



**ASSEMBLY SUBSTITUTE AMENDMENT 2,
TO 1995 SENATE BILL 11**

April 6, 1995 - Offered by SPECIAL COMMITTEE ON STATE-FEDERAL RELATIONS.

1 **AN ACT to renumber and amend** 895.045; and **to create** 895.045 (2) and (3) and
2 895.85 of the statutes; **relating to:** comparative negligence and punitive
3 damages.

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

4 **SECTION 1.** 895.045 of the statutes is renumbered 895.045 (1) and amended to
5 read:
6 895.045 (1) (title) CONTRIBUTORY COMPARATIVE NEGLIGENCE. Contributory
7 negligence shall does not bar recovery in an action by any person or the person's legal
8 representative to recover damages for negligence resulting in death or in injury to
9 person or property, if such that negligence was not greater than the negligence of the
10 person against whom recovery is sought, but any damages allowed shall be
11 diminished in the proportion to the amount of negligence attributable attributed to
12 the person recovering. The liability of any person found to be less than 10% causally
13 negligent is limited to 50% of the total amount recoverable from the persons found
14 to be causally negligent or to the amount of the liability limits of any policy of

1 insurance covering the person's liability for the damages caused by the negligence,
2 whichever amount is greater. The liability of any person found to be equal to or
3 greater than 10% causally negligent is equal to the total amount recoverable from
4 the persons found to be causally negligent.

5 **SECTION 2.** 895.045 (2) and (3) of the statutes are created to read:

6 895.045 (2) CONCERTED ACTION. Notwithstanding sub. (1), if 2 or more persons
7 act in accordance with a common scheme or plan, those persons are jointly and
8 severally liable for all damages resulting from that action, except as provided in s.
9 895.85 (5).

10 (3) JOINT AND SEVERAL LIABILITY. Notwithstanding sub. (1), all persons found
11 causally negligent in a cause of action for damages resulting from environmental
12 pollution, hazardous waste or substances or waste disposal sites are jointly and
13 severally liable for those damages.

14 **SECTION 3.** 895.85 of the statutes is created to read:

15 **895.85 Punitive damages. (1) DEFINITIONS.** In this section:

16 (a) "Defendant" means the party against whom punitive damages are sought.

17 (b) "Double damages" means those court awards made under a statute
18 providing for twice, 2 times or double the amount of damages suffered by the injured
19 party.

20 (c) "Plaintiff" means the party seeking to recover punitive damages.

21 (d) "Treble damages" means those court awards made under a statute
22 providing for 3 times or treble the amount of damages suffered by the injured party.

23 (2) SCOPE. This section does not apply to awards of double damages or treble
24 damages, or to the award of exemplary damages under ss. 46.90 (6) (c), 51.30 (9),

1 51.61 (7), 103.96 (2), 153.85, 252.14 (4), 252.15 (8) (a), 943.245 (2) and (3) and 943.51
2 (2) and (3).

3 **(3) STANDARD OF CONDUCT.** The plaintiff may receive punitive damages if
4 evidence is submitted showing that the defendant acted maliciously toward the
5 plaintiff or in a wilful disregard of the rights of the plaintiff.

6 **(4) PROCEDURE.** If the plaintiff establishes a prima facie case for the allowance
7 of punitive damages:

8 (a) The plaintiff may introduce evidence of the wealth of a defendant; and

9 (b) The judge shall submit to the jury a special verdict as to punitive damages
10 or, if the case is tried to the court, the judge shall issue a special verdict as to punitive
11 damages.

12 **(5) APPLICATION OF JOINT AND SEVERAL LIABILITY.** The rule of joint and several
13 liability does not apply to punitive damages.

14 **SECTION 4. Initial applicability.**

15 (1) This act first applies to civil actions commenced on the effective date of this
16 subsection.

17 **(END)**