



1995 SENATE BILL 82

February 23, 1995 - Introduced by Senators HUELSMAN, PETAK, LEEAN, RUDE, FARROW, ZIEN, DARLING, ROSENZWEIG, COWLES, SCHULTZ, WEEDEN, FITZGERALD, BUETTNER, DRZEWIECKI and A. LASEE, cosponsored by Representatives GREEN, ALBERS, WASSERMAN, BLACK, GOETSCH, FREESE, ZUKOWSKI, SCHNEIDERS, SERATTI, LADWIG, AINSWORTH, OWENS, GARD, URBAN, KREIBICH, DUFF and KLUSMAN. Referred to Committee on Judiciary.

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, medical
4 malpractice settlements and judgments and granting rule-making authority.

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.

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.

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

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

1 **655.015 Future medical expenses.** If a settlement, panel award or judgment
2 under this chapter is entered into or rendered before June 14, 1986, or on or after the
3 effective date of this section [revisor inserts date], and provides for future medical
4 expense payments in excess of \$25,000 \$100,000, that portion of future medical
5 expense payments in excess of \$25,000 \$100,000 shall be paid into the fund. The
6 commissioner shall develop by rule a system for managing and disbursing those
7 moneys through payments for these expenses. The commissioner shall promulgate
8 a rule defining "medical expenses", taking into consideration developments in the
9 provision of health care. The payments shall be made under the system until either
10 the amount is exhausted or the patient dies.

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

12 **655.017 Limitation on noneconomic damages.** The amount of
13 noneconomic damages recoverable by a claimant or plaintiff under this chapter for
14 acts or omissions of a health care provider if the ~~action is filed~~ act or omission occurs
15 on or after June 14, 1986 and before January 1, 1991 the effective date of this section
16 [revisor inserts date], and for acts or omissions of an employe of a health care
17 provider, acting within the scope of his or her employment and providing health care
18 services, for actions filed acts or omissions occurring on or after June 14, 1986 and
19 ~~before January 1, 1991~~ the effective date of this section [revisor inserts date], is
20 subject to the ~~limit~~ limits under s. 893.55 (4) (d) and (f).

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

22 655.27 (5) (d) A person who has recovered a final judgment or a settlement
23 approved by the board of governors against a health care provider, or an employe of
24 a health care provider, that has coverage under the fund may file a claim with the
25 board of governors to recover that portion of such judgment or settlement which is

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

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

19 893.55 (4) (b) The total noneconomic damages recoverable ~~under ch. 655~~ for
20 bodily injury or death, including any action or proceeding based on contribution or
21 indemnification, may not exceed the limit under par. (d) for each ~~occurrence~~
22 treatment, operation or omission, from all health care providers and all employees of
23 health care providers acting within the scope of their employment and providing
24 health care services who are found negligent and from the patients compensation

1 fund for any ~~action filed~~ act or omission occurring on or after June 14, 1986 and before
2 January 1, 1991 the effective date of this paragraph ... [revisor inserts date].

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

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

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

12 893.55 (4) (f) Notwithstanding the limits on noneconomic damages under this
13 subsection, damages recoverable against health care providers for wrongful death
14 are subject to the limit under s. 895.04 (4). If damages in excess of the limit under
15 s. 895.04 (4) are found, the court shall make any reduction required under s. 895.045
16 and shall award the lesser of the reduced amount or the limit under s. 895.04 (4).

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

18 893.55 (6) Evidence of any compensation that the injured party received from
19 sources other than the defendant to compensate the claimant for the injury is
20 admissible in an action to recover damages for medical malpractice.

21 (END)