

# State of Wisconsin



January 2011 Special Session  
Senate Bill 1

Date of enactment: **January 27, 2011**  
Date of publication\*: **January 31, 2011**

## 2011 WISCONSIN ACT 2

AN ACT *to repeal* 146.38 (3) (d) and 146.38 (3) (e); *to renumber and amend* 146.38 (1) (b), 907.01 and 907.02; *to amend* 146.38 (1m), 146.38 (2), 146.38 (3) (intro.), 146.38 (3) (a), (b) and (c), 230.85 (3) (b), 802.10 (7), 809.103 (2) (a), 814.04 (intro.), 814.29 (3) (a), 907.03, 940.08 (1), 940.24 (1) and 940.295 (3) (a) 3.; and *to create* 146.38 (1) (b) 1., 146.38 (1) (b) 2., 146.38 (1) (b) 3., 146.38 (1) (b) 4., 146.38 (1) (bm), 146.38 (2m), 146.38 (3m), 146.38 (3t), 146.38 (6), 153.05 (3m), 893.555, 895.043 (6), 895.044, 895.045 (3), 895.046, 895.047, 904.16, 907.01 (3), 907.02 (2), 940.08 (3), 940.24 (3) and 940.295 (3) (am) of the statutes; **relating to**: limiting noneconomic damages awarded in actions against long-term care providers; actions against manufacturers, distributors, sellers, and promoters of certain products; confidentiality of health care services reviews; use as evidence of information regarding health care providers; reporting of quality indicators identifying individual hospitals; homicide or injury by negligent handling of a dangerous weapon, explosives, or fire; criminal abuse of individuals at risk; criminal abuse and neglect of patients and residents; evidence of lay and expert witnesses; damages for frivolous claims; and punitive damage awards.

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

**SECTION 1.** 146.38 (1) (b) of the statutes is renumbered 146.38 (1) (b) (intro.) and amended to read:

146.38 (1) (b) (intro.) "Health care provider" includes an ambulance service provider, as defined in s. 256.01 (3), an emergency medical technician, as defined in s. 256.01 (5), and a first responder, as defined in s. 256.01 (9). means any of the following:

**SECTION 2.** 146.38 (1) (b) 1. of the statutes is created to read:

146.38 (1) (b) 1. A person specified in s. 146.81 (1) (a) to (hp), (r), or (s).

**SECTION 3.** 146.38 (1) (b) 2. of the statutes is created to read:

146.38 (1) (b) 2. A facility, association, or business entity, as specified in s. 146.81 (1) (i) to (q).

**SECTION 4.** 146.38 (1) (b) 3. of the statutes is created to read:

146.38 (1) (b) 3. A person working under the supervision of or in collaboration with a person specified in subd. 1.

**SECTION 5.** 146.38 (1) (b) 4. of the statutes is created to read:

146.38 (1) (b) 4. A parent, subsidiary, or affiliate organization of a facility, association, or business entity, as specified in subd. 2.

**SECTION 6.** 146.38 (1) (bm) of the statutes is created to read:

146.38 (1) (bm) "Incident or occurrence report" means a written or oral statement that is made to notify a person, organization, or an evaluator who reviews or evaluates the services of health care providers or charges for such services of an incident, practice, or other situa-

\* Section 991.11, WISCONSIN STATUTES 2009-10: Effective date of acts. "Every act and every portion of an act enacted by the legislature over the governor's partial veto which does not expressly prescribe the time when it takes effect shall take effect on the day after its date of publication as designated" by the secretary of state [the date of publication may not be more than 10 working days after the date of enactment].

## 2011 Wisconsin Act 2

tion that becomes the subject of such a review or evaluation.

**SECTION 7.** 146.38 (1m) of the statutes is amended to read:

146.38 (1m) No person who participates in the review or evaluation of the services of health care providers ~~or facilities~~ or charges for such services may disclose an incident or occurrence report or any information acquired in connection with such review or evaluation except as provided in sub. (3) or (3m).

**SECTION 8.** 146.38 (2) of the statutes is amended to read:

146.38 (2) All persons, organizations, or evaluators reviewing or evaluating, whether from one or more entities, who review or evaluate the services of health care providers in order to help improve the quality of health care, to avoid improper utilization of the services of health care providers, or to determine the reasonable charges for such services shall keep a record of their investigations, inquiries, proceedings and conclusions. No such record may be released to any person under s. 804.10 (4) or otherwise except as provided in sub. (3) or (3m). No such record may be used in any civil or criminal action ~~for personal injuries~~ against the health care provider ~~or facility~~ or any other health care provider; however, except for incident or occurrence reports or records from other persons, organizations, or evaluators reviewing or evaluating health care providers, information, documents or records presented during the review or evaluation may not be construed as immune from discovery under s. 804.10 (4) or use in any civil or criminal action merely because they were so presented. Any person who testifies during or participates in the review or evaluation may testify in any civil or criminal action as to matters within his or her knowledge, but may not testify as to information obtained through his or her participation in the review or evaluation, nor as to any conclusion of such review or evaluation.

**SECTION 9.** 146.38 (2m) of the statutes is created to read:

146.38 (2m) An incident or occurrence report may not be used in any civil or criminal action against a health care provider.

**SECTION 10.** 146.38 (3) (intro.) of the statutes is amended to read:

146.38 (3) (intro.) Information acquired in connection with the review and evaluation of health care services shall be disclosed and records of such review and evaluation shall be released, with the identity of any patient whose treatment is reviewed being withheld ~~unless the patient has granted permission to disclose identity~~ except as permitted under s. 146.82, in the following circumstances:

**SECTION 11.** 146.38 (3) (a), (b) and (c) of the statutes are amended to read:

146.38 (3) (a) To the health care provider ~~or facility~~ whose services are being reviewed or evaluated, upon the request of such provider ~~or facility~~;

(b) To any person with the consent of the health care provider ~~or facility~~ whose services are being reviewed or evaluated;

(c) To the person requesting the review or evaluation, for use solely for the purpose of improving the quality of health care, avoiding the improper utilization of the services of health care providers ~~and facilities~~, and determining the reasonable charges for such services;

**SECTION 12.** 146.38 (3) (d) of the statutes is repealed.

**SECTION 13.** 146.38 (3) (e) of the statutes is repealed.

**SECTION 14.** 146.38 (3m) of the statutes is created to read:

146.38 (3m) (a) Information acquired in connection with the review and evaluation of health care services may be disclosed, and records of such review and evaluation may be released, in statistical form with the consent of the person authorizing or with the authority to authorize the review or evaluation. Information disclosed or records released under this subsection shall not reveal the identity of any patient except as permitted under s. 146.82.

(b) Information acquired in connection with the review or evaluation of health care services may be disclosed, and the records of such a review or evaluation released, to any of the following persons, with the consent of the person authorizing or with the authority to authorize the review or evaluation:

1. The employer of a health care provider, as defined in sub. (1) (b) 1. and 3.

2. The parent, subsidiary, or affiliate organization of a health care provider, as defined in sub. (1) (b) 2.

3. The parent, subsidiary, or affiliate organization of the employer of a health care provider, as defined in sub. (1) (b) 1. and 3.

**SECTION 15.** 146.38 (3t) of the statutes is created to read:

146.38 (3t) A record described under sub. (2) or an incident or occurrence report disclosed either under sub. (3) or (3m) or in violation of this section remains confidential and may not be used in any civil or criminal action against the health care provider or any other health care provider.

**SECTION 16.** 146.38 (6) of the statutes is created to read:

146.38 (6) Health care provider specific information acquired by an administrative agency in order to help improve the quality of health care, to avoid the improper utilization of services of health care providers, or to determine the reasonable charges for health care services is exempt from inspection, copying, or receipt under s. 19.35 (1).

**SECTION 17.** 153.05 (3m) of the statutes is created to read:

153.05 (3m) The entity under contract under sub. (2m) (a) may report quality indicators identifying individual hospitals based on data the entity collects under this subchapter.

**SECTION 18.** 230.85 (3) (b) of the statutes is amended to read:

230.85 (3) (b) If, after hearing, the division of equal rights finds that the respondent did not engage in or threaten a retaliatory action it shall order the complaint dismissed. The division of equal rights shall order the employee's appointing authority to insert a copy of the findings and orders into the employee's personnel file and, if the respondent is a natural person, order the respondent's appointing authority to insert such a copy into the respondent's personnel file. If the division of equal rights finds by unanimous vote that the employee filed a frivolous complaint it may order payment of the respondent's reasonable actual attorney fees and actual costs. Payment may be assessed against either the employee or the employee's attorney, or assessed so that the employee and the employee's attorney each pay a portion. To find a complaint frivolous the division of equal rights must find that s. 802.05 (2) or 895.044 has been violated.

**SECTION 19.** 802.10 (7) of the statutes is amended to read:

802.10 (7) SANCTIONS. Violations of a scheduling or pretrial order are subject to ss. 802.05, 804.12 ~~and~~, 805.03, ~~and~~ 895.044.

**SECTION 20.** 809.103 (2) (a) of the statutes is amended to read:

809.103 (2) (a) Is frivolous, as determined under s. 802.05 (2) or 895.044.

**SECTION 21.** 814.04 (intro.) of the statutes is amended to read:

**814.04 Items of costs.** (intro.) Except as provided in ss. 93.20, 100.195 (5m) (b), 100.30 (5m), 106.50 (6) (i) and (6m) (a), 111.397 (2) (a), 115.80 (9), 281.36 (2) (b) 1., 767.553 (4) (d), 769.313, 802.05, 814.245, 895.035 (4), 895.044, 895.443 (3), 895.444 (2), 895.445 (3), 895.446 (3), 895.506, 943.212 (2) (b), 943.245 (2) (d), 943.51 (2) (b), and 995.10 (3), when allowed costs shall be as follows:

**SECTION 22.** 814.29 (3) (a) of the statutes is amended to read:

814.29 (3) (a) A request for leave to commence or defend an action, proceeding, writ of error or appeal without being required to pay fees or costs or to give security for costs constitutes consent of the affiant and counsel for the affiant that if the judgment is in favor of the affiant the court may order the opposing party to first pay the amount of unpaid fees and costs, including attorney fees under ss. 802.05 ~~and~~, 804.12 (1) (c), and 895.044

and under 42 USC 1988 and to pay the balance to the plaintiff.

**SECTION 23.** 893.555 of the statutes is created to read:

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

(a) "Long-term care provider" means any of the following:

1. An adult family home, as defined in s. 50.01 (1).
2. A residential care apartment complex, as defined in s. 50.01 (1d).
3. A community-based residential facility, as defined in s. 50.01 (1g).
4. A home health agency, as defined in s. 50.01 (1r).
5. A nursing home, as defined in s. 50.01 (3).
6. A hospice, as defined in s. 50.90 (1).

(b) "Noneconomic damages" has the meaning given in s. 893.55 (4) (a).

(2) Except as provided in sub. (3), an action to recover damages for injury arising from any treatment or operation performed by, or from any omission by, a long-term care provider, regardless of the theory on which the action is based, shall be commenced within the later of:

(a) Three years from the date of the injury.

(b) One year from the date the injury was discovered or, in the exercise of reasonable diligence should have been discovered, except that an action may not be commenced under this paragraph more than 5 years from the date of the act or omission.

(3) If a long-term care provider conceals from a patient a prior act or omission of the provider that has resulted in injury to the patient, an action shall be commenced within one year from the date the patient discovers the concealment or, in the exercise of reasonable diligence, should have discovered the concealment or within the time limitation provided by sub. (2), whichever is later.

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

(5) A court in an action tried without a jury shall make a finding as to noneconomic damages without regard to the limit under s. 893.55 (4) (d). If noneconomic damages in excess of the limit are found, the court shall make any reduction required under s. 895.045 and shall award as noneconomic damages the lesser of the reduced

amount or the limit. If an action is before a jury, the jury shall make a finding as to noneconomic damages without regard to the limit under s. 893.55 (4) (d). If the jury finds that noneconomic damages exceed the limit, the jury shall make any reduction required under s. 895.045 and the court shall award as noneconomic damages the lesser of the reduced amount or the limit.

(6) Notwithstanding the limits on noneconomic damages under this section, damages recoverable against a long-term care provider, and an employee of a long-term care provider acting within the scope of his or her employment and providing long-term care services, for wrongful death are subject to the limit under s. 895.04 (4). If damages in excess of the limit under s. 895.04 (4) are found, the court shall make any reduction required under s. 895.045 and shall award the lesser of the reduced amount or the limit under s. 895.04 (4).

(7) Damages recoverable under this section against a long-term care provider, and an employee of a long-term care provider acting within the scope of his or her employment and providing long-term care services, are subject to the provisions of s. 895.045.

(8) Evidence of any compensation for bodily injury received from sources other than the defendant to compensate the claimant for the injury is admissible in an action to recover damages for negligence by a long-term care provider. This section does not limit the substantive or procedural rights of persons who have claims based upon subrogation.

**SECTION 23m.** 895.043 (6) of the statutes is created to read:

895.043 (6) **LIMITATION ON DAMAGES.** Punitive damages received by the plaintiff may not exceed twice the amount of any compensatory damages recovered by the plaintiff or \$200,000, whichever is greater. This subsection does not apply to a plaintiff seeking punitive damages from a defendant whose actions under sub. (3) included the operation of a vehicle, including a motor vehicle as defined under s. 340.01 (35), a snowmobile as defined under s. 340.01 (58a), an all-terrain vehicle as defined under s. 340.01 (2g), and a boat as defined under 30.50 (2), while under the influence of an intoxicant to a degree that rendered the defendant incapable of safe operation of the vehicle. In this subsection, "intoxicant" has the meaning given in s. 30.50 (4e).

**SECTION 28.** 895.044 of the statutes is created to read:

**895.044 Damages for maintaining certain claims and counterclaims.** (1) A party or a party's attorney may be liable for costs and fees under this section for commencing, using, or continuing an action, special proceeding, counterclaim, defense, cross complaint, or appeal to which any of the following applies:

(a) The action, special proceeding, counterclaim, defense, cross complaint, or appeal was commenced, used, or continued in bad faith, solely for purposes of harassing or maliciously injuring another.

(b) The party or the party's attorney knew, or should have known, that the action, special proceeding, counterclaim, defense, cross complaint, or appeal was without any reasonable basis in law or equity and could not be supported by a good faith argument for an extension, modification, or reversal of existing law.

(2) Upon either party's motion made at any time during the proceeding or upon judgment, if a court finds, upon clear and convincing evidence, that sub. (1) (a) or (b) applies to an action or special proceeding commenced or continued by a plaintiff or a counterclaim, defense, or cross complaint commenced, used, or continued by a defendant, the court:

(a) May, if the party served with the motion withdraws, or appropriately corrects, the action, special proceeding, counterclaim, defense, or cross complaint within 21 days after service of the motion, or within such other period as the court may prescribe, award to the party making the motion, as damages, the actual costs incurred by the party as a result of the action, special proceeding, counterclaim, defense, or cross complaint, including the actual reasonable attorney fees the party incurred, including fees incurred in any dispute over the application of this section. In determining whether to award, and the appropriate amount of, damages under this paragraph, the court shall take into consideration the timely withdrawal or correction made by the party served with the motion.

(b) Shall, if a withdrawal or correction under par. (a) is not timely made, award to the party making the motion, as damages, the actual costs incurred by the party as a result of the action, special proceeding, counterclaim, defense, or cross complaint, including the actual reasonable attorney fees the party incurred, including fees incurred in any dispute over the application of this section.

(3) If a party makes a motion under sub. (2), a copy of that motion and a notice of the date of the hearing on that motion shall be served on any party who is not represented by counsel only by personal service or by sending the motion to the party by registered mail.

(4) If an award under this section is affirmed upon appeal, the appellate court shall, upon completion of the appeal, remand the action to the trial court to award damages to compensate the successful party for the actual reasonable attorney fees the party incurred in the appeal.

(5) If the appellate court finds that sub. (1) (a) or (b) applies to an appeal, the appellate court shall, upon completion of the appeal, remand the action to the trial court to award damages to compensate the successful party for all the actual reasonable attorney fees the party incurred in the appeal. An appeal is subject to this subsection in its entirety if any element necessary to succeed on the appeal is supported solely by an argument that is described under sub. (1) (a) or (b).

(6) The costs and fees awarded under subs. (2), (4), and (5) may be assessed fully against the party bringing the action, special proceeding, cross complaint, defense, counterclaim, or appeal or the attorney representing the party, or both, jointly and severally, or may be assessed so that the party and the attorney each pay a portion of the costs and fees.

(7) This section does not apply to criminal actions or civil forfeiture actions. Subsection (5) does not apply to appeals under s. 809.107, 809.30, or 974.05 or to appeals of criminal or civil forfeiture actions.

**SECTION 29.** 895.045 (3) of the statutes is created to read:

895.045 (3) **PRODUCT LIABILITY.** (a) In an action by any person to recover damages for injuries caused by a defective product based on a claim of strict liability, the fact finder shall first determine if the injured party has the right to recover damages. To do so, the fact finder shall determine what percentage of the total causal responsibility for the injury resulted from the contributory negligence of the injured person, what percentage resulted from the defective condition of the product, and what percentage resulted from the contributory negligence of any other person.

(b) If the injured party's percentage of total causal responsibility for the injury is greater than the percentage resulting from the defective condition of the product, the injured party may not, based on the defect in the product, recover damages from the manufacturer, distributor, seller, or any other person responsible for placing the product in the stream of commerce.

(c) If the injured party's percentage of total causal responsibility for the injury is equal to or less than the percentage resulting from the defective condition of the product, the injured party may recover but the damages recovered by the injured party shall be diminished by the percentage attributed to that injured party.

(d) If multiple defendants are alleged to be responsible for the defective condition of the product, and the injured party is not barred from recovery under par. (b), the fact finder shall determine the percentage of causal responsibility of each product defendant for the defective condition of the product. The judge shall then multiply that percentage of causal responsibility of each product defendant for the defective condition of the product by the percentage of causal responsibility for the injury to the person attributed to the defective product. The result of that multiplication is the individual product defendant's percentage of responsibility for the damages to the injured party. A product defendant whose responsibility for the damages to the injured party is 51 percent or more of the total responsibility for the damages to the injured party is jointly and severally liable for all of the damages to the injured party. The responsibility of a product defendant whose responsibility for the damages to the injured party is less than 51 percent of the total responsi-

bility for the damages to the injured party is limited to that product defendant's percentage of responsibility for the damages to the injured party.

(e) If the injured party is not barred from recovery under par. (b), the fact that the injured party's causal responsibility for the injury is greater than an individual product defendant's responsibility for the damages to the injured party does not bar the injured party from recovering from that individual product defendant.

(f) This subsection does not apply to actions based on negligence or a breach of warranty.

**SECTION 30.** 895.046 of the statutes is created to read:

**895.046 Remedies against manufacturers, distributors, sellers, and promoters of products. (1) DEFINITIONS.** In this section:

(a) "Claimant" means a person seeking damages or other relief for injury or harm to a person or property caused by or arising from a product, or a person on whose behalf a claim for such damages or other relief is asserted.

(b) "Relevant production period" means the time period during which the specific product that allegedly caused a claimant's injury or harm was manufactured, distributed, sold, or promoted.

(2) **APPLICABILITY.** This section applies to all actions in law or equity in which a claimant alleges that the manufacturer, distributor, seller, or promoter of a product is liable for an injury or harm to a person or property, including actions based on allegations that the design, manufacture, distribution, sale, or promotion of, or instructions or warnings about, a product caused or contributed to a personal injury or harm to a person or property, a private nuisance, or a public nuisance, and to all related or independent claims, including unjust enrichment, restitution, or indemnification.

(3) **REMEDY WITH SPECIFIC PRODUCT IDENTIFICATION.** Except as provided in sub. (4), the manufacturer, distributor, seller, or promoter of a product may be held liable in an action under sub. (2) only if the claimant proves, in addition to any other elements required to prove his or her claim, that the manufacturer, distributor, seller, or promoter of a product manufactured, distributed, sold, or promoted the specific product alleged to have caused the claimant's injury or harm.

(4) **REMEDY WITHOUT SPECIFIC PRODUCT IDENTIFICATION.** Subject to sub. (5), if a claimant cannot meet the burden of proof under sub. (3), the manufacturer, distributor, seller, or promoter of a product may be held liable for an action under sub. (2) only if all of the following apply:

(a) The claimant proves all of the following:

1. That no other lawful process exists for the claimant to seek any redress from any other person for the injury or harm.

2. That the claimant has suffered an injury or harm that can be caused only by a manufactured product chem-

ically and physically identical to the specific product that allegedly caused the claimant's injury or harm.

3. That the manufacturer, distributor, seller, or promoter of a product manufactured, distributed, sold, or promoted a complete integrated product, in the form used by the claimant or to which the claimant was exposed, and that meets all of the following criteria:

a. Is chemically and physically identical to the specific product that allegedly caused the claimant's injury or harm.

b. Was manufactured, distributed, sold, or promoted in the geographic market where the injury or harm is alleged to have occurred during the time period in which the specific product that allegedly caused the claimant's injury or harm was manufactured, distributed, sold, or promoted.

c. Was distributed or sold without labeling or any distinctive characteristic that identified the manufacturer, distributor, seller, or promoter.

(b) The action names, as defendants, those manufacturers of a product who collectively manufactured at least 80 percent of all products sold in this state during the relevant production period by all manufacturers of the product in existence during the relevant production period that are chemically identical to the specific product that allegedly caused the claimant's injury or harm.

(5) **LIMITATION ON LIABILITY.** No manufacturer, distributor, seller, or promoter of a product is liable under sub. (4) if more than 25 years have passed between the date that the manufacturer, distributor, seller, or promoter of a product last manufactured, distributed, sold, or promoted the specific product chemically identical to the specific product that allegedly caused the claimant's injury and the date that the claimant's cause of action accrued.

(6) **APPORTIONMENT OF LIABILITY.** If more than one manufacturer, distributor, seller, or promoter of a product is found liable for the claimant's injury or harm under subs. (4) and (5), the court shall apportion liability among those manufacturers, distributors, sellers, and promoters, but that liability shall be several and not joint.

**SECTION 31.** 895.047 of the statutes is created to read:

**895.047 Product liability.** (1) **LIABILITY OF MANUFACTURER.** In an action for damages caused by a manufactured product based on a claim of strict liability, a manufacturer is liable to a claimant if the claimant establishes all of the following by a preponderance of the evidence:

(a) That the product is defective because it contains a manufacturing defect, is defective in design, or is defective because of inadequate instructions or warnings. A product contains a manufacturing defect if the product departs from its intended design even though all possible care was exercised in the manufacture of the product. A product is defective in design if the foreseeable risks of harm posed by the product could have been reduced or

avoided by the adoption of a reasonable alternative design by the manufacturer and the omission of the alternative design renders the product not reasonably safe. A product is defective because of inadequate instructions or warnings only if the foreseeable risks of harm posed by the product could have been reduced or avoided by the provision of reasonable instructions or warnings by the manufacturer and the omission of the instructions or warnings renders the product not reasonably safe.

(b) That the defective condition rendered the product unreasonably dangerous to persons or property.

(c) That the defective condition existed at the time the product left the control of the manufacturer.

(d) That the product reached the user or consumer without substantial change in the condition in which it was sold.

(e) That the defective condition was a cause of the claimant's damages.

(2) **LIABILITY OF SELLER OR DISTRIBUTOR.** (a) A seller or distributor of a product is not liable based on a claim of strict liability to a claimant unless the manufacturer would be liable under sub. (1) and any of the following applies:

1. The claimant proves by a preponderance of the evidence that the seller or distributor has contractually assumed one of the manufacturer's duties to manufacture, design, or provide warnings or instructions with respect to the product.

2. The claimant proves by a preponderance of the evidence that neither the manufacturer nor its insurer is subject to service of process within this state.

3. A court determines that the claimant would be unable to enforce a judgment against the manufacturer or its insurer.

(b) The court shall dismiss a product seller or distributor as a defendant based on par. (a) 2. if the manufacturer or its insurer submits itself to the jurisdiction of the court in which the suit is pending.

(3) **DEFENSES.** (a) If the defendant proves by clear and convincing evidence that at the time of the injury the claimant was under the influence of any controlled substance or controlled substance analog to the extent prohibited under s. 346.63 (1) (a), or had an alcohol concentration, as defined in s. 340.01 (1v), of 0.08 or more, there shall be a rebuttable presumption that the claimant's intoxication or drug use was the cause of his or her injury.

(b) Evidence that the product, at the time of sale, complied in material respects with relevant standards, conditions, or specifications adopted or approved by a federal or state law or agency shall create a rebuttable presumption that the product is not defective.

(c) The damages for which a manufacturer, seller, or distributor would otherwise be liable shall be reduced by the percentage of causal responsibility for the claimant's harm attributable to the claimant's misuse, alteration, or modification of the product.

(d) The court shall dismiss the claimant's action under this section if the damage was caused by an inherent characteristic of the product that would be recognized by an ordinary person with ordinary knowledge common to the community that uses or consumes the product.

(e) A seller or distributor of a product is not liable to a claimant for damages if the seller or distributor receives the product in a sealed container and has no reasonable opportunity to test or inspect the product. This paragraph does not apply if the seller or distributor may be liable under sub. (2) (a) 2. or 3.

(4) **SUBSEQUENT REMEDIAL MEASURES.** In an action for damages caused by a manufactured product based on a claim of strict liability, evidence of remedial measures taken subsequent to the sale of the product is not admissible for the purpose of showing a manufacturing defect in the product, a defect in the design of the product, or a need for a warning or instruction. This subsection does not prohibit the admission of such evidence to show a reasonable alternative design that existed at the time when the product was sold.

(5) **TIME LIMIT.** In any action under this section, a defendant is not liable to a claimant for damages if the product alleged to have caused the damage was manufactured 15 years or more before the claim accrues, unless the manufacturer makes a specific representation that the product will last for a period beyond 15 years. This subsection does not apply to an action based on a claim for damages caused by a latent disease.

(6) **INAPPLICABILITY.** This section does not apply to actions based on a claim of negligence or breach of warranty.

**SECTION 32.** 904.16 of the statutes is created to read:

**904.16 Health care reports.** (1) In this section:

(a) "Health care provider" has the meaning given in s. 146.38 (1) (b).

(b) "Regulatory agency" means the department of regulation and licensing or the division within the department of health services that conducts quality assurance activities related to health care providers.

(2) Except as provided in sub. (3), the following may not be used as evidence in a civil or criminal action brought against a health care provider:

(a) Reports that a regulatory agency requires a health care provider to give or disclose to that regulatory agency.

(b) Statements of, or records of interviews with, employees of a health care provider related to the regulation of the health care provider obtained by a regulatory agency.

(3) This section does not prohibit the use of the reports, statements, and records described in sub. (2) in any administrative proceeding conducted by a regulatory agency. This section does not apply to reports protected under s. 146.997.

**SECTION 33.** 907.01 of the statutes is renumbered 907.01 (intro.) and amended to read:

**907.01 Opinion testimony by lay witnesses.** (intro.) If the witness is not testifying as an expert, the witness's testimony in the form of opinions or inferences is limited to those opinions or inferences which are ~~rati~~rationally all of the following:

(1) Rationally based on the perception of the witness ~~and helpful.~~

(2) Helpful to a clear understanding of the witness's testimony or the determination of a fact in issue.

**SECTION 34.** 907.01 (3) of the statutes is created to read:

907.01 (3) Not based on scientific, technical, or other specialized knowledge within the scope of a witness under s. 907.02 (1).

**SECTION 34m.** 907.02 of the statutes is renumbered 907.02 (1) and amended to read:

907.02 (1) If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise, if the testimony is based upon sufficient facts or data, the testimony is the product of reliable principles and methods, and the witness has applied the principles and methods reliably to the facts of the case.

**SECTION 37.** 907.02 (2) of the statutes is created to read:

907.02 (2) Notwithstanding sub. (1), the testimony of an expert witness may not be admitted if the expert witness is entitled to receive any compensation contingent on the outcome of any claim or case with respect to which the testimony is being offered.

**SECTION 38.** 907.03 of the statutes is amended to read:

**907.03 Bases of opinion testimony by experts.** The facts or data in the particular case upon which an expert bases an opinion or inference may be those perceived by or made known to the expert at or before the hearing. If of a type reasonably relied upon by experts in the particular field in forming opinions or inferences upon the subject, the facts or data need not be admissible in evidence in order for the opinion or inference to be admitted. Facts or data that are otherwise inadmissible may not be disclosed to the jury by the proponent of the opinion or inference unless the court determines that their probative value in assisting the jury to evaluate the expert's opinion or inference substantially outweighs their prejudicial effect.

**SECTION 39.** 940.08 (1) of the statutes is amended to read:

940.08 (1) Whoever ~~Except as provided in sub. (3), whoever~~ causes the death of another human being by the

negligent operation or handling of a dangerous weapon, explosives or fire is guilty of a Class G felony.

**SECTION 40.** 940.08 (3) of the statutes is created to read:

940.08 (3) Subsection (1) does not apply to a health care provider acting within the scope of his or her practice or employment.

**SECTION 41.** 940.24 (1) of the statutes is amended to read:

940.24 (1) ~~Whoever~~ Except as provided in sub. (3), whoever causes bodily harm to another by the negligent operation or handling of a dangerous weapon, explosives or fire is guilty of a Class I felony.

**SECTION 42.** 940.24 (3) of the statutes is created to read:

940.24 (3) Subsection (1) does not apply to a health care provider acting within the scope of his or her practice or employment.

**SECTION 43.** 940.295 (3) (a) 3. of the statutes is amended to read:

940.295 (3) (a) 3. ~~Abuses~~ Except as provided in par. (am), abuses, with negligence, or neglects a patient or a resident.

**SECTION 44.** 940.295 (3) (am) of the statutes is created to read:

940.295 (3) (am) Paragraph (a) 3. does not apply to a health care provider acting in the scope of his or her practice or employment who commits an act or omission of mere inefficiency, unsatisfactory conduct, or failure in good performance as the result of inability, incapacity,

inadvertency, ordinary negligence, or good faith error in judgment or discretion.

**SECTION 45. Initial applicability.**

(1) CRIMES. The treatment of sections 940.08 (1) and (3), 940.24 (1) and (3), and 940.295 (3) (a) 3. and (am) of the statutes first applies to acts or omissions committed on the effective date of this subsection.

(2) DISCLOSURE AND RELEASE OF RECORDS OR INFORMATION. The treatment of section 146.38 (1m), (2), (3) (d) and (e), and (3m) of the statutes first applies to disclosures or releases occurring on the effective date of this subsection.

(3) USE OF RECORDS OR INFORMATION. The treatment of section 146.38 (2) and (2m) of the statutes first applies to use of records or information on the effective date of this subsection.

(4) EVIDENCE. The treatment of section 904.16 of the statutes first applies to health care provider reports received, and statements of, or records of interviews with, employees of a health care provider obtained, on the effective date of this subsection.

(5) CIVIL ACTIONS. The treatment of sections 230.85 (3) (b), 802.10 (7), 809.103 (2) (a), 814.04 (intro.), 814.29 (3) (a), 895.043 (6), 895.044, 895.045 (3), 895.046, 895.047, and 907.03 of the statutes, the renumbering and amendment of sections 907.01 and 907.02 of the statutes, and the creation of sections 907.01 (3) and 907.02 (2) of the statutes first apply to actions or special proceedings that are commenced on the effective date of this subsection.