

## 2005 BILL

1 AN ACT *to create* 893.555 of the statutes; **relating to:** limiting the recovery of  
2 noneconomic damages against long-term care providers.

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### *Analysis by the Legislative Reference Bureau*

Current law limits the recovery of noneconomic damages, such as pain and suffering, from a health care provider found to have committed medical malpractice to \$432,352 (as of May 2004), adjusted annually for inflation by the director of state courts. This bill creates an identical limit on the recovery of noneconomic damages from a long-term care provider, such as a nursing home or hospice, whose negligence causes injury to a person.

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:*

3 SECTION 1. 893.555 of the statutes is created to read:

4 **893.555 Limitation of damages; long-term care providers. (1)** In this  
5 section:

6 (a) “Long-term care provider” means an adult family home, as defined in s.  
7 50.01 (1); a community-based residential facility, as defined in s. 50.01 (1g); a home

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1 health agency, as defined in s. 50.01 (1r); a hospice, as defined in s. 50.90 (1); a  
2 nursing home, as defined in s. 50.01 (3), or a residential care apartment complex, as  
3 defined in s. 50.01 (1d).

4 (b) “Noneconomic damages” means moneys intended to compensate for pain  
5 and suffering; humiliation; embarrassment; worry; mental distress; noneconomic  
6 effects of disability including loss of enjoyment of the normal activities, benefits, and  
7 pleasures of life and loss of mental or physical health, well-being, or bodily functions;  
8 loss of consortium, society, and companionship; or loss of love and affection.

9 (2) The total noneconomic damages recoverable for bodily injury arising from  
10 care or treatment performed by, or from any omission by, a person who is a long-term  
11 care provider, including any action or proceeding based on contribution or  
12 indemnification, may not exceed the limit under s. 893.55 (4) (d) for each occurrence  
13 on or after the effective date of this subsection .... [revisor inserts date], from all  
14 long-term care providers and all employees of long-term care providers acting  
15 within the scope of their employment and providing long-term care services who are  
16 found negligent.

17 (3) A court in an action tried without a jury shall make a finding as to  
18 noneconomic damages without regard to the limit under s. 893.55 (4) (d). If  
19 noneconomic damages in excess of the limit are found, the court shall make any  
20 reduction required under s. 895.045 and shall award as noneconomic damages the  
21 lesser of the reduced amount or the limit. If an action is before a jury, the jury shall  
22 make a finding as to noneconomic damages without regard to the limit under s.  
23 893.55 (4) (d). If the jury finds that noneconomic damages exceed the limit, the jury  
24 shall make any reduction required under s. 895.045 and the court shall award as  
25 noneconomic damages the lesser of the reduced amount or the limit.

