



2009 ASSEMBLY BILL 179

April 2, 2009 – Introduced by Representatives CULLEN, STASKUNAS, MONTGOMERY, RICHARDS, SMITH, BERCEAU and SPANBAUER, cosponsored by Senators RISSER, LEHMAN, ROBSON, KREITLOW and GROTHMAN. Referred to Committee on Insurance.

1 **AN ACT** *to amend* 893.80 (1m) and 893.82 (5m); and *to create* 893.80 (3m) of the
2 statutes; **relating to:** notification to the state and certain public agencies
3 regarding a medical malpractice claim and limits on liability.

Analysis by the Legislative Reference Bureau

Under current law, if a person is injured as the result of medical malpractice, he or she must commence an action to recover his or her damages within three years from the date of the injury or within one year from the date that the injury was discovered or should have been discovered, but not more than five years after the date of the act or omission that caused the injury. However, if a health care provider conceals an act from the person that resulted in the injury, the injured person must commence the action within one year from the date that the concealment was discovered or should have been discovered, within three years from the date of the injury, or within one year from the date that the injury was discovered, whichever is later. In addition, under current law, if a foreign object is left in a person's body, the person must commence the medical malpractice action within one year from the date that the person was aware of the object or should have been aware, within three years from the date of the injury, or within one year from the date that the injury was discovered, whichever is later.

Also under current law, if a person wants to bring a civil action against an officer, employee, or agent of the state or against a volunteer fire company, political corporation, or governmental subdivision or its officers, employees, or agents for an act committed in the course of the officer's, employee's, or agent's duties, the person

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must first serve a notice of the claim with the attorney general or on the fire company, corporation, or subdivision, and on their officer, employee, or agent within 120 days after the date of the act. If the claim is to recover damages for medical malpractice, the period to serve the notice of a claim is extended to 180 days after the injury was discovered or should have been discovered.

This bill removes the requirement that a person must serve the notice of a claim for medical malpractice on the attorney general or on a volunteer fire company, political corporation, or governmental subdivision and its officers, employees, or agents within 180 days after the injury. Instead, the bill requires a person who was injured as the result of the medical malpractice to commence that action within the same time period that is required when the claim is against a private health care provider.

Current law limits the amount that may be recovered in a civil action against local governments and political corporations and their officers, agents, or employees to \$50,000, and against volunteer fire companies and their officers, agents, or employees to \$25,000. Current law also limits the amount that may be recovered in a civil action against state officers, agents, or employees to \$250,000.

This bill raises the limit on the amount that may be recovered in a civil action against local governments, political corporations, and volunteer fire companies and their officers, agents, or employees to the amount allowed against state officers, agents, or employees, \$250,000, if the action was related to the provision of health care services, the local government, political corporation, or volunteer fire company provided the health care services, and the officer, agent, or employee who provided the health care services was acting within the scope of his or her duties.

For further information see the *state* 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.** 893.80 (1m) of the statutes is amended to read:
2 893.80 **(1m)** With regard to a claim to recover damages for medical malpractice,
3 the time period under provisions of sub. (1) (a) shall be 180 days after discovery of
4 the injury or the date on which, in the exercise of reasonable diligence, the injury
5 should have been discovered, rather than 120 days after the happening of the event
6 giving rise to the claim do not apply. The time periods that apply for commencing an
7 action under this section for damages for medical malpractice are the time periods
8 under ss. 893.55 (1m), (2), and (3) and 893.56.

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1 **SECTION 2.** 893.80 (3m) of the statutes is created to read:

2 893.80 **(3m)** Notwithstanding the limits on the amount recoverable under sub.
3 (3), in a civil action for damages resulting from an act or omission while providing
4 health care services against a health care provider, as defined in s. 146.81 (1), or
5 against an officer, agent, or employee of a health care provider acting within the
6 scope of his or her duties and providing health care services covered under this
7 section, shall be governed by the limits on the amount recoverable under s. 893.82
8 (6).

9 **SECTION 3.** 893.82 (5m) of the statutes is amended to read:

10 893.82 **(5m)** With regard to a claim to recover damages for medical malpractice,
11 the ~~time periods under provisions of subs. (3), (3m), and (4) shall be 180 days after~~
12 ~~discovery of the injury or the date on which, in the exercise of reasonable diligence,~~
13 ~~the injury should have been discovered, rather than 120 days after the event causing~~
14 ~~the injury do not apply. The time periods for commencing an action under this section~~
15 for damages for medical malpractice are the time periods under ss. 893.55 (1m), (2),
16 and (3) and 893.56.

17 **SECTION 4. Initial applicability.**

18 (1) This act first applies to acts or omissions that occur on the effective date of
19 this subsection.

20

(END)