

**1975 Assembly Bill 1032**

Date published: **October 1, 1975**

**CHAPTER 81, Laws of 1975**

AN ACT to renumber 895.45; to amend 20.865 (intro.) and (1) (a), 165.25 (6) and 895.46 (1), as renumbered; and to create 16.865 (6), 20.865 (1) (fm), (Lm) and (vm) and 227.01 (5) (v) of the statutes, relating to risk management by the state, and making appropriations.

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

SECTION 1. 16.865 (6) of the statutes is created to read:

16.865 (6) Have the authority to contract for investigative and adjustment services as provided in s. 20.865 (1) (fm) which can be performed more economically or efficiently by such contract.

SECTION 2. 20.865 (intro.) of the statutes is amended to read:

**20.865 Program supplements.** (intro.) There is appropriated to the various state agencies from the respective funds and accounts from which their appropriations are financed such amounts as ~~herein~~ provided in this section, but only after the amounts included in the respective program appropriations for the purposes indicated in this section have been exhausted. All expenditures under this section for purposes normally financed by program revenues shall be charged to the appropriate account, but if the revenues of such account are exhausted or not available such expenditures shall be charged to the general purpose revenues of the fund from which the appropriation was made. Those expenditures paid from general purpose revenues on behalf of program revenues shall be separately accounted for and the general purpose revenue of the appropriate fund shall, except as otherwise provided in s. 20.285 (1) (g), be reimbursed for such expenses as soon as funds become available in the appropriate account. Estimated supplements under this section from other than general fund general purpose revenue shall appear in the schedule as the paragraphs which correspond to the general purpose revenue paragraphs in that subsection, as follows: If general purpose revenue pars. (a), (b), (c), (cm), (d), (dm), (e) ~~or~~, (f) or (fm) are used, the corresponding program revenue paragraphs shall be pars. (g), (h), (i), (im), (j), (jm), (k) ~~and~~, (l) and (Lm), respectively, and the corresponding segregated fund paragraphs shall be pars. (q), (r), (s), (sm), (t), (tm), (u) ~~and~~, (v) and (vm), respectively. In the case of annual or biennial appropriations under this section, the amounts available from program and segregated revenues shall be limited to the dollar level specified in the corresponding general purpose revenue appropriation subject to the balances available in the respective accounts or funds.

SECTION 3. 20.865 (1) (a) of the statutes, as affected by supreme court order dated February 17, 1975, effective January 1, 1976, is amended to read:

20.865 (1) (a) *Judgments.* A sum sufficient to pay the amounts due under ss. 59.31, ~~285.04~~, 285.05 (5), 285.06, 286.43, ~~895.46~~ [as renumbered by this act] and chapter 582, laws of 1911.

SECTION 4. 20.865 (1) (fm), (Lm) and (vm) of the statutes are created to read:

20.865 (1) (fm) *Risk management.* A sum sufficient to pay settlements made pursuant to s. 165.25 (6), the costs incurred under ss. 285.04 and 895.46 (1) including any judgments, investigative and adjustment fees and the cost of insurance contracts arranged by the department of administration to protect the state against risk of loss as provided under s. 16.865. The department of administration shall biennially on July 1 of the even-numbered years allocate as a charge to state agencies a proportionate share of the estimated costs under ss. 16.865 and 895.46 (1) to respective appropriations as provided under pars. (Lm) and (vm). Such sums as are received from state agencies under pars. (Lm) and (vm) shall be deposited in the general fund as general purpose revenue earned as provided in the introductory paragraph.

(Lm) *Risk Management.* See the introductory paragraph and par (fm).

(vm) *Risk Management.* See the introductory paragraph and par. (fm).

SECTION 5. 165.25 (6) of the statutes is amended to read:

165.25 (6) ATTORNEY FOR STATE EMPLOYEES. At the request of the head of any department of state government, the attorney general may appear for and defend any state officer or employe of the such department in any civil action or civil proceeding brought against such officer or employe for or on account of any act growing out of or committed in the lawful course of the officer's or employe's duties. Witness fees or other expenses determined by the attorney general to be reasonable and necessary to the defense in such action or proceeding shall be paid as provided for in s. 885.07. The attorney general may compromise and settle such action as he may determine to be in the best interest of the state. Agents of any department shall be covered by this section while acting within the scope of any written agreement entered into prior to the occurrence of any act which results in a civil action or civil proceeding.

SECTION 6. 227.01 (5) (v) of the statutes is created to read:

227.01 (5) (v) Establishes procedures used for the determination of allocations as charges to state agencies under s. 20.865 (1) (fm).

SECTION 7. 895.45 of the statutes, as affected by supreme court order dated February 17, 1975, effective January 1, 1976, is renumbered 895.46 and 895.46 (1), as renumbered, is amended to read:

895.46 (1) Where the defendant in any action or special proceeding is a public officer or employe and is proceeded against in his official capacity or is proceeded against as an individual because of acts committed while carrying out his duties as an officer or employe and the jury or the court finds that such defendant was acting within the scope of his employment the judgment as to damages and costs entered against the officer or employe in excess of any insurance applicable to such officer or employe shall be paid by the state or political subdivision of which he is an officer or employe. Agents of any department of the state shall be covered by this section while acting within the scope of any written agreement entered into prior to the occurrence of any act which results in any action or special proceeding. Regardless of the results of the litigation the governmental unit, when it does not provide legal counsel to the defendant officer or employe, shall pay reasonable attorney's fees and costs of defending the action, unless it is found by the court or jury that the defendant officer or employe did not act within the scope of his employment. Failure by the officer or employe to give notice to his department head of action or special proceeding commenced against him as soon as reasonably possible shall be a bar to recovery by the officer or employe from the state or political subdivision of reasonable attorney's fees and costs of defending the action. Such attorney's fees and expenses shall not be recoverable if the state or political subdivision offers the officer or employe legal counsel and such offer is refused by the defendant officer or employe. Deputy sheriffs in those counties where they serve not at the will of the sheriff but on civil service basis shall be covered by this subsection, except that the provision relating to payment of the judgment shall be discretionary and not mandatory. In such counties the judgment as to damages and costs may be paid by the county if approved by the county board.

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