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Promoting Fairness and Equity in Wisconsin's Civil Justice System

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TO: Members, Assembly Committee on Corrections and Courts
FROM: Andrew Cook, on behalf of the Wisconsin Civil Justice Council, Inc.
DATE: January 21, 2010
RE: Opposition to Assembly Bill 480

The Wisconsin Civil Justice Council, Inc. (WCJC) was formed in early 2009 to represent Wisconsin business and other interests on emerging civil litigation challenges before the Legislature. The WCJC consists of a broad coalition of groups whose primary goal is to achieve fairness and equity, reduce costs, and enhance Wisconsin's image as a place to live and work.

Although WCJC does not dispute the well intended motives behind the introduction of Assembly Bill 480, WCJC opposes AB 480 for the reasons explained below.

“Gender-based Act” Definition is Vague and the Bill Allows Damages for More than Just Violence Motivated by Gender

The purpose of AB 480 ostensibly is to add a private cause of action for “acts of violence motivated by gender.” However, AB 480 goes well beyond simply adding a new civil cause of action for *violence* motivated by gender. The legislation’s vague definition of “gender-based act” allows a lawsuit to be filed if either of the following occurs:

1. An act that is committed, at least in part, on the basis of the victim’s gender.
2. A physical intrusion or invasion of a sexual nature that the actor commits under coercive conditions

The first provision would allow any “act” that is committed, “at least in part, on the basis of the victim’s gender.” This extremely vague definition goes well beyond allowing a private cause of action for violence motivated by gender and will likely lead to more lawsuits where no violence actually occurred.

Statute of Limitations is Substantially Longer than other Tort Statute of Limitations

Statutes of limitations are essentially a legal countdown that begins when someone is injured. When the time period expires, a claim may no longer be brought. As explained in greater detail below, WCJC has concerns with the bill’s inordinately long statute of limitations.

Public Policy Behind Statute of Limitations

Statutes of limitations are important because some period is needed to balance an individual’s ability to bring a lawsuit with the ability to mount a fair defense and to protect courts from stale or fraudulent claims. As time passes, witnesses become difficult to locate or pass away, records are lost or discarded, and memories fade. Without statutes of limitations, litigation can become a “he said-she said” situation.

When setting statute of limitations, lawmakers must strike a difficult balance. On the one hand, potential plaintiffs should have an adequate opportunity to bring a claim. On the other, defendants and the courts must be protected from having to deal with cases in which the search for the truth may be seriously impaired by the loss of evidence, witnesses, and fading of memories. By striking this balance, statutes of limitations promote justice, discourage unnecessary delay, and preclude the prosecution of stale or fraudulent claims. These laws are essential to a fair and well-ordered civil justice system. The possibility of an unfair trial is heightened when heart-wrenching allegations are involved.

In addition, statutes of limitations provide predictability and certainty to the business community as well as nonprofit organizations. It allows them to accurately gauge their potential liability and make financial and insurance coverage decisions accordingly.

Statute of Limitations for Similar Torts

In Wisconsin, personal injury and wrongful death claims must generally be brought within three years. Wis. Stat. § 893.53. Medical malpractice claims must be brought within three years of the date of injury or one year from discovery of the injury, but not more than five years from the date of the act. Wis. Stat. § 893.55 (1m). The statute of limitations for claims involving intentional torts, such as libel, slander, assault, battery, and invasion of privacy, is two years. Wis. Stat. § 893.57. (Note: Senate Bill 182, which just recently passed both the Senate and Assembly, amends current law by changing the statute of limitations for intentional torts from two to three years. Barring an unexpected veto by the Governor, the statute of limitations for intentional torts will be three years.)

Unlike existing statutes of limitations – which range from two to five years – AB 480 would allow a claim to be brought within seven years after the cause of action accrues. As noted above, current law already provides a cause action for assault, which statute of limitations’ is two years (soon to be three years if it is an intentional tort).

Thus, it is not clear why an extended statute of limitations of seven years is necessary for this tort.

Assembly Bill 480 Unnecessarily Adds New Cause of Action and Unjustly Shifts Fees to Defendants

Existing case law already allows a plaintiff to bring a private cause of action for assault, battery, and for intentional infliction of emotional distress. Each of these causes of action could be used in circumstances where the abusive behavior was gender-based. Also, depending on the circumstances, a plaintiff bringing an existing common law cause of action may seek emotional distress or punitive damages.

Moreover, Wisconsin’s Fair Employment Law currently allows employees to sue an employer for workplace discrimination. Last year, the Wisconsin Legislature amended the WFEL when it enacted 2009 Wisconsin Act 20. The new law expanded the WFEL by adding punitive and compensatory damages. These damages are in addition to existing remedies under the WFEL, such as back pay, attorney fees, and court costs.

Assembly Bill 480 also unfairly shifts fees in favor of plaintiffs, but never in favor of the defendant if he or she is wrongly accused. This fee-shifting mechanism will have the unintended consequence of wrongly accused defendants having to pay exorbitant attorney fee and litigation costs, yet not be able to recover those costs.

Conclusion

Clearly there is no place in society for violence against another person based on his or her gender. However, as explained above, existing common and statutory laws provide sufficient remedies. Based on the foregoing, WCJC respectfully opposes AB 480.