



**Wisconsin Institute of  
Certified Public Accountants**

March 23, 2009

To: Joint Finance Committee Co- Chairs, Senator Mark Miller and Rep. Mark Pocan and Members of the Joint Finance Committee

From: Dennis. F. Tomorsky, CPA, JD & CEO, Wisconsin Institute of Certified Public Accountants.

Re: Strong opposition to inclusion of proposed changes to Joint and Several Liability laws contained in Assembly Bill 75

On behalf of the Wisconsin Institute of Certified Public Accountants representing the interests of more than 7,800 members and nearly 11,000 licensed CPAs working in the state of Wisconsin, this written testimony expresses strong opposition to a provision contained in the Governor's budget bill on page 1605, section 895.045 (1). The proposed change to Wisconsin joint and several liability laws contained in the budget bill provides that a party could be liable for 100% of damages even if they were only one percent at fault.

Joint-and-several liability is an unfair concept that lumps together all defendants, those most responsible and those least responsible, and holds them each financially accountable for 100% of the damage caused by others. If you pass this joint and several liability language and make it law, a CPA could be forced to pay 100% of damages for a claim, even if they are only partially or minimally responsible. A fair and equitable justice system would dictate that if an individual or business is 25% at fault, they should be liable for 25% of the damages – not for 100% simply because they are perceived as having deep pockets due to their insurance or successful business operations.

Besides threatening the viability of accounting firms, joint and several liability will ultimately harm investors by restricting existing and potential audit services and by deterring qualified individuals from serving on corporate boards. Fewer CPAs will provide these services due to prohibitively expensive insurance costs, and those that continue to provide the services will be forced to significantly increase their fees to cover their insurance and higher personal risk of liability for others' negligence.

This proposed law change guts a carefully considered 1995 law that clarified that a defendant could only be fully liable for all damages if he or she is **51 percent or more at fault**. Proportionate liability is fair and forces plaintiffs' attorneys to focus on cases with merit rather than create new incentives to sue anybody with money in the hope that someone with one-percent negligence will be found liable.

This budget provision would give Wisconsin the dubious distinction of having one of the most expansive joint and several liability laws in the Midwest. Even our neighboring states moved away from the liability exposure being proposed in this budget bill. By the time Minnesota changed its joint and several liability law in 2003, 37 states had abolished joint and several liability or had a higher threshold of fault before a defendant was required to pay 100% of the damages. Iowa, South Dakota and Wisconsin adopted a 51%

fault threshold, while Michigan and North Dakota abolished joint and several liability altogether, except in certain limited cases.

The proposed change in joint and several liability also deliberately creates new victims. It will force a party who is minimally at fault, to be responsible for 100 percent of damages simply because the person most at fault does not have sufficient funds to pay the victim. It will unfairly levy disproportionate punishment on businesses perceived as having "deep pocket" and it will promote "market incentives" for plaintiffs' lawyers to pursue cases "without regard to the merits of the underlying claims."

According to the American Institute of Certified Public Accountants, the accounting profession as a whole faces thousands of lawsuits where billions of dollars in damages are claimed, far exceeding accountants' proportionate share of responsibility. These costs are staggering.

National figures bear this out. In 1991, the six largest firms spent \$477 million on legal matters--9% of their domestic auditing and accounting revenues and an 18% increase over 1990 litigation costs. Litigation claims against other firms rose by two-thirds between 1987 and 1991; 40% went "bare," without liability insurance, in light of the cost of such insurance. In 1993, the then Big 6 firms reported to the SEC some \$30 billion in claims. The costs of insurance, judgments, settlements and legal fees averaged \$100 million per firm, or almost 11% of the firms' accounting and auditing revenues.

Another victim, already over burdened, will be Wisconsin taxpayers. The taxpayers will pay the price for frivolous lawsuits brought against school boards, municipalities and state government in the form of higher taxes and reduced services. Local governments are often named in lawsuits simply because they are perceived as "deep pockets."

The 'threat' of 100% liability is especially egregious when applied to auditors, as they are not responsible for the actions that have resulted in the litigation. An audit is an opinion on the fairness with which financial statements, produced by the company management, present the company's financial position and results of operations. The auditor is not responsible for preparing those statements-- that is the sole responsibility of management. Additionally, an auditor is not responsible for the innumerable daily decisions of management that determine the success or failure of a company. Yet, an auditor under this budget language -- could be 100% liable for the wrongdoing of others.

On behalf of the nearly 11,000 licensed CPAs in Wisconsin, the businesses we serve and the clients we advise, I urge you to remove the joint and several liability provisions from the budget bill.

Current law is fair and it works. Current law apportions fault between or among parties and sets the level of damages as a result of the injury. Thank you in advance for your consideration.

Copy: Governor James Doyle & Wisconsin Legislature