



State of Wisconsin
2005 - 2006 LEGISLATURE

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**SENATE AMENDMENT 1,
TO 2005 SENATE BILL 393**

November 4, 2005 – Offered by COMMITTEE ON AGRICULTURE AND INSURANCE.

1 At the locations indicated, amend the bill as follows:

2 **1.** Page 1, line 4: after “cases” insert “, health care liability insurance limits,
3 and payment by the injured patients and families compensation fund of noneconomic
4 damages in installments”.

5 **2.** Page 2, line 1: before that line insert:

6 “**SECTION 1b.** 619.01 (7) (a) of the statutes is amended to read:

7 619.01 (7) (a) *Primary coverage plans.* Health care liability insurance plans
8 established under this paragraph shall provide minimum coverage to insureds in the
9 amount of not less than \$200,000 for each occurrence and \$600,000 for all
10 occurrences in any one policy year for occurrences before July 1, 1987, \$300,000 for
11 each occurrence and \$900,000 for all occurrences in any one policy year for
12 occurrences on or after July 1, 1987, and before July 1, 1988, \$400,000 for each
13 occurrence and \$1,000,000 for all occurrences in any one policy year for occurrences

1 on or after July 1, 1988, and before July 1, 1997, and for health care providers
2 specified in s. 655.002 (1) (d) to (j) \$1,000,000 for each occurrence and \$3,000,000 for
3 all occurrences in any one policy year for occurrences on or after July 1, 1997, and
4 for health care providers specified in s. 655.002 (1) (a) to (c) and (2) \$1,000,000 for
5 each occurrence and \$3,000,000 for all occurrences in any one policy year for
6 occurrences on or after July 1, 1997, and before July 1, 2006, and \$750,000 for each
7 occurrence and \$2,250,000 for all occurrences in any one policy year for occurrences
8 on or after July 1, 2006, for the protection of persons who are legally entitled to
9 recover damages from the insured for errors, omissions, or neglect in the
10 performance of the insured’s professional services. If an insured has excess limits
11 liability coverage or such coverage is available to the insured, the coverage provided
12 under such plans shall be equal to the minimum level of such excess limits coverage.
13 If the insured does not have excess limits liability coverage and such coverage is not
14 available to the insured, the commissioner may establish minimum levels of
15 coverage higher than the minimum limits specified in this paragraph for such
16 plans.”.

17 **3.** Page 2, line 1: delete “SECTION 1” and substitute “SECTION 1c”.

18 **4.** Page 2, line 9: after that line insert:

19 “SECTION 1e. 655.23 (4) (b) 2. a. of the statutes is amended to read:

20 655.23 (4) (b) 2. a. For occurrence coverage for health care providers under s.
21 655.002 (1) (a) to (c) and (2), at least \$1,000,000 for each occurrence and \$3,000,000
22 for all occurrences in any one policy year for occurrences on or after July 1, 1997, and
23 before July 1, 2006, and \$750,000 for each occurrence and \$2,250,000 for all
24 occurrences in any one policy year for occurrences on or after July 1, 2006.

1 **SECTION 1f.** 655.23 (4) (b) 2. am. of the statutes is created to read:

2 655.23 (4) (b) 2. am. For occurrence coverage for health care providers under
3 s. 655.002 (1) (d) to (j), at least \$1,000,000 for each occurrence and \$3,000,000 for all
4 occurrences in any one policy year for occurrences on or after July 1, 1997.

5 **SECTION 1g.** 655.23 (4) (b) 2. b. of the statutes is amended to read:

6 655.23 (4) (b) 2. b. For claims-made coverage for health care providers under
7 s. 655.002 (1) (a) to (c) and (2), at least \$1,000,000 for each claim arising from an
8 occurrence on or after July 1, 1997, and before July 1, 2006, regardless of when the
9 claim is made, and \$3,000,000 for all claims in any one reporting year for claims made
10 on or after July 1, 1997, and before July 1, 2006, and \$750,000 for each claim arising
11 from an occurrence on or after July 1, 2006, and \$2,250,000 for all claims in any one
12 reporting year for claims made on or after July 1, 2006.

13 **SECTION 1h.** 655.23 (4) (b) 2. bm. of the statutes is created to read:

14 655.23 (4) (b) 2. bm. For claims-made coverage for health care providers under
15 s. 655.002 (1) (d) to (j), at least \$1,000,000 for each claim arising from an occurrence
16 on or after July 1, 1997, and \$3,000,000 for all claims in any one reporting year for
17 claims made on or after July 1, 1997.

18 **SECTION 1j.** 655.23 (4) (c) 1. of the statutes is amended to read:

19 655.23 (4) (c) 1. Except as provided in subd. 2., self-insurance shall be in
20 amounts of at least \$200,000 for each occurrence and \$600,000 for all occurrences in
21 any one policy year for occurrences before July 1, 1987, \$300,000 for each occurrence
22 and \$900,000 for all occurrences in any one policy year for occurrences on or after
23 July 1, 1987, and before July 1, 1988, \$400,000 for each occurrence and \$1,000,000
24 for all occurrences in any one policy year for occurrences on or after July 1, 1988, and
25 before July 1, 1997, and for health care providers under s. 655.002 (1) (d) to (j)

1 \$1,000,000 for each occurrence and \$3,000,000 for all occurrences in any one policy
2 year for occurrences on or after July 1, 1997, and for health care providers under s.
3 655.002 (1) (a) to (c) and (2) \$1,000,000 for each occurrence and \$3,000,000 for all
4 occurrences in any one policy year for occurrences on or after July 1, 1997, and before
5 July 1, 2006, and \$750,000 for each occurrence and \$2,250,000 for all occurrences in
6 any one policy year for occurrences on or after July 1, 2006.

7 **SECTION 1m.** 655.27 (5) (d) of the statutes is amended to read:

8 655.27 (5) (d) A person who has recovered a final judgment or a settlement
9 approved by the board of governors against a health care provider, or an employee
10 of a health care provider, that has coverage under the fund may file a claim with the
11 board of governors to recover that portion of such judgment or settlement which is
12 in excess of the limits in s. 655.23 (4) or the maximum liability limit for which the
13 health care provider is insured, whichever limit is greater. ~~In~~ Subject to par. (dm),
14 in the event the fund incurs liability for future payments exceeding \$1,000,000 to any
15 person under a single claim as the result of a settlement or judgment that is entered
16 into or rendered under this chapter for an act or omission that occurred on or after
17 May 25, 1995, the fund shall pay, after deducting the reasonable costs of collection
18 attributable to the remaining liability, including attorney fees reduced to present
19 value, the full medical expenses each year, plus an amount not to exceed \$500,000
20 per year that will pay the remaining liability over the person's anticipated lifetime,
21 or until the liability is paid in full. ~~If~~ Subject to par. (dm), if the remaining liability
22 is not paid before the person dies, the fund may pay the remaining liability in a lump
23 sum. Payments shall be made from money collected and paid into the fund under
24 sub. (3) and from interest earned thereon. For claims subject to a periodic payment
25 made under this paragraph, payments shall be made until the claim has been paid

1 in full, except as provided in par. (dm) and s. 655.015. Periodic payments made under
2 this paragraph include direct or indirect payment or commitment of moneys to or on
3 behalf of any person under a single claim by any funding mechanism. No interest
4 may be paid by the fund on the unpaid portion of any claim filed under this
5 paragraph, except as provided under s. 807.01 (4), 814.04 (4), or 815.05 (8).

6 **SECTION 1n.** 655.27 (5) (dm) of the statutes is created to read:

7 655.27 (5) (dm) If the fund is liable for payment of a portion of a final judgment
8 or settlement that includes noneconomic damages and that results from an act or
9 omission occurring on or after the effective date of this paragraph [revisor inserts
10 date], the fund shall pay any attorney fees under s. 655.013 for which it is liable as
11 soon as practicable and shall pay the noneconomic damages for which it is liable in
12 annual installments of \$100,000 or 10 percent of the balance of the noneconomic
13 damages owed by the fund, whichever is greater, until the noneconomic damages for
14 which the fund is liable are fully paid. However, the parties may agree to a
15 discounted, faster payout of noneconomic damages. If the claimant dies before all
16 noneconomic damages are fully paid by the fund, the amount remaining reverts to
17 the fund.”.

18 **5.** Page 3, line 2: after that line insert:

19 “4. No monetary award can adequately compensate an injured person or a
20 member of the injured person’s family for the pain and suffering and other
21 noneconomic damages associated with an injury caused by medical malpractice.

22 5. A stable environment regarding resolution of medical malpractice claims
23 with limits on medical malpractice awards is an important factor in retaining and
24 recruiting health care providers to practice in Wisconsin.

1 6. Assumption by the fund of responsibility for a portion of medical malpractice
2 claims decreases costs to health care providers, which will aid in retaining and
3 recruiting health care providers to practice in Wisconsin.

4 7. Stability and predictability of costs experienced by a fund maintained for the
5 purpose of paying damages awarded to medical malpractice victims assures all
6 victims reasonable compensation for their loss.”.

7 **6.** Page 5, line 3: delete lines 3 to 18 and substitute:

8 “**SECTION 7g.** 893.55 (4) (d) of the statutes is amended to read:

9 893.55 (4) (d) The limit on total noneconomic damages for each occurrence
10 under par. (b) on or after ~~May 25, 1995~~ the effective date of this paragraph [revisor
11 inserts date], shall be ~~\$350,000~~ \$2,000,000 for a person under the age of 18 at the
12 time of his or her injury and shall be reduced by 1 percent for each year that elapses
13 after the person attains the age of 18. In addition, the limit on total noneconomic
14 damages for each occurrence under par. (b) on or after the effective date of this
15 paragraph [revisor inserts date], for each person listed under s. 655.007 having
16 a derivative claim for injury on account of malpractice is \$100,000, except that if a
17 parent or guardian of a child under the age of 18 is the injured party, then the limit
18 of \$100,000 for the child’s derivative claim is increased by \$20,000 for each year that
19 the child’s age is under the age of 17 at the time of his or her parent’s or guardian’s
20 injury. These limits shall be adjusted by the director of state courts to reflect changes
21 in the consumer price index for all urban consumers, U.S. city average, as
22 determined by the U.S. department of labor, at least annually thereafter, with the
23 adjusted limit limits to apply to awards subsequent to such adjustments.”.

24 **7.** Page 5, line 18: after that line insert:

1 **“SECTION 9c. Initial applicability.**

2 (1) HEALTH CARE LIABILITY INSURANCE LIMITS. The treatment of sections 619.01
3 (7) (a) and 655.23 (4) (b) 2. a., am., b., and bm. of the statutes first applies to policies
4 issued or renewed on the effective date of this subsection.

5 **SECTION 10c. Effective dates.** This act takes effect on the day after
6 publication, except as follows:

7 (1) HEALTH CARE LIABILITY INSURANCE LIMITS. The treatment of sections 619.01
8 (7) (a) and 655.23 (4) (b) 2. a., am., b., and bm. and (c) 1. of the statutes and SECTION
9 9c (1) of this act take effect on July 1, 2006.”.

10 **(END)**