120 days after the event causing the injury do not apply. The time periods for commencing an action under this section for damages for medical malpractice are the time periods under ss. 893.55 (1m), (2), and (3) and 893.56.

SECTION 3. Initial applicability.

(1) This act first applies to acts or omissions that occur on the effective date of this subsection.

(END)



Lstago

~~PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION~~

SAV
X-ref ✓

Inserts

regen.

- 1 AN ACT *to amend* 893.80 (1m) and 893.82 (5m) of the statutes; **relating to:**
- 2 notification to the state and certain public agencies regarding a medical
- 3 malpractice claim *and limits on liability*

Analysis by the Legislative Reference Bureau

Under current law, if a person is injured as the result of medical malpractice, he or she must commence an action to recover his or her damages within three years from the date of the injury or within one year from the date that the injury was discovered or should have been discovered, but not more than five years after the date of the act or omission that caused the injury. However, if a health care provider conceals an act from the person that resulted in the injury, the injured person must commence the action within one year from the date that the concealment was discovered or should have been discovered, within three years from the date of the injury, or within one year from the date that the injury was discovered, whichever is later. In addition, under current law, if a foreign object is left in a person's body, the person must commence the medical malpractice action within one year from the date that the person was aware of the object or should have been aware, within three years from the date of the injury, or within one year from the date that the injury was discovered, whichever is later.

Also under current law, if a person wants to bring a civil action against an officer, employee, or agent of the state or against a volunteer fire company, political corporation, or governmental subdivision or its officers, employees, or agents for an act committed in the course of the officer's, employee's, or agent's duties, the person must first serve a notice of the claim with the attorney general or on the fire company,

corporation, or subdivision, and on their officer, employee, or agent within 120 days after the date of the act. If the claim is to recover damages for medical malpractice, the period to serve the notice of a claim is extended to 180 days after the injury was discovered or should have been discovered.

This bill removes the requirement that a person must serve the notice of a claim for medical malpractice on the attorney general or on a volunteer fire company, political corporation, or governmental subdivision and its officers, employees, or agents within 180 days after the injury. Instead, the bill requires a person who was injured as the result of the medical malpractice to commence that action within the same time period that is required when the claim is against a private health care provider.

Insert
and

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

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

1 SECTION 1. 893.80 (1m) of the statutes is amended to read:

2 893.80 (1m) With regard to a claim to recover damages for medical malpractice,
3 the ~~time period under provisions of sub. (1) (a) shall be 180 days after discovery of~~
4 ~~the injury or the date on which, in the exercise of reasonable diligence, the injury~~
5 ~~should have been discovered, rather than 120 days after the happening of the event~~
6 ~~giving rise to the claim do not apply. The time periods that apply for commencing an~~
7 ~~action under this section for damages for medical malpractice are the time periods~~
8 ~~under ss. 893.55 (1m), (2), and (3) and 893.56.~~

Insert
2-8

9 SECTION 2. 893.82 (5m) of the statutes is amended to read:

10 893.82 (5m) With regard to a claim to recover damages for medical malpractice,
11 the ~~time periods under provisions of subs. (3), (3m), and (4) shall be 180 days after~~
12 ~~discovery of the injury or the date on which, in the exercise of reasonable diligence,~~
13 ~~the injury should have been discovered, rather than 120 days after the event causing~~
14 ~~the injury do not apply. The time periods for commencing an action under this section~~

1 for damages for medical malpractice are the time periods under ss. 893.55 (1m), (2),
2 and (3) and 893.56.

3 **SECTION 3. Initial applicability.**

4 (1) This act first applies to acts or omissions that occur on the effective date of
5 this subsection.

6 (END)

2009-2010 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-0061/lins
RPN:bjk:rs

insert anl:

or volunteer fire company

and volunteer fire companies

Current law limits the amount that may be recovered in a civil action against local governments and political corporations and their officers, agents, or employees to \$50,000, and against volunteer fire companies and their officers, agents, or employees to \$25,000. Current law also limits the amount that may be recovered in a civil action against state officers, agents, or employees to \$250,000.

This bill ~~would~~ raise the limit on the amount that may be recovered in a civil action against local governments, ~~and~~ political corporations, and their officers, agents, or employees to the amount allowed against state officers, agents, or employees, \$250,000, if the action was related to the provision of health care services, the local government, ~~or~~ political corporation provided health care services, and the officer, agent, or employee who provided the health care services was acting within the scope of his or her duties. the

insert 2-8:

- 1
- 2
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SECTION 1. 893.80 (3m) of the statutes is created to read:

893.80 (3m) Notwithstanding the limits on the amount recoverable under sub. (3), in a civil action for damages resulting from an act or omission while providing health care services against a health care provider, as defined in s. 146.81 (1), or against an officer, agent, or employee of a health care provider acting within the scope of his or her duties and providing health care services covered under this section, shall be governed by the limits on the amount recoverable under s. 893.82 (6).

Duerst, Christina

From: Briganti, Sarah
Sent: Friday, February 06, 2009 3:45 PM
To: LRB.Legal
Subject: Draft Review: LRB 09-0061/1 Topic: State medical malpractice claim notification

Please Jacket LRB 09-0061/1 for the SENATE.