

2011 DRAFTING REQUEST

Bill

Received: 03/08/2011

Received By: tkuczens

Wanted: As time permits

Companion to LRB:

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.gov

Carbon copy (CC:) to: tracy.kuczynski@legis.wisconsin.gov

Pre Topic:

No specific pre topic given

Topic:

statement of apology inadmissible in tort action

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>
/?	tkuczens 03/08/2011	kfollett 03/08/2011		_____			
/1	tkuczens 05/19/2011	kfollett 05/19/2011	jfrantze 03/08/2011	_____	sbasford 03/08/2011	lparisi 03/08/2011	
/2			rschluet 05/19/2011	_____	sbasford 05/19/2011	sbasford 05/19/2011	

FE Sent For:

Not Needed

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/1		12/15/11 5/19/11	frantze 03/08/2011		sbasford 03/08/2011	lparisi 03/08/2011	

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/?	tkuczens	1/15f 3/8	✓	3/8			

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. Callicott (Ten) - create companion to LRB-0709
(Statement of apology inadmissible in tort action)
x 62502



State of Wisconsin
2011 - 2012 LEGISLATURE

1607/1



LRB-0769/1

TKK:kjf:rs

RMHR

2011 BILL

3/8/11

Reger

1 AN ACT to create 904.14 of the statutes; relating to: inadmissibility of a
2 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:

3 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

1 (a) “Health care provider” has the meaning given in s. 153.01 (4t).

2 (b) “Relative” has the meaning given in s. 146.34 (1) (j).

3 **(2)** A statement, gesture, or the conduct of a health care provider or a health
4 care provider’s employee or agent, that expresses apology, benevolence, compassion,
5 condolence, fault, liability, responsibility, or sympathy to a patient or to his or her
6 relative or representative is not admissible into evidence or subject to discovery in
7 any civil action or administrative hearing regarding the health care provider as
8 evidence of liability or as an admission against interest.

9 **SECTION 2. Initial applicability.**

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

12 (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.

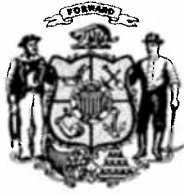
From: Kuczenski, Tracy
Sent: Wednesday, May 18, 2011 3:38 PM
To: Esser, Jennifer
Subject: RE: Memo

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



2011 BILL

5/19/11

Today (once jacket is back)

Regen

1 AN ACT to create 904.14 of the statutes; relating to: inadmissibility of a
2 statement of apology or condolence by a health care provider.

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BILL**SECTION 1**

1 (a) "Health care provider" has the meaning given in s. 153.01 (4t). ✓

2 (b) "Relative" has the meaning given in s. 146.34 (1) (j).

← 146.81(1) and includes an ambulatory surgery center

3 (2) A statement, gesture, or the conduct of a health care provider or a health
4 care provider's employee or agent, that expresses apology, benevolence, compassion,
5 condolence, fault, liability, ^{remorse} responsibility, or sympathy to a patient or to his or her
6 relative or representative is not admissible into evidence or subject to discovery in
7 any civil action or administrative hearing regarding the health care provider as
8 evidence of liability or as an admission against interest.

9 **SECTION 2. Initial applicability.**

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

12 (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 –

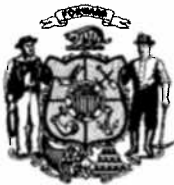
As we discussed this morning, I am preparing Corrected Copies of SB 103 and AB 147 to correct a substantive omission from the analysis of these companion bills.

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



CORRECTED COPY

2011 SENATE BILL 103

Per
CJS 06-27-2011

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.

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benevolence,
compassion,

fault, liability, remorse, responsibility