



State of Wisconsin

LEGISLATIVE REFERENCE BUREAU

RESEARCH APPENDIX - **PLEASE DO NOT REMOVE FROM DRAFTING FILE**

Date Transfer Requested: 12/29/2010 (Per: CMH)

- | | |
|---|---|
| A ☞ The <u>2011</u> drafting file for
LRB-0358 | E ☞ The <u>2011</u> drafting file for
LRB-0371 |
| B ☞ The <u>2011</u> drafting file for
LRB-0368 | F ☞ The <u>2011</u> drafting file for
LRB-0372 |
| C ☞ The <u>2011</u> drafting file for
LRB-0369 | G ☞ The <u>2011</u> drafting file for
LRB-0671 |
| D ☞ The <u>2011</u> drafting file for
LRB-0370 | |

☞ **Compile Draft – Appendix G**

has been copied/added to the drafting file for

2011 LRB-0388
(Jr1 Special Session Draft)

2011 DRAFTING REQUEST

Bill

Received: 12/10/2010

Received By: **phurley**

Wanted: **As time permits**

Companion to LRB:

For: **Administration**

By/Representing: **Cindy Dombrowski**

May Contact:

Drafter: **phurley**

Subject: **Courts - torts**
Courts - limitations

Addl. Drafters:

Extra Copies: **David Schmiedicke**
Jennifer Kraus

Submit via email: **NO**

Pre Topic:

No specific pre topic given

Topic:

Caps on noneconomic damages against long term care providers

Instructions:

redraft of 05-0554

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>
/?				_____			S&L
/P1	phurley 12/15/2010	wjackson 12/16/2010	jfrantze 12/16/2010	_____	cduerst 12/16/2010		

FE Sent For:

<END>

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/?

phurley

/p/wlj 12/15

Jo
12/16

RB 12/16
Jo

FE Sent For:

<END>

Hurley, Peggy

From: Hanaman, Cathlene
Sent: Monday, December 13, 2010 9:16 AM
To: Hurley, Peggy
Subject: FW: Drafting Request - Jobs Bill

From: DOADLBASADMININTERNETSHAREPOINT@WI.GOV
[mailto:DOADLBASADMININTERNETSHAREPOINT@WI.GOV]
Sent: Monday, December 13, 2010 9:14 AM
To: Hanaman, Cathlene
Cc: Kraus, Jennifer - DOA; Thornton, Scott - DOA
Subject: Drafting Request - Jobs Bill

Topic: Medical Malpractice

Tracking Code: JB0013

SBO Team: 5

SBO Analyst: Dombrowski, Cynthia A - DOA
Phone: (608) 266-2214
E-mail: Cynthia.Dombrowski@Wisconsin.gov

Agency Acronym: SupCt

Agency Number: 680

Priority: High

Intent:

Current law limits the recovery of noneconomic damages, such as pain and suffering from a health care provider found to have committed medical malpractice, and is adjusted annually for inflation.

Create an identical limit on the recovery of noneconomic damages from a long-term care provider, such as a nursing home or hospice whose negligence causes injury.

Note: This was originally drafted in 2005 as LRB-0554/1.

Attachments: False

12/13/2010

2005 BILL

mental distress, loss of companionship, and loss of enjoyment

1 AN ACT *to create* 893.555 of the statutes; **relating to:** limiting the recovery of
2 noneconomic damages against long-term care providers.

Analysis by the Legislative Reference Bureau

Current law limits the recovery of noneconomic damages, such as pain and suffering, from a health care provider found to have committed medical malpractice to \$432,352 (as of May 2004), adjusted annually for inflation by the director of state courts. This bill creates an identical limit on the recovery of noneconomic damages from a long-term care provider, such as a nursing home or hospice, whose negligence causes injury to a person.

\$750,000

For further information see the *state and local* 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:

3 SECTION 1. 893.555 of the statutes is created to read:

4 **893.555 Limitation of damages; long-term care providers.** (1) In this
5 section:

6 (a) "Long-term care provider" means an adult family home, as defined in s.
7 50.01 (1); a community-based residential facility, as defined in s. 50.01 (1g); a home

residential care apt complex as defined in (1d),

Hurley, Peggy

From: Gauger, Michelle C - DOA [Michelle.Gauger@Wisconsin.gov]
Sent: Wednesday, December 15, 2010 2:48 PM
To: Hurley, Peggy
Cc: Dombrowski, Cynthia A - DOA
Subject: RE: Drafting Request - Jobs Bill
Attachments: image001.gif; image002.gif; image003.gif
Hi Peggy,

*T/C. Do 2
versions.
Include SOL in
1. Just the
nonecons
in the
other.*

We received a preliminary decision from the Governor-elect on these issues -- He would like all of the pertinent medical malpractice limits to apply to long-term care providers.

However, this decision may be revisited after further discussions. Would you be able to draft the bill both ways with an early version showing just the non-economic damages limit and a second version including all of the provisions? If this is unwieldy, please let me know.

Thanks!

Michelle Gauger

From: Dombrowski, Cynthia A - DOA
Sent: Monday, December 13, 2010 10:16 AM
To: Gauger, Michelle C - DOA
Subject: FW: Drafting Request - Jobs Bill

Michelle,

These are the issues we discussed last week relating to med mal and long term care providers.

Cindy

Cynthia Dombrowski
Executive Policy and Budget Analyst
Department of Administration
Tel: (608)266-2214
Fax: (608)267-0372
cynthia.dombrowski@wisconsin.gov

From: Hurley, Peggy [mailto:Peggy.Hurley@legis.wisconsin.gov]
Sent: Monday, December 13, 2010 10:11 AM
To: Kraus, Jennifer - DOA; Thornton, Scott - DOA; Dombrowski, Cynthia A - DOA
Subject: RE: Drafting Request - Jobs Bill

Hi everyone,

I have a couple of questions about this request. I have reviewed the 2005 draft and I see that it defines "long-term care providers" and then essentially recreates s. 893.55 (4) (a), (b), and (c). The draft applies the limits on noneconomic damages in s. 893.55 (4) (d) to long-term care providers.

The 2005 draft does not include any provisions that mirror s. 893.55 (4) (e) or (f) or (5), (6), or (7). I don't think that ss. 893.55 (4) (e) and (5) are applicable, because those relate to awards made under chapter

12/15/2010

655, which does not apply to long-term care providers. However, I don't see any reason why ss. 893.55 (4) (f) [relating to wrongful death actions], (6) [relating to contributory negligence], or (7) [relating to compensations from sources other than the defendant] were not included. Your thoughts?

In addition, s. 893.55 (1m), (2), and (3) all relate to the statute of limitations for medical malpractice claims; do you want a parallel provision for claims against long-term care providers? The default statute of limitations is 3 years. Please let me know your thoughts.

Thank you for reviewing these matters; I look forward to working with you on this draft.

Peggy Hurley
608 266 8906

From: DOADLBASADMININTERNETSHAREPOINT@WI.GOV
[mailto:DOADLBASADMININTERNETSHAREPOINT@WI.GOV]
Sent: Monday, December 13, 2010 9:14 AM
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Subject: Drafting Request - Jobs Bill

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SBO Analyst: Dombrowski, Cynthia A - DOA
Phone: (608) 266-2214
E-mail: Cynthia.Dombrowski@Wisconsin.gov

Agency Acronym: SupCt

Agency Number: 680

Priority: High

Intent:

Current law limits the recovery of noneconomic damages, such as pain and suffering from a health care provider found to have committed medical malpractice, and is adjusted annually for inflation.

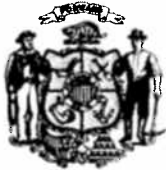
Create an identical limit on the recovery of noneconomic damages from a long-term care provider, such as a nursing home or hospice whose negligence causes injury.

Note: This was originally drafted in 2005 as LRB-0554/1.

12/15/2010

Attachments: False

12/15/2010



State of Wisconsin
2011 - 2012 LEGISLATURE



LRB-0671/P1

PJH:.....

Wlj

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

*J-note
12.5.10*

Gen Cat

- 1 **AN ACT ...; relating to:** limiting the amount of noneconomic damages awarded
2 in negligence claims against long-term care providers.

Analysis by the Legislative Reference Bureau

Under current law, a person, or certain people related to the person, who is injured by the medical malpractice of a health care provider may sue for economic damages and for noneconomic damages. Noneconomic damages are intended to compensate for pain and suffering, loss of companionship, mental distress, and loss of enjoyment of life.

Current law limits noneconomic damages to \$750,000 per occurrence of medical malpractice. Current law also limits damages for loss of society and companionship to certain relatives recoverable in a wrongful death action against a health care provider to \$500,000 in the case of a deceased minor and \$350,000 in the case of a deceased adult.

Under current law, a person, or certain people related to the person, who is injured by the medical malpractice of a health care provider may bring an action against a health care provider no later than three years from the date the injury occurred, or within one year that the injury was discovered or should have been discovered, except that if a health care provider conceals an act or omission that results in an injury, within one year from the date the concealment was discovered or should have been discovered. If the injury or concealment is discovered after the three-year limit has expired, the person may still bring suit for up to five years after the health care provider's act or omission.

This bill applies the same limit to noneconomic damages that are awarded for an injury or a wrongful death that is caused by the negligence of a long-term care

provider, such as a nursing home, hospice, or assisted living facility. The bill applies the same statute of limitations to actions against a long-term care provider.

For further information see the *state and local* 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. 893.555 of the statutes is created to read:

2 **893.555 Limitation of damages; long-term care providers** (1) In this

3 section:

4 (a) "Long-term care provider" means any of the following:

5 1. An adult family home, as defined in s. 50.01 (1). ✓

6 2. A residential care apartment complex, as defined in s. 50.01 (1d). ✓

7 3. A community-based residential facility, as defined in s. 50.01 (1g). ✓

8 4. A home health agency, as defined in s. 50.01 (1r). ✓

9 5. A nursing home, as defined in s. 50.01 (3). ✓

10 6. A hospice, as defined in s. 50.90 (1). ✓

11 (b) "Noneconomic damages" has the meaning given in s. 893.55 (4) (a). ✓

12 (2) Except as provided ⁱⁿ ~~by~~ sub. (3), an action to recover damages for injury
13 arising from any treatment or operation performed by, or from any omission by, a
14 long-term care provider, regardless of the theory on which the action is based, shall
15 be commenced within the later of:

16 (a) Three years from the date of the injury. ✓

17 (b) One year from the date the injury was discovered or, in the exercise of
18 reasonable diligence should have been discovered, except that an action may not be
19 commenced under this paragraph more than 5 years from the date of the act or
20 omission.

1 (3) If a long-term care provider conceals from a patient a prior act or omission
2 of the provider that has resulted in injury to the patient, an action shall be
3 commenced within one year from the date the patient discovers the concealment or,
4 in the exercise of reasonable diligence, should have discovered the concealment or
5 within the time limitation provided by sub. (2),[✓] whichever is later.

6 (4) The total noneconomic damages recoverable for bodily injury arising from
7 care or treatment performed, or from any omission, by a long-term care provider,
8 including any action or proceeding based on contribution or indemnification and any
9 action for a claim by a person other than the injured person for noneconomic damages
10 recoverable for bodily injury, may not exceed the limit under s. 893.55 (4) (d) for each
11 occurrence on or after the effective date of this subsection ...^Δ[LRB inserts date], from
12 all long-term care providers and all employees of long-term care providers acting
13 within the scope of their employment and providing long-term care services who are
14 found negligent.

15 (5) A court in an action tried without a jury shall make a finding as to
16 noneconomic damages without regard to the limit under s. 893.55 (4) (d). If
17 noneconomic damages in excess of the limit are found, the court shall make any
18 reduction required under s. 895.045 and shall award as noneconomic damages the
19 lesser of the reduced amount or the limit. If an action is before a jury, the jury shall
20 make a finding as to noneconomic damages without regard to the limit under s.
21 893.55 (4) (d). If the jury finds that noneconomic damages exceed the limit, the jury
22 shall make any reduction required under s. 895.045 and the court shall award as
23 noneconomic damages the lesser of the reduced amount or the limit.

24 (6) Notwithstanding the limits on noneconomic damages under this section,
25 damages recoverable against^a long-term care providers^g and an employee of a^h

1 long-term care provider^y acting within the scope of his or her employment and
2 providing long-term care services, for wrongful death are subject to the limit under
3 s. 895.04 (4). If damages in excess of the limit under s. 895.04 (4) are found, the court
4 shall make any reduction required under s. 895.045 and shall award the lesser of the
5 reduced amount or the limit under s. 895.04 (4).

6 (7) Damages recoverable under this section against long-term care providers^o
7 and an employee of a long-term care provider^g acting within the scope of his or her[^]
8 employment and providing long-term care services, are subject to the provisions of
9 s. 895.045.

10 (8) Evidence of any compensation for bodily injury received from sources other
11 than the defendant to compensate the claimant for the injury is admissible in an
12 action to recover damages for negligence by a long-term care provider. This section
13 does not limit the substantive or procedural rights of persons who have claims based
14 upon subrogation.

15

(END)

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-0671/?dn

PJH:/...

WJ

Date

Cindy 

Please review this draft to ensure that it complies with your intent. This draft contains provisions that mirror ss. 893.55 (1m), (2), (4) (a), (b), (c), (f), (6), and (7). I did not include provisions that mirror ~~ss. 893.55 (1d), (3), (4) (e), or (5)~~ because those ~~sections~~ provisions did not seem applicable to long-term care providers. The draft refers to the limits set in s. 893.55 (4) ~~(d)~~.

This draft does not include a provision similar to s. 893.56, which relates to actions by minors against health care providers. Please let me know if you want me to include a provision like that.

The draft also does not treat ^ss. 893.80 (1m) ^{and} ^es. 893.82 (5m), which relate to the statute of limitations for malpractice suits against governmental bodies and against state employees, respectively. Please let me know if you want me to treat these statutes to apply to suits against governmental bodies or state employees for negligence in a long-term care setting.

Please let me know if you have any questions or would like any changes to this draft.

Peggy Hurley
Legislative Attorney
Phone: (608) 266-8906
E-mail: peggy.hurley@legis.wisconsin.gov

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-0671/P1dn
PJH:wlj:jf

December 16, 2010

Cindy:

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Peggy Hurley
Legislative Attorney
Phone: (608) 266-8906
E-mail: peggy.hurley@legis.wisconsin.gov



State of Wisconsin
2011 - 2012 LEGISLATURE



LRB-0671/P1
PJH:wljf

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17 (b) One year from the date the injury was discovered or, in the exercise of
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1 commenced under this paragraph more than 5 years from the date of the act or
2 omission.

3 (3) If a long-term care provider conceals from a patient a prior act or omission
4 of the provider that has resulted in injury to the patient, an action shall be
5 commenced within one year from the date the patient discovers the concealment or,
6 in the exercise of reasonable diligence, should have discovered the concealment or
7 within the time limitation provided by sub. (2), whichever is later.

8 (4) The total noneconomic damages recoverable for bodily injury arising from
9 care or treatment performed, or from any omission, by a long-term care provider,
10 including any action or proceeding based on contribution or indemnification and any
11 action for a claim by a person other than the injured person for noneconomic damages
12 recoverable for bodily injury, may not exceed the limit under s. 893.55 (4) (d) for each
13 occurrence on or after the effective date of this subsection [LRB inserts date], from
14 all long-term care providers and all employees of long-term care providers acting
15 within the scope of their employment and providing long-term care services who are
16 found negligent.

17 (5) A court in an action tried without a jury shall make a finding as to
18 noneconomic damages without regard to the limit under s. 893.55 (4) (d). If
19 noneconomic damages in excess of the limit are found, the court shall make any
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