Received By: tkuczens

## 2011 DRAFTING REQUEST

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Received: 03/08/2011

Wanted: As time permits			Companion to LRB:				
For: Pam Galloway (608) 266-2502			By/Representing: Jen				
May Conta					Drafter: tkuczen	S	
Subject:	Courts -	· torts			Addl. Drafters:		
					Extra Copies:		
Submit via	email: YES						
Requester's	s email:	Sen.Gallow	yay@legis.w	isconsin.go	v		
Carbon cop	py (CC:) to:	tracy.kucze	enski@legis.	wisconsin.g	gov		
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Received By: tkuczens

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Received: 03/08/2011

Wanted: As time permits		Companion to LRB:  By/Representing: Jen							
For: Pam Galloway (608) 266-2502									
May Contact:			Drafter: tkuczen	ıs					
Subject:	Courts	- torts			Addl. Drafters:				
					Extra Copies:				
Submit v	ia email: YES								
Requeste	r's email:	Sen.Gallow	ay@legis.w	isconsin.gov	,				
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# 2011 DRAFTING REQUEST

Bill									
Receive	d: <b>03/08/2011</b>				Received By: tkuczens				
Wanted:	As time perm	its			Companion to L	LRB:			
For: Par	m Galloway (6	608) 266-2502			By/Representing: <b>Jen</b>				
May Co		A A			Drafter: tkuczens				
Subject:	Courts	- torts		Addl. Drafters:					
					Extra Copies:				
Submit	via email: YES								
Request	er's email:	Sen.Gallov	way@legis.w	visconsin.go	v				
Carbon	copy (CC:) to:	tracy.kucz	enski@legis	.wisconsin.g	gov				
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FE Sent For:

<END>

# 2011 DRAFTING REQUEST

Bill

Received: 03/08/2011	Received By: <b>tkuczens</b> Companion to LRB:			
Wanted: As time permits				
For: Pam Galloway (608) 266-2502	By/Representing: Jen			
May Contact:	Drafter: tkuczens			
Subject: Courts - torts	Addl. Drafters:			
	Extra Copies:			
Submit via email: YES				
Requester's email: Sen.Galloway@legis.wisconsin.go	v			
Carbon copy (CC:) to: tracy.kuczenski@legis.wisconsin.g	gov			
Pre Topic:				
No specific pre topic given				
Topic:				
statement of apology inadmissible in tort action				
Instructions:				
See attached				
Drafting History:				
Vers. Drafted Reviewed Typed Proofed  /? tkuczens  3/8	Submitted Jacketed Required			

FE Sent For:

<**END>** 

## STATE OF WISCONSIN – LEGISLATIVE REFERENCE BUREAU

LRB

Research (608-266-0341)

Library (608-266-7040)

Legal (608-266-3561)

LRB

March 7 2011	
Sen. Galloura, (Jen) - create companion to con (statement of apology inadmissible in fact action)	23-0769
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# State of Wisconsin 2011 - 2012 LEGISLATURE



## **2011 BILL**

3/8/11

AN ACT to create 904.14 of the statutes; relating to: inadmissibility of a

statement of apology or condolence by a health care provider.

## Analysis by the Legislative Reference Bureau

Under current law, certain types of evidence are not allowed to be admitted in a court action for various policy reasons. For example, evidence of remedial measures taken after an event occurred that would have made the event less likely is not admissible to prove negligence or culpable conduct in connection with the event. As another example, no written or oral communication relating to a dispute in mediation is admissible or subject to discovery in any judicial proceeding or administrative action.

This bill provides that a statement or conduct of a health care provider that expresses apology, condolence, or sympathy to a patient or patient's relative or representative is not admissible into evidence or subject to discovery in any civil action or administrative hearing regarding the health care provider as evidence of liability or as an admission against interest.

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

- **Section 1.** 904.14 of the statutes is created to read:
- 4 904.14 Inadmissibility of statement by health care provider of apology
- 5 **or condolence. (1)** In this section:

#### **BILL**

- (a) "Health care provider" has the meaning given in s. 153.01 (4t).
- (b) "Relative" has the meaning given in s. 146.34 (1) (j).
- (2) A statement, gesture, or the conduct of a health care provider or a health care provider's employee or agent, that expresses apology, benevolence, compassion, condolence, fault, liability, responsibility, or sympathy to a patient or to his or her relative or representative is not admissible into evidence or subject to discovery in any civil action or administrative hearing regarding the health care provider as evidence of liability or as an admission against interest.

#### **SECTION 2. Initial applicability.**

(1) This act first applies to statements, gestures, or conduct that occur on the effective date of this subsection.

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(END)

## Parisi, Lori

From:

Perrine, Nicholas

Sent:

Tuesday, March 08, 2011 10:44 AM

To:

LRB.Legal

Subject:

Draft Review: LRB 11-1607/1 Topic: statement of apology inadmissible in tort action

Please Jacket LRB 11-1607/1 for the SENATE.

## Kuczenski, Tracy

From:

Esser, Jennifer

Sent:

Thursday, May 19, 2011 9:38 AM

To:

Kuczenski, Tracy

Cc:

Scholz, AJ

Subject:

RE: LRB-1607/1

Will send right away. I'd appreciate that my new draft be identical to 0769/2...thanks much.

From: Kuczenski, Tracy

Sent: Thursday, May 19, 2011 9:28 AM

To: Esser, Jennifer Subject: LRB-1607/1

Hi Jennifer -

After a bit of sleuthing, I'm assuming that you'd like me to revise LRB-1607/1 so that it is identical to LRB-0769/2. Is that correct? If so, it looks as though you have the jacket for LRB-1607 and I'll need to get that back before I can get a revised draft to you.

Thanks, Tracy

Tracy K. Kuczenski
Legislative Attorney
Wisconsin Legislative Reference Bureau
tracy.kuczenski@legis.wisconsin.gov
(608) 266-9867

From: Esser, Jennifer

**Sent:** Wednesday, May 18, 2011 5:21 PM

To: Kuczenski, Tracy Subject: RE: Memo

Oops Sen. Galloway sorry.

From: Kuczenski, Tracy

Sent: Wednesday, May 18, 2011 3:38 PM

To: Esser, Jennifer Subject: RE: Memo

Hi Jen -

What Senator do you work for?

Tracy K. Kuczenski
Legislative Attorney
Wisconsin Legislative Reference Bureau
tracy.kuczenski@legis.wisconsin.gov
(608) 266-9867

From: Esser, Jennifer

**Sent:** Wednesday, May 18, 2011 3:07 PM

To: Kuczenski, Tracy



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## State of Misconsin 2011 - 2012 LEGISLATURE



## **2011 BILL**

5/19/11

Today (once jacket is brekt)

AN ACT to create 904.14 of the statutes; relating to: inadmissibility of a

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**SECTION 1.** 904.14 of the statutes is created to read:

904.14 Inadmissibility of statement by health care provider of apology

**or condolence.** (1) In this section:

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(a) "Health care provider" has the meaning given in s. (15	
(b) "Relative" has the meaning given in s. 146.34 (1) (j).	ambilitory surgery center

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(END)

#### Kuczenski, Tracy

From:

Kuczenski, Tracy

Sent:

Monday, June 27, 2011 10:46 AM

To:

Esser, Jennifer, Scholz, AJ

Cc:

Reader, Chris; Sappenfield, Anne; Miller, Steve

Subject:

SB 103 / AB 147 Corrected Copies

Hi Jen and AJ -

As we discussed this morning, I am preparing Corrected Copies of SB 103 and AB 147 to correct a substantive omission from the analysis of these companion bills.

Under the analysis as it currently appears on the introduced bills, only three types of statements and conduct are listed: apology, condolence, or sympathy. These three types of statements and conduct, however, are not entirely representative of the types of statements, gestures, or conduct that would be made inadmissible into evidence or subject to discovery under the bill. In the Corrected Copies, I have modified the second paragraph of the analysis to add the full complement of statements and conduct, as enumerated on page 2, lines 5 and 6 of the bills, which would be made inadmissible under the bill.

Please let me know if you have any questions.

Thank you, Tracy

Tracy K. Kuczenski
Legislative Attorney
Wisconsin Legislative Reference Bureau
tracy kuczenski@legis.wisconsin.gov
(608) 266-9867



## State of Misconsin 2011 - 2012 LEGISLATURE



CORRECTEDCOPY

**2011 SENATE BILL 103** 

Per 5506-27-2011

May 24, 2011 – Introduced by Senators Galloway, Cowles, Darling, Holperin, Schultz and Wanggaard, cosponsored by Representatives Severson, Nygren, Strachota, Kaufert, Bewley, Bies, Brooks, Jacque, Ripp, Spanbauer, Tauchen and Thiesfeldt. Referred to Committee on Judiciary, Utilities, Commerce, and Government Operations.

1 AN ACT to create 904.14 of the statutes; relating to: inadmissibility of a

statement of apology or condolence by a health care provider.

## Analysis by the Legislative Reference Bureau

Under current law, certain types of evidence are not allowed to be admitted in a court action for various policy reasons. For example, evidence of remedial measures taken after an event occurred that would have made the event less likely is not admissible to prove negligence or culpable conduct in connection with the event. As another example, no written or oral communication relating to a dispute in mediation is admissible or subject to discovery in any judicial proceeding or administrative action.

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