



1995 ENGROSSED ASSEMBLY BILL 36

February 1, 1995 - Printed by direction of ASSEMBLY CHIEF CLERK.

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

Analysis by the Legislative Reference Bureau

Engrossment information:

The text of Engrossed 1995 Assembly Bill 36 consists of the following documents adopted in the assembly on January 31, 1995: the bill as affected by Assembly Amendment 1, Assembly Amendment 2, Assembly Amendment 3 (as affected by Assembly Amendment 1 thereto), Assembly Amendment 4, Assembly Amendment 5, Assembly Amendment 6, Assembly Amendment 7, Assembly Amendment 8, Assembly Amendment 12, Assembly Amendment 17, Assembly Amendment 18 and Assembly Amendment 20. In engrossing, the amendments of page 3, lines 7, 13 and 14 of the bill by Assembly Amendment 20 were given effect by amending the language inserted by Assembly Amendment 5 rather than the language in the bill.

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

5 **SECTION 1g.** 20.145 (2) (v) of the statutes is amended to read:
6 20.145 (2) (v) *Operations and benefits.* After deducting the amounts
7 appropriated under pars. (u) and (um), the balances of the moneys paid into the

1 patients compensation fund under s. 655.27 (3) to carry out the responsibilities of the
2 commissioner of insurance under s. 655.27, to make payments to the investment
3 board under s. 20.536 and, ~~with respect to settlements, patients compensation panel~~
4 ~~awards and judgments entered into or rendered before June 14, 1986,~~ to pay future
5 medical expenses under s. 655.015.

6 **SECTION 1j.** 601.427 (9) of the statutes is created to read:

7 601.427 (9) COMMISSIONER'S REPORT. Within 2 years after the effective date of
8 this subsection [revisor inserts date], and within 2 years thereafter, the
9 commissioner shall submit a report to the legislature in the manner provided under
10 s. 13.172 (2). The reports shall compare the data for the year before the effective date
11 of this subsection [revisor inserts date], with the data for the years after the
12 effective date of this subsection [revisor inserts date], to evaluate the effects that
13 1995 Wisconsin Act (this act) has had on the following:

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

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

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

18 **SECTION 1m.** 655.015 of the statutes is amended to read:

19 **655.015 Future medical expenses.** If a settlement, ~~panel award~~ or judgment
20 under this chapter entered into or rendered before June 14, 1986, resulting from an
21 act or omission that occurred on or after the effective date of this section [revisor
22 inserts date], provides for future medical expense payments in excess of \$25,000
23 \$100,000, that portion of future medical expense payments in excess of \$25,000
24 \$100,000 shall be paid into the fund, after deducting the reasonable costs of collection
25 attributable to those future medical expense payments. The commissioner shall

1 develop by rule a system for managing and disbursing those moneys through
2 payments for these expenses. The commissioner shall promulgate a rule specifying
3 the criteria that shall be used to determine the medical expenses related to the
4 settlement or judgment, taking into consideration developments in the provision of
5 health care. The payments shall be made under the system until either the amount
6 is exhausted or the patient dies.

7 SECTION 2. 655.017 of the statutes is amended to read:

8 **655.017 Limitation on noneconomic damages.** The amount of
9 noneconomic damages recoverable by a claimant or plaintiff under this chapter for
10 acts or omissions of a health care provider if the ~~action is filed~~ act or omission occurs
11 ~~on or after June 14, 1986 and before January 1, 1991~~ the effective date of this section
12 ... [revisor inserts date], and for acts or omissions of an employe of a health care
13 provider, acting within the scope of his or her employment and providing health care
14 services, for ~~actions filed~~ acts or omissions occurring on or after June 14, 1986 and
15 before January 1, 1991 the effective date of this section ... [revisor inserts date], is
16 subject to the ~~limit~~ limits under s. 893.55 (4) (d) and (f).

17 SECTION 2m. 655.27 (3) (c) of the statutes is amended to read:

18 655.27 (3) (c) *Collection and deposit of fees.* Fees under pars. (a) and (b) and
19 future medical expense payments specified for the fund ~~by a settlement, panel award~~
20 ~~or judgment entered into or rendered before June 14, 1986,~~ under s. 655.015 shall
21 be collected by the commissioner for deposit into the fund in a manner prescribed by
22 the commissioner by rule.

23 SECTION 3. 655.27 (5) (d) of the statutes is amended to read:

24 655.27 (5) (d) A person who has recovered a final judgment or a settlement
25 resulting from an act or omission that occurred on or after the effective date of this

1 paragraph [revisor inserts date], that is approved by the board of governors
2 against a health care provider, or an employe of a health care provider, that has
3 coverage under the fund may file a claim with the board of governors to recover that
4 portion of such judgment or settlement which is in excess of the limits in s. 655.23
5 (4) or the maximum liability limit for which the health care provider is insured,
6 whichever limit is greater. In the event the fund incurs liability exceeding
7 \$1,000,000 to any person under a single claim as the result of a settlement, panel
8 award or judgment that is entered into or rendered under this chapter before June
9 14, 1986 on or after the effective date of this paragraph [revisor inserts date], the
10 fund shall pay not more than, after deducting the reasonable costs of collection
11 attributable to the remaining liability, the full medical expenses each year, plus an
12 amount not to exceed \$500,000 per year that will pay the remaining liability over the
13 person's anticipated lifetime, or until the liability is paid in full. Payments shall be
14 made from money collected and paid into the fund under sub. (3) and from interest
15 earned thereon. For claims subject to the \$500,000 limit a periodic payment made
16 under this paragraph, payments shall be made until the claim has been paid in full,
17 and any attorney fees in connection with such claim shall be similarly prorated
18 except as provided in s. 655.015. Payment of not more than \$500,000 per year
19 includes Periodic payments made under this paragraph include direct or indirect
20 payment or commitment of moneys to or on behalf of any person under a single claim
21 by any funding mechanism. No interest may be paid by the fund on the unpaid
22 portion of any claim filed under this paragraph, except as provided under s. 807.01
23 (4), 814.04 (4) or 815.05 (8).

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

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

9 **SECTION 5.** 893.55 (4) (d) of the statutes is amended to read:

10 893.55 (4) (d) The limit on total noneconomic damages for each occurrence
11 under par. (b) on or after the effective date of this paragraph [revisor inserts date],
12 shall be ~~\$1,000,000 for actions filed on or after June 14, 1986,~~ \$350,000 and shall be
13 adjusted by the director of state courts to reflect changes in the consumer price index
14 for all urban consumers, U.S. city average, as determined by the U.S. department of
15 labor, at least annually thereafter, with the adjusted limit to apply to awards
16 subsequent to such adjustments.

17 **SECTION 6.** 893.55 (4) (f) of the statutes is created to read:

18 893.55 (4) (f) Notwithstanding the limits on noneconomic damages under this
19 subsection, damages recoverable against health care providers and an employe of a
20 health care provider, acting within the scope of his or her employment and providing
21 health care services, for wrongful death are subject to the limit under s. 895.04 (4).
22 If damages in excess of the limit under s. 895.04 (4) are found, the court shall make
23 any reduction required under s. 895.045 and shall award the lesser of the reduced
24 amount or the limit under s. 895.04 (4).

25 **(END)**