



## 1995 ASSEMBLY BILL 36

January 19, 1995 - Introduced by Representatives GREEN, ALBERS, URBAN and HANDRICK, cosponsored by Senator HUELSMAN. Referred to Committee on Insurance, Securities and Corporate Policy.

1 **AN ACT to amend** 655.015, 655.017, 655.27 (5) (d), 893.55 (4) (b) and 893.55 (4)  
2 (d); and **to create** 893.55 (4) (f) and 893.55 (6) of the statutes; **relating to:**  
3 limiting medical malpractice noneconomic damage awards and granting  
4 rule-making authority.

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### *Analysis by the Legislative Reference Bureau*

This bill establishes \$250,000 as the maximum amount that a claimant may recover for noneconomic damages caused by the negligence of a health care provider or health care provider employe. This maximum is adjusted annually for inflation. Noneconomic damages are defined in the law to include items such as pain and suffering, embarrassment, mental distress and loss of society and companionship. Currently, there is no maximum limit on the amount recoverable for noneconomic damages.

Under current law, if an injured party receives compensation from someone for his or her injury, such as an insurance company, that information is not admissible as evidence in the action to recover damages from another person for the injury. This bill allows that information to be admissible as evidence in the action. The bill limits the damages for loss of society and companionship that may be recoverable in medical malpractice cases involving death to the \$150,000 maximum currently established for other civil actions involving death.

Prior to June 14, 1986, any medical malpractice award for future medical expenses greater than \$25,000 was paid into the compensation fund for later payment to the patient. This bill reinstates that provision and raises the limit to \$100,000.

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

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

1           **SECTION 1.** 655.015 of the statutes is amended to read:

2           **655.015 Future medical expenses.** If a settlement, panel award or judgment  
3 under this chapter is entered into or rendered before June 14, 1986, or on or after the  
4 effective date of this section .... [revisor inserts date], and provides for future medical  
5 expense payments in excess of ~~\$25,000~~ \$100,000, that portion of future medical  
6 expense payments in excess of ~~\$25,000~~ \$100,000 shall be paid into the fund. The  
7 commissioner shall develop by rule a system for managing and disbursing those  
8 moneys through payments for these expenses. The commissioner shall promulgate  
9 a rule defining "medical expenses", taking into consideration developments in the  
10 provision of health care. The payments shall be made under the system until either  
11 the amount is exhausted or the patient dies.

12           **SECTION 2.** 655.017 of the statutes is amended to read:

13           **655.017 Limitation on noneconomic damages.** The amount of  
14 noneconomic damages recoverable by a claimant or plaintiff under this chapter for  
15 acts or omissions of a health care provider if the ~~action is filed~~ act or omission occurs  
16 ~~on or after June 14, 1986 and before January 1, 1991~~ the effective date of this section  
17 .... [revisor inserts date], and for acts or omissions of an employe of a health care  
18 provider, acting within the scope of his or her employment and providing health care  
19 services, for actions filed acts or omissions occurring on or after June 14, 1986 and  
20 before January 1, 1991 the effective date of this section .... [revisor inserts date], is  
21 subject to the ~~limit~~ limits under s. 893.55 (4) (d) and (f).

1           **SECTION 3.** 655.27 (5) (d) of the statutes is amended to read:

2           655.27 **(5)** (d) A person who has recovered a final judgment or a settlement  
3 approved by the board of governors against a health care provider, or an employe of  
4 a health care provider, that has coverage under the fund may file a claim with the  
5 board of governors to recover that portion of such judgment or settlement which is  
6 in excess of the limits in s. 655.23 (4) or the maximum liability limit for which the  
7 health care provider is insured, whichever limit is greater. In the event the fund  
8 incurs liability exceeding \$1,000,000 to any person under a single claim as the result  
9 of a settlement, panel award or judgment that is entered into or rendered under this  
10 chapter before June 14, 1986, or on or after the effective date of this paragraph ...  
11 [revisor inserts date], the fund shall pay not more than \$500,000 per year. If the cost  
12 of medical expenses will exceed \$500,000 per year, the fund shall pay the full medical  
13 expenses plus an amount determined by the fund that will pay the remaining  
14 liability over the person's anticipated lifetime. Payments shall be made from money  
15 collected and paid into the fund under sub. (3) and from interest earned thereon. For  
16 claims subject to the ~~\$500,000~~ yearly limit, payments shall be made until the claim  
17 has been paid in full, and any attorney fees in connection with such claim shall be  
18 similarly prorated. Payment of not more than ~~\$500,000 per year~~ the yearly limit  
19 includes direct or indirect payment or commitment of moneys to or on behalf of any  
20 person under a single claim by any funding mechanism. No interest may be paid by  
21 the fund on the unpaid portion of any claim filed under this paragraph, except as  
22 provided under s. 807.01 (4), 814.04 (4) or 815.05 (8).

23           **SECTION 4.** 893.55 (4) (b) of the statutes is amended to read:

24           893.55 **(4)** (b) The total noneconomic damages recoverable ~~under ch. 655~~ for  
25 bodily injury or death, including any action or proceeding based on contribution or

1 indemnification, may not exceed the limit under par. (d) for each occurrence  
2 treatment, operation or omission, from all health care providers and all employes of  
3 health care providers acting within the scope of their employment and providing  
4 health care services who are found negligent and from the patients compensation  
5 fund for any ~~action filed~~ act or omission occurring on or after June 14, 1986 and before  
6 ~~January 1, 1991~~ the effective date of this paragraph ... [revisor inserts date].

7 **SECTION 5.** 893.55 (4) (d) of the statutes is amended to read:

8 893.55 (4) (d) The limit on total noneconomic damages for each occurrence  
9 under par. (b) shall be ~~\$1,000,000~~ \$250,000 for actions filed any act or omission  
10 occurring on or after June 14, 1986, the effective date of this paragraph ... [revisor  
11 inserts date], and shall be adjusted by the director of state courts to reflect changes  
12 in the consumer price index for all urban consumers, U.S. city average, as  
13 determined by the U.S. department of labor, at least annually thereafter, with the  
14 adjusted limit to apply to awards subsequent to such adjustments.

15 **SECTION 6.** 893.55 (4) (f) of the statutes is created to read:

16 893.55 (4) (f) Notwithstanding the limits on noneconomic damages under this  
17 subsection, damages recoverable against health care providers for wrongful death  
18 are subject to the limit under s. 895.04 (4). If damages in excess of the limit under  
19 s. 895.04 (4) are found, the court shall make any reduction required under s. 895.045  
20 and shall award the lesser of the reduced amount or the limit under s. 895.04 (4).

21 **SECTION 7.** 893.55 (6) of the statutes is created to read:

22 893.55 (6) Evidence of any compensation for bodily injury received from  
23 sources other than the defendant to compensate the claimant for the injury is  
24 admissible in an action to recover damages for medical malpractice.

25 (END)