



**ASSEMBLY SUBSTITUTE AMENDMENT 2,
TO 1995 ASSEMBLY BILL 671**

February 20, 1996 – Offered by COMMITTEE ON JUDICIARY.

1 **AN ACT to amend** 118.125 (2) (intro.), 343.16 (5) (a), 448.03 (5) (b) and 449.20; and
2 **to create** 51.30 (4) (am), 118.125 (2) (p), 146.82 (3) (bm), 885.205 (4), 895.475
3 and 905.04 (4) (j) of the statutes; **relating to:** civil liability of therapists.

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

4 **SECTION 1.** 51.30 (4) (am) of the statutes is created to read:

5 51.30 (4) (am) *Reports without informed written consent.* Notwithstanding par.
6 (a), a therapist, as defined in s. 895.475 (1), may follow the procedures in s. 895.475
7 (3) or (4) without first receiving the informed written consent of the subject
8 individual if the circumstances described in s. 895.475 apply.

9 **SECTION 2.** 118.125 (2) (intro.) of the statutes is amended to read:

10 118.125 (2) **CONFIDENTIALITY.** (intro.) All pupil records maintained by a public
11 school shall be confidential, except as provided in pars. (a) to (m) and (p) and sub.
12 (2m). The school board shall adopt regulations to maintain the confidentiality of
13 such records.

14 **SECTION 3.** 118.125 (2) (p) of the statutes is created to read:

1 118.125 (2) (p) A therapist, as defined in s. 895.475 (1), employed by a school
2 district may disclose information in a pupil record under s. 895.475.

3 **SECTION 4.** 146.82 (3) (bm) of the statutes is created to read:

4 146.82 (3) (bm) Notwithstanding sub. (1), a therapist, as defined in s. 895.475
5 (1), may follow the procedures provided in s. 895.475 (3) or (4) without first receiving
6 the informed consent of the patient if the circumstances described in s. 895.475 apply.

7 **SECTION 5.** 343.16 (5) (a) of the statutes is amended to read:

8 343.16 (5) (a) The secretary may require any applicant for a license or any
9 licensed operator to submit to a special examination by such persons or agencies as
10 the secretary may direct to determine incompetency, physical or mental disability,
11 disease or any other condition which might prevent such applicant or licensed person
12 from exercising reasonable and ordinary control over a motor vehicle. When the
13 department requires the applicant to submit to an examination, the applicant shall
14 pay the cost thereof. If the department receives an application for a renewal or
15 duplicate license after voluntary surrender under s. 343.265 or receives a report from
16 a physician or optometrist under s. 146.82 (3) (a) or (b), or if the department has a
17 report of 2 or more arrests within a one-year period for any combination of violations
18 of s. 346.63 (1) or (5) or a local ordinance in conformity therewith or a law of a
19 federally recognized American Indian tribe or band in this state in conformity with
20 s. 346.63 (1) or (5), or s. 346.63 (1m), 1985 stats., or s. 346.63 (2) or (6) or 940.25, or
21 s. 940.09 where the offense involved the use of a vehicle, the department shall
22 determine, by interview or otherwise, whether the operator should submit to an
23 examination under this section. The examination may consist of an assessment. If
24 the examination indicates that education or treatment for a disability, disease or
25 condition concerning the use of alcohol or a controlled substance is appropriate, the

1 department may order a driver safety plan in accordance with s. 343.30 (1q). If there
2 is noncompliance with assessment or the driver safety plan, the department shall
3 suspend the person's operating privilege in the manner specified in s. 343.30 (1q) (d).

4 **SECTION 6.** 448.03 (5) (b) of the statutes is amended to read:

5 448.03 (5) (b) No physician shall be is liable for any civil damages for either of
6 the following:

7 1. Reporting in good faith to the department of transportation under s. 146.82
8 (3) (a) a patient's name and other information relevant to a physical or mental
9 condition of the patient ~~which~~ that in the physician's judgment impairs the patient's
10 ability to exercise reasonable and ordinary control over a motor vehicle.

11 2. In good faith, not reporting to the department of transportation under s.
12 146.82 (3) (a) a patient's name and other information relevant to a physical or mental
13 condition of the patient ~~which~~ that in the physician's judgment does not impair the
14 patient's ability to exercise reasonable and ordinary control over a motor vehicle.

15 **SECTION 7.** 449.20 of the statutes is amended to read:

16 **449.20 Civil immunity.** No optometrist shall be is liable for any civil damages
17 for either of the following:

18 (1) Reporting in good faith to the department of transportation under s. 146.82
19 (3) (b) a patient's name and other information relevant to the vision of the patient
20 ~~which~~ that in the optometrist's judgment impairs the patient's ability to exercise
21 reasonable and ordinary control over a motor vehicle.

22 (2) In good faith, not reporting to the department of transportation under s.
23 146.82 (3) (b) a patient's name and other information relevant to the vision of the
24 patient ~~which~~ that in the optometrist's judgment does not impair the patient's ability
25 to exercise reasonable and ordinary control over a motor vehicle.

1 **SECTION 8.** 885.205 (4) of the statutes is created to read:

2 885.205 (4) This prohibition does not include communications that a therapist,
3 as defined in s. 895.475 (1), discloses under s. 895.475.

4 **SECTION 9.** 895.475 of the statutes is created to read:

5 **895.475 Civil liability exemption; therapists. (1)** In this section,
6 “therapist” means a physician, psychologist, social worker, nurse, chemical
7 dependency counselor or other person, whether or not licensed by the state, who
8 provides treatment to any person who may be drug dependent, as defined in s. 51.01
9 (8), or who may have alcoholism, a developmental disability or mental illness, as
10 defined in s. 51.01 (1m), (5) and (13), if that person is not prohibited by law from
11 providing that treatment.

12 **(2)** A therapist is immune from civil liability for injuries to persons, other than
13 the patient, resulting from the therapist’s failure to warn of or take precautions to
14 provide protection from a patient’s behavior unless one of the following occurs:

15 (a) The patient has communicated to the therapist a threat of physical harm
16 against a clearly identified or readily identifiable victim.

17 (b) The therapist makes a determination that is reasonable under the
18 circumstances that the patient evidences a substantial probability of physical harm
19 to other individuals as described in s. 51.20 (1) (a) 2. b.

20 **(3)** A therapist is immune from civil liability for injuries to persons, other than
21 the patient, if, after the patient communicates a threat of physical harm against a
22 clearly identified or readily identifiable victim, the therapist takes one or more of the
23 following courses of action and the decision to take that action and the action taken
24 are reasonable under the circumstances:

1 (a) Makes efforts to communicate the threat and other relevant information to
2 the intended victim.

3 (b) Communicates the threat and other relevant information to the law
4 enforcement agency, as defined in s. 165.83 (1) (b), of the jurisdiction where the
5 patient or intended victim resides or is physically present.

6 (c) Takes steps to obtain emergency detention of the patient under s. 51.15,
7 involuntary commitment of the patient under s. 51.20, protective custody of the
8 patient under s. 51.45 (11) or emergency protective placement of the patient under
9 s. 55.06 (11).

10 (d) Secures voluntary admission of the patient to an inpatient facility, as
11 defined in s. 51.01 (10), and communicates the threat and other relevant information
12 to the treatment director, as defined in s. 51.01 (18), or his or her designee.

13 (e) Formulates a diagnostic impression and establishes and undertakes a
14 documented treatment plan calculated to eliminate the possibility that the patient
15 will carry out the threat.

16 **(4)** A therapist is immune from civil liability for injuries to persons, other than
17 the patient, if, after the therapist determines that the patient evidences a
18 substantial probability of physical harm to other individuals, as described in s. 51.20
19 (1) (a) 2. b., the therapist takes one or more of the following courses of action and the
20 decision to take that action and the action taken are reasonable under the
21 circumstances:

22 (a) Communicates information regarding the patient's substantial probability
23 of physical harm to other individuals to the law enforcement agency, as defined in
24 s. 165.83 (1) (b), of the jurisdiction where the patient resides or is physically present.

1 (b) Takes steps to obtain emergency detention of the patient under s. 51.15,
2 involuntary commitment of the patient under s. 51.20, protective custody of the
3 patient under s. 51.45 (11) or emergency protective placement of the patient under
4 s. 55.06 (11).

5 (c) Secures voluntary admission of the patient to an inpatient facility, as
6 defined in s. 51.01 (10) and communicates information regarding the patient's
7 substantial probability of physical harm to other individuals and other relevant
8 information to the treatment director, as defined in s. 51.01 (18), or his or her
9 designee.

10 (d) Formulates a diagnostic impression and establishes and undertakes a
11 documented treatment plan calculated to eliminate the possibility that the patient
12 will cause physical harm to other individuals.

13 **SECTION 10.** 905.04 (4) (j) of the statutes is created to read:

14 905.04 (4) (j) *Proceeding related to disclosure of patient's threat or probability*
15 *of harm.* There is no privilege as to communications relevant to proceedings
16 resulting from a disclosure under s. 895.475.

17 **SECTION 11. Initial applicability.**

18 (1) This act first applies to a patient's threat of physical violence or evidence
19 of a substantial probability of physical violence to others occurring on the effective
20 date of this subsection.

21 (END)