

## 2003 ASSEMBLY BILL 487

**AN ACT** *to amend* 13.94 (1) (de), 15.405 (7) (c), 20.145 (2) (title), 20.145 (2) (q), 20.145 (2) (u), 20.145 (2) (um), 20.145 (2) (v), 25.14 (1) (a) 9., 25.17 (1) (kp), 25.17 (3) (a), 50.37 (intro.), 165.25 (6) (a), 619.04 (5) (b), 619.04 (5m) (b), 619.04 (9), chapter 655 (title), 655.001 (7), subchapter IV (title) of chapter 655 [precedes 655.27], 655.27 (title), 655.27 (1), 655.27 (3) (a) 2m., 655.27 (3) (am), 655.27 (3) (bg) 2., 655.275 (title), 655.275 (1), 893.55 (4) (b), 893.82 (2) (d) 3., 895.46 (4) and 895.70 (5); and ***to repeal and recreate*** 655.27 (6) of the statutes; **relating to:** the purpose and integrity of the patients compensation fund and changing its name to the injured patients and families compensation fund.

---

***Analysis by the Legislative Reference Bureau***

---

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

1

**SECTION 1.** 13.94 (1) (de) of the statutes is amended to read:

**ASSEMBLY BILL 487****SECTION 1**

1           13.94 (1) (de) At least once every 3 years, perform a financial audit of the state  
2 life insurance fund, the local government property insurance fund, and the patients  
3 injured patients and families compensation fund.

4           **SECTION 2.** 15.405 (7) (c) of the statutes is amended to read:

5           15.405 (7) (c) The chairperson of the patients injured patients and families  
6 compensation fund peer review council under s. 655.275 shall serve as a nonvoting  
7 member of the medical examining board.

8           **SECTION 3.** 20.145 (2) (title) of the statutes is amended to read:

9           20.145 (2) (title) PATIENTS INJURED PATIENTS AND FAMILIES COMPENSATION FUND.

10          **SECTION 4.** 20.145 (2) (q) of the statutes is amended to read:

11          20.145 (2) (q) *Interest earned on future medical expenses.* From the patients  
12 injured patients and families compensation fund under s. 655.27 a sum sufficient  
13 equal to the interest earned by the patients injured patients and families  
14 compensation fund that is attributable to future medical expense payments held by  
15 the fund under s. 655.015, to be credited to individual claimants' future medical  
16 expense payments accounts as provided in s. 655.015, for the purpose of paying  
17 future medical expenses.

18          **SECTION 5.** 20.145 (2) (u) of the statutes is amended to read:

19          20.145 (2) (u) *Administration.* From the patients injured patients and families  
20 compensation fund under s. 655.27 (3), the amounts in the schedule for  
21 administration, except for costs of the patients injured patients and families  
22 compensation fund peer review council and its associated administrative costs  
23 assessed under s. 655.27 (3) (am).

24          **SECTION 6.** 20.145 (2) (um) of the statutes is amended to read:

**ASSEMBLY BILL 487**

1           20.145 (2) (um) *Peer review council*. From the patients injured patients and  
2 families compensation fund under s. 655.27 (3) (am), the amounts in the schedule for  
3 payment of costs, including costs of administration, incurred by the patients injured  
4 patients and families compensation fund peer review council under s. 655.275 (5).

5           **SECTION 7.** 20.145 (2) (v) of the statutes is amended to read:

6           20.145 (2) (v) *Specified responsibilities, investment board payments, and future*  
7 *medical expenses*. After deducting the amounts appropriated under pars. (q), (u), and  
8 (um), the balance of the moneys paid into the patients injured patients and families  
9 compensation fund under s. 655.27 (3) to carry out the responsibilities of the  
10 commissioner of insurance specified under s. 655.27, excluding payment of expenses  
11 related to administering the fund, to make payments to the investment board under  
12 s. 20.536, and to pay future medical expenses under s. 655.015.

13           **SECTION 8.** 25.14 (1) (a) 9. of the statutes is amended to read:

14           25.14 (1) (a) 9. The patients injured patients and families compensation fund.

15           **SECTION 9.** 25.17 (1) (kp) of the statutes is amended to read:

16           25.17 (1) (kp) Patients Injured patients and families compensation fund (s.  
17 655.27);

18           **SECTION 10.** 25.17 (3) (a) of the statutes is amended to read:

19           25.17 (3) (a) Invest the fixed retirement investment trust, state life fund,  
20 veterans trust fund, and patients injured patients and families compensation fund  
21 in loans, securities, and any other investments authorized by s. 620.22, and in bonds  
22 or other evidences of indebtedness or preferred stock of companies engaged in the  
23 finance business whether as direct lenders or as holding companies owning  
24 subsidiaries engaged in the finance business. Investments permitted by sub. (4) are  
25 permitted investments under this subsection.

**ASSEMBLY BILL 487****SECTION 11**

1           **SECTION 11.** 50.37 (intro.) of the statutes is amended to read:

2           **50.37 Notification to accrediting organization.** (intro.) The department  
3 shall notify a private accrediting organization that has accredited a hospital and the  
4 board of governors of the ~~patients~~ injured patients and families compensation fund  
5 under s. 619.04 (3) if the department has done any of the following:

6           **SECTION 12.** 165.25 (6) (a) of the statutes is amended to read:

7           165.25 **(6)** (a) At the request of the head of any department of state government,  
8 the attorney general may appear for and defend any state department, or any state  
9 officer, employee, or agent of the department in any civil action or other matter  
10 brought before a court or an administrative agency which is brought against the state  
11 department, or officer, employee, or agent for or on account of any act growing out  
12 of or committed in the lawful course of an officer's, employee's, or agent's duties.  
13 Witness fees or other expenses determined by the attorney general to be reasonable  
14 and necessary to the defense in the action or proceeding shall be paid as provided for  
15 in s. 885.07. The attorney general may compromise and settle the action as the  
16 attorney general determines to be in the best interest of the state. Members, officers,  
17 and employees of the Wisconsin state agencies building corporation and the  
18 Wisconsin state public building corporation are covered by this section. Members of  
19 the board of governors created under s. 619.04 (3), members of a committee or  
20 subcommittee of that board of governors, members of the ~~patients~~ injured patients  
21 and families compensation fund peer review council created under s. 655.275 (2), and  
22 persons consulting with that council under s. 655.275 (5) (b) are covered by this  
23 section with respect to actions, claims, or other matters arising before, on, or after  
24 April 25, 1990. The attorney general may compromise and settle claims asserted  
25 before such actions or matters formally are brought or may delegate such authority

**ASSEMBLY BILL 487**

1 to the department of administration. This paragraph may not be construed as a  
2 consent to sue the state or any department thereof or as a waiver of state sovereign  
3 immunity.

4 **SECTION 13.** 619.04 (5) (b) of the statutes is amended to read:

5 619.04 (5) (b) A rating plan which takes into consideration the loss and expense  
6 experience of the individual health care provider which resulted in the payment of  
7 money, by the plan or other sources, for damages arising out of the rendering of  
8 health care by the health care provider or an employee of the health care provider,  
9 except that an adjustment to a health care provider's premiums may not be made  
10 under this paragraph prior to the receipt of the recommendation of the ~~patients~~  
11 injured patients and families compensation fund peer review council under s.  
12 655.275 (5) (a) and the expiration of the time period provided, under s. 655.275 (7),  
13 for the health care provider to comment or prior to the expiration of the time period  
14 under s. 655.275 (5) (a).

15 **SECTION 14.** 619.04 (5m) (b) of the statutes is amended to read:

16 619.04 (5m) (b) The rule shall provide that the automatic increase does not  
17 apply if the board determines that the performance of the ~~patients~~ injured patients  
18 and families compensation fund peer review council in making recommendations  
19 under s. 655.275 (5) (a) adequately addresses the consideration set forth in sub. (5)  
20 (b).

21 **SECTION 15.** 619.04 (9) of the statutes is amended to read:

22 619.04 (9) Neither the state nor the board of governors shall be liable for any  
23 obligation of the plan or of the ~~patients~~ injured patients and families compensation  
24 fund under s. 655.27. The board of governors and members of any committee or

**ASSEMBLY BILL 487**

**SECTION 15**

1 subcommittee thereof shall be immune from civil liability for acts or omissions while  
2 performing their duties under this section and s. 655.27.

3 **SECTION 16.** Chapter 655 (title) of the statutes is amended to read:

4 **CHAPTER 655**

5 **HEALTH CARE LIABILITY AND**

6 **PATIENTS INJURED PATIENTS**

7 **AND FAMILIES COMPENSATION**

8 **SECTION 17.** 655.001 (7) of the statutes is amended to read:

9 655.001 (7) “Fund” means the patients injured patients and families  
10 compensation fund under s. 655.27.

11 **SECTION 18.** Subchapter IV (title) of chapter 655 [precedes 655.27] of the  
12 statutes is amended to read:

13 **CHAPTER 655**

14 **SUBCHAPTER IV**

15 **PATIENTS INJURED PATIENTS AND**

16 **FAMILIES COMPENSATION FUND**

17 **SECTION 19.** 655.27 (title) of the statutes is amended to read:

18 **655.27 (title) Patients Injured patients and families compensation**  
19 **fund.**

20 **SECTION 20.** 655.27 (1) of the statutes is amended to read:

21 655.27 (1) FUND. There is created a patients an injured patients and families  
22 compensation fund for the purpose of paying that portion of a medical malpractice  
23 claim which is in excess of the limits expressed in s. 655.23 (4) or the maximum  
24 liability limit for which the health care provider is insured, whichever limit is  
25 greater, paying future medical expense payments under s. 655.015, and paying

**ASSEMBLY BILL 487**

1 claims under sub. (1m). The fund shall provide occurrence coverage for claims  
2 against health care providers that have complied with this chapter, and against  
3 employees of those health care providers, and for reasonable and necessary expenses  
4 incurred in payment of claims and fund administrative expenses. The coverage  
5 provided by the fund shall begin July 1, 1975. The fund shall not be liable for  
6 damages for injury or death caused by an intentional crime, as defined under s.  
7 939.12, committed by a health care provider or an employee of a health care provider,  
8 whether or not the criminal conduct is the basis for a medical malpractice claim.

9 **SECTION 21.** 655.27 (3) (a) 2m. of the statutes is amended to read:

10 655.27 (3) (a) 2m. The loss and expense experience of the individual health care  
11 provider which resulted in the payment of money, from the fund or other sources, for  
12 damages arising out of the rendering of medical care by the health care provider or  
13 an employee of the health care provider, except that an adjustment to a health care  
14 provider's fees may not be made under this subdivision prior to the receipt of the  
15 recommendation of the patients injured patients and families compensation fund  
16 peer review council under s. 655.275 (5) (a) and the expiration of the time period  
17 provided, under s. 655.275 (7), for the health care provider to comment or prior to the  
18 expiration of the time period under s. 655.275 (5) (a).

19 **SECTION 22.** 655.27 (3) (am) of the statutes is amended to read:

20 655.27 (3) (am) *Assessments for peer review council.* The fund, a mandatory  
21 health care liability risk-sharing plan established under s. 619.04, and a private  
22 health care liability insurer shall be assessed, as appropriate, fees sufficient to cover  
23 the costs of the patients injured patients and families compensation fund peer review  
24 council, including costs of administration, for reviewing claims paid by the fund,  
25 plan, and insurer, respectively, under s. 655.275 (5). The fees shall be set by the

**ASSEMBLY BILL 487****SECTION 22**

1 commissioner by rule, after approval by the board of governors, and shall be collected  
2 by the commissioner for deposit in the fund. The costs of the ~~patients~~ injured patients  
3 and families compensation fund peer review council shall be funded from the  
4 appropriation under s. 20.145 (2) (um).

5 **SECTION 23.** 655.27 (3) (bg) 2. of the statutes is amended to read:

6 655.27 (3) (bg) 2. The rule shall provide that the automatic increase does not  
7 apply if the board of governors determines that the performance of the ~~patients~~  
8 injured patients and families compensation fund peer review council in making  
9 recommendations under s. 655.275 (5) (a) adequately addresses the consideration set  
10 forth in par. (a) 2m.

11 **SECTION 24.** 655.27 (6) of the statutes is repealed and recreated to read:

12 655.27 (6) PURPOSE AND INTEGRITY OF FUND. The fund is established to curb the  
13 rising costs of health care by financing part of the liability incurred by health care  
14 providers as a result of medical malpractice claims and to ensure that proper claims  
15 are satisfied. The fund, including any net worth of the fund, is held in irrevocable  
16 trust for the sole benefit of health care providers participating in the fund and proper  
17 claimants. Moneys in the fund may not be used for any other purpose of the state.

18 **SECTION 25.** 655.275 (title) of the statutes is amended to read:

19 **655.275** (title) **Patients Injured patients and families compensation**  
20 **fund peer review council.**

21 **SECTION 26.** 655.275 (1) of the statutes is amended to read:

22 655.275 (1) DEFINITION. In this section, “council” means the ~~patients~~ injured  
23 patients and families compensation fund peer review council.

24 **SECTION 27.** 893.55 (4) (b) of the statutes is amended to read:



**ASSEMBLY BILL 487**

1           893.55 (4) (b) The total noneconomic damages recoverable for bodily injury or  
2 death, including any action or proceeding based on contribution or indemnification,  
3 may not exceed the limit under par. (d) for each occurrence on or after May 25, 1995,  
4 from all health care providers and all employees of health care providers acting  
5 within the scope of their employment and providing health care services who are  
6 found negligent and from the ~~patients~~ injured patients and families compensation  
7 fund.

8           **SECTION 28.** 893.82 (2) (d) 3. of the statutes is amended to read:

9           893.82 (2) (d) 3. A member of the board of governors created under s. 619.04  
10 (3), a member of a committee or subcommittee of that board of governors, a member  
11 of the ~~patients~~ injured patients and families compensation fund peer review council  
12 created under s. 655.275 (2), and a person consulting with that council under s.  
13 655.275 (5) (b).

14           **SECTION 29.** 895.46 (4) of the statutes is amended to read:

15           895.46 (4) The protection afforded by this section applies to members of the  
16 board of governors created under s. 619.04 (3), members of a committee or  
17 subcommittee of that board of governors, members of the ~~patients~~ injured patients  
18 and families compensation fund peer review council created under s. 655.275 (2), and  
19 persons consulting with that council under s. 655.275 (5) (b), with respect to  
20 judgments, attorney fees, and costs awarded before, on, or after April 25, 1990.

21           **SECTION 30.** 895.70 (5) of the statutes is amended to read:

22           895.70 (5) SILENCE AGREEMENTS. Any provision in a contract or agreement  
23 relating to the settlement of any claim by a patient against a therapist that limits  
24 or eliminates the right of the patient to disclose sexual contact by the therapist to a  
25 subsequent therapist, the department of regulation and licensing, the department

**ASSEMBLY BILL 487**

**SECTION 30**

1 of health and family services, the ~~patients~~ injured patients and families  
2 compensation fund peer review council, or a district attorney is void.

3 (END)