



State of Wisconsin
2013 - 2014 LEGISLATURE



LRB-2708/P1
PJK:jld:rs

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

1 **AN ACT to amend** 618.43 (1) (a) 2.; and **to create** 655.001 (8c) and 655.23 (3) (am)
2 of the statutes; **relating to:** authorizing out-of-state risk retention groups to
3 provide health care liability insurance.

Analysis by the Legislative Reference Bureau

The health care liability provisions of the statutes require certain health care providers to carry health care liability (medical malpractice) insurance with liability limits of at least \$1,000,000 for each occurrence and at least \$3,000,000 for all occurrences in a policy year. Any portion of a medical malpractice claim that exceeds the policy limits is paid by the Injured Patients and Families Compensation Fund for health care providers that are subject to the health care liability provisions. Under current law, a health care provider may satisfy the requirement for liability coverage either by being covered under a policy issued by an insurer authorized to do business in this state or by qualifying as a self-insurer in accordance with conditions established by the commissioner of insurance (commissioner).

This bill authorizes a health care provider to satisfy the liability coverage requirement by being covered under a policy issued by an insurer that is a risk retention group that is domiciled in another state. Although not authorized to do business in this state, the risk retention group must be registered with the commissioner and approved by the commissioner to provide health care liability insurance coverage to health care providers under the health care liability provisions of the statutes. Under the bill, any such risk retention group is subject to all the requirements under the health care liability provisions of the statutes that apply to other insurers that provide health care liability insurance coverage under the health

care liability provisions of the statutes, including policy approval by the commissioner, assessments for the peer review council, mandated payment of specified costs in the settlement or defense of claims, and reporting requirements related to claims paid. Current law defines a risk retention group with the meaning given under federal law, which is, generally, a corporation or limited liability company whose primary activity is assuming and spreading the liability exposure of its group members; that is chartered or licensed as a liability insurance company under the laws of a state; that has as its owners only persons who comprise the membership of the group and who are provided insurance by the group, or that has as its sole owner an organization that has as its members only persons who comprise the membership of the group and as its owners only persons who comprise the membership of the group and who are provided insurance by the group; and whose members are engaged in businesses or activities similar or related with respect to the liability to which such members are exposed by virtue of any related, similar, or common business, services, or operations.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

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

1 **SECTION 1.** 618.43 (1) (a) 2. of the statutes is amended to read:

2 618.43 (1) (a) 2. The insurance is transacted by an unauthorized insurer which
3 that is a risk retention group, including a foreign risk retention group authorized to
4 provide health care liability insurance under s. 655.23 (3) (am) that has not been
5 issued a certificate of authority under s. 618.12.

 ****NOTE: I believe this retains the status quo but eliminates any confusion over whether the out-of-state risk retention group is unauthorized or not.

6 **SECTION 2.** 655.001 (8c) of the statutes is created to read:

7 655.001 (8c) “Insurer” includes a foreign insurer that is a risk retention group
8 that issues health care liability insurance under this chapter.

 ****NOTE: This provision makes all of the provisions in ch. 655 that apply to insurers apply to out-of-state risk retention groups.

9 **SECTION 3.** 655.23 (3) (am) of the statutes is created to read:

10 655.23 (3) (am) For purposes of par. (a) only, a foreign insurer that is a risk
11 retention group and that has not been issued a certificate of authority under s. 618.12

1 is authorized to do business in this state if the risk retention group is registered with
2 the commissioner and approved by the commissioner to provide health care liability
3 insurance coverage under this chapter.

****NOTE: If an out-of-state risk retention group satisfies these requirements, a
health care provider satisfies the financial responsibility requirements with a policy sold
by the out-of-state risk retention group.

4 (END)