



1995 SENATE BILL 46

January 31, 1995 - Introduced by Senators HUELSMAN, ZIEN, PETAK, COWLES, DRZEWIECKI, LEEAN, RUDE, DARLING, A. LASEE, FARROW, ROSENZWEIG, SCHULTZ, WEEDEN and BUETTNER, cosponsored by Representatives GREEN, ALBERS, HANDRICK, HUTCHISON, GARD, WALKER, DUFF, OWENS, SCHNEIDERS, LADWIG, FREESE, HAHN, SKINDRUD, MUSSER, OTTE, KREIBICH, AINSWORTH, URBAN, SERATTI, GOETSCH, ZUKOWSKI, GUNDERSON, JOHNSRUD, BRANDEMUEHL, SILBAUGH and WARD. Referred to Committee on Judiciary.

- 1 **AN ACT to repeal** 655.017 and 893.55 (4) and (5); **to amend** 893.55 (title); and
2 **to create** 895.81 to 895.83 of the statutes; **relating to:** limitations on awards
3 for noneconomic damages.

Analysis by the Legislative Reference Bureau

Under current law, the following requirements apply in medical malpractice cases:

1. Recovery for noneconomic damages, such as pain and suffering, for any single occurrence of malpractice against all health care providers and providers' employes responsible for that injury is not limited.
2. Awards must state separately the elements of damages and specify the amounts assigned to each element.
3. Awards must reduce economic damages to present value, taking into account the effects of inflation.

Under current law, there is no limit on an award of noneconomic damages, such as pain and suffering, in other civil actions. Also, current law provides that punitive damages may be awarded in all civil actions in order to penalize a defendant for outrageous conduct.

This bill creates a limitation of \$250,000 for the recovery of noneconomic damages by each claimant, excluding punitive, exemplary or vindictive damages, in any civil action. Further, the bill provides that a finding as to noneconomic damages by the court or a jury must be limited to \$250,000 before any reduction required for contributory negligence. The bill also provides that every award of damages in any civil action for bodily injury or death shall state separately the elements of damages and specify the amounts assigned to each element. In addition, the bill requires the reduction of economic damages to present value in all civil actions for bodily injury or death.

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1 **SECTION 1.** 655.017 of the statutes is repealed.

2 **SECTION 2.** 893.55 (title) of the statutes is amended to read:

3 **893.55 (title) Medical malpractice; limitation of actions; limitation of**
4 **damages; itemization of damages.**

5 **SECTION 3.** 893.55 (4) and (5) of the statutes are repealed.

6 **SECTION 4.** 895.81 to 895.83 of the statutes are created to read:

7 **895.81 Specification of elements of damages. (1)** Every award of damages
8 in a civil action for bodily injury or death shall specify the sum of money, if any,
9 awarded for each of the following for each claimant for the period from the date of
10 injury to the date of award and for the period after the date of award:

11 (a) Noneconomic damages, as defined in s. 895.83 (1).

12 (b) Loss of earnings or earning capacity.

13 (c) Each element of medical expenses.

14 (d) Other economic injuries and damages.

15 (e) Punitive, exemplary or vindictive damages.

16 **(2)** Every award of damages in a civil action for bodily injury or death shall
17 specify the sum of money, if any, attributed to each item of noneconomic damages
18 under sub. (1) (a).

19 **895.82 Reduction of economic damages to present value.** The court or
20 jury shall determine the economic damages in a civil action for bodily injury or death,
21 including any action or proceeding based on contribution or indemnification, for the

1 period during which the damages have accrued and are expected to accrue, taking
2 into account the estimated life expectancy of the person. The court shall reduce those
3 damages to present value.

4 **895.83 Limitation on award for noneconomic damages.** (1) In this
5 section, “noneconomic damages” means moneys intended to compensate for pain and
6 suffering; humiliation; embarrassment; worry; mental distress; noneconomic effects
7 of disability including loss of enjoyment of the normal activities, benefits and
8 pleasures of life and loss of mental or physical health, well-being or bodily functions;
9 loss of consortium, society and companionship; or loss of love and affection; and
10 excludes any moneys awarded as punitive, exemplary or vindictive damages.

11 (2) (a) The total noneconomic damages recoverable by each claimant from all
12 defendants in a civil action, including any action or proceeding based on contribution
13 or indemnification, shall not exceed \$250,000 for actions filed on or after the effective
14 date of this paragraph [revisor inserts date], and shall be adjusted annually by
15 the director of state courts to reflect changes in the consumer price index for all urban
16 consumers, U.S. city average, as determined by the U.S. department of labor, with
17 the adjusted level to apply to awards made after the adjustment.

18 (b) A court in an action tried without a jury shall make a finding as to
19 noneconomic damages subject to the limit under par. (a). The court then shall make
20 any reduction required under s. 895.045. If an action is before a jury, the jury shall
21 make a finding as to noneconomic damages without regard to or notice of the limit
22 under par. (a). If the jury finds an amount of noneconomic damages that exceeds the
23 limit, the court shall reduce the amount to the limit under par. (a) and then shall
24 make any reduction required under s. 895.045.

25 **SECTION 5. Initial applicability.**

