

State of Wisconsin



1995 Assembly Bill 36

Date of enactment: **May 10, 1995**
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1995 WISCONSIN ACT 10

AN ACT *to amend* 20.145 (2) (v), 655.015, 655.017, 655.27 (3) (c), 655.27 (5) (d), 893.55 (4) (b) and 893.55 (4) (d); and *to create* 20.145 (2) (q), 601.427 (9), 893.55 (4) (f), 893.55 (6) and 893.55 (7) of the statutes; **relating to:** limiting medical malpractice noneconomic damage awards, granting rule-making authority and making an appropriation.

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

SECTION 1. 20.145 (2) (q) of the statutes is created to read:

20.145 (2) (q) *Interest earned on future medical expenses.* From the patients compensation fund under s. 655.27, a sum sufficient equal to the interest earned by the patients compensation fund that is attributable to future medical expense payments held by the fund under s. 655.015, to be credited to individual claimants' future medical expense payments accounts as provided in s. 655.015, for the purpose of paying future medical expenses.

SECTION 2. 20.145 (2) (v) of the statutes is amended to read:

20.145 (2) (v) *Operations and benefits.* After deducting the amounts appropriated under pars. (q), (u) and (um), the balances of the moneys paid into the patients compensation fund under s. 655.27 (3) to carry out the responsibilities of the commissioner of insurance under s. 655.27, to make payments to the investment board under s. 20.536 and, ~~with respect to settlements, patients compensation panel awards and judgments entered into or rendered before June 14, 1986,~~ to pay future medical expenses under s. 655.015.

SECTION 3. 601.427 (9) of the statutes is created to read:

601.427 (9) **COMMISSIONER'S REPORT.** Within 2 years after the effective date of this subsection [revisor inserts date], and within 2 years thereafter, the commissioner shall submit a report to the legislature in the manner provided under s. 13.172 (2). The reports shall compare the data for the year before the effective date of this subsection [revisor inserts date], with the data for the years after the effective date of this subsection [revisor inserts date], to evaluate the effects that 1995 Wisconsin Act (this act) has had on the following:

(a) The number of health care providers practicing in Wisconsin.

(b) The fees that health care providers pay under s. 655.27 (3).

(c) The premiums that health care providers pay for health care liability insurance.

SECTION 4. 655.015 of the statutes is amended to read:

655.015 Future medical expenses. If a settlement, panel award or judgment under this chapter entered into or rendered before June 14, 1986, resulting from an act or omission that occurred on or after the effective date of this section [revisor inserts date], provides for future medical expense payments in excess of \$25,000

* Section 991.11, WISCONSIN STATUTES 1993-94: 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].

\$100,000, that portion of future medical expense payments in excess of \$25,000 an amount equal to \$100,000 plus an amount sufficient to pay the costs of collection attributable to the future medical expense payments, including attorney fees reduced to present value, shall be paid into the fund. The commissioner shall develop by rule a system for managing and disbursing those moneys through payments for these expenses, which shall include a provision for the creation of a separate accounting for each claimant's payments and for crediting each claimant's account with a proportionate share of any interest earned by the fund, based on that account's proportionate share of the fund. The commissioner shall promulgate a rule specifying the criteria that shall be used to determine the medical expenses related to the settlement or judgment, taking into consideration developments in the provision of health care. The payments shall be made under the system until either the amount account is exhausted or the patient dies.

SECTION 5. 655.017 of the statutes is amended to read:

655.017 Limitation on noneconomic damages.

The amount of noneconomic damages recoverable by a claimant or plaintiff under this chapter for acts or omissions of a health care provider if the action is filed act or omission occurs on or after June 14, 1986 and before January 1, 1991 the effective date of this section [revisor inserts date], and for acts or omissions of an employe of a health care provider, acting within the scope of his or her employment and providing health care services, for actions filed acts or omissions occurring on or after June 14, 1986 and before January 1, 1991 the effective date of this section [revisor inserts date], is subject to the limit limits under s. 893.55 (4) (d) and (f).

SECTION 6. 655.27 (3) (c) of the statutes is amended to read:

655.27 (3) (c) *Collection and deposit of fees.* Fees under pars. (a) and (b) and future medical expense payments specified for the fund by a settlement, panel award or judgment entered into or rendered before June 14, 1986, under s. 655.015 shall be collected by the commissioner for deposit into the fund in a manner prescribed by the commissioner by rule.

SECTION 7. 655.27 (5) (d) of the statutes is amended to read:

655.27 (5) (d) A person who has recovered a final judgment or a settlement approved by the board of governors against a health care provider, or an employe of a health care provider, that has coverage under the fund may file a claim with the board of governors to recover that portion of such judgment or settlement which is in excess of the limits in s. 655.23 (4) or the maximum liability limit for which the health care provider is insured, whichever limit is greater. In the event the fund incurs liability for future payments exceeding \$1,000,000 to any person under a single claim as the result of a settlement,

panel award or judgment that is entered into or rendered under this chapter before June 14, 1986 for an act or omission that occurred on or after the effective date of this paragraph [revisor inserts date], the fund shall pay not more than, after deducting the reasonable costs of collection attributable to the remaining liability, including attorney fees reduced to present value, the full medical expenses each year, plus an amount not to exceed \$500,000 per year that will pay the remaining liability over the person's anticipated lifetime, or until the liability is paid in full. If the remaining liability is not paid before the person dies, the fund may pay the remaining liability in a lump sum. Payments shall be made from money collected and paid into the fund under sub. (3) and from interest earned thereon. For claims subject to the \$500,000 limit a periodic payment made under this paragraph, payments shall be made until the claim has been paid in full, and any attorney fees in connection with such claim shall be similarly prorated. Payment of not more than \$500,000 per year includes except as provided in s. 655.015. Periodic payments made under this paragraph include direct or indirect payment or commitment of moneys to or on behalf of any person under a single claim by any funding mechanism. No interest may be paid by the fund on the unpaid portion of any claim filed under this paragraph, except as provided under s. 807.01 (4), 814.04 (4) or 815.05 (8).

SECTION 8. 893.55 (4) (b) of the statutes is amended to read:

893.55 (4) (b) The total noneconomic damages recoverable under ch. 655 for bodily injury or death, including any action or proceeding based on contribution or indemnification, may not exceed the limit under par. (d) for each occurrence on or after the effective date of this paragraph [revisor inserts date], from all health care providers and all employes of health care providers acting within the scope of their employment and providing health care services who are found negligent and from the patients compensation fund for any action filed on or after June 14, 1986 and before January 1, 1991.

SECTION 9. 893.55 (4) (d) of the statutes is amended to read:

893.55 (4) (d) The limit on total noneconomic damages for each occurrence under par. (b) on or after the effective date of this paragraph [revisor inserts date], shall be \$1,000,000 for actions filed on or after June 14, 1986, \$350,000 and shall be adjusted by the director of state courts to reflect changes in the consumer price index for all urban consumers, U.S. city average, as determined by the U.S. department of labor, at least annually thereafter, with the adjusted limit to apply to awards subsequent to such adjustments.

SECTION 10. 893.55 (4) (f) of the statutes is created to read:

893.55 (4) (f) Notwithstanding the limits on noneconomic damages under this subsection, damages recover-

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able against health care providers and an employe of a health care provider, acting within the scope of his or her employment and providing health 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).

SECTION 11. 893.55 (6) of the statutes is created to read:

893.55 (6) Damages recoverable under this section against health care providers and an employe of a health

care provider, acting within the scope of his or her employment and providing health care services, are subject to the provisions of s. 895.045.

SECTION 12m. 893.55 (7) of the statutes is created to read:

893.55 (7) 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 medical malpractice. This section does not limit the substantive or procedural rights of persons who have claims based upon subrogation.
