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State of Wisconsin
2005 – 2006 LEGISLATURE

LRB-0953/P2 P3
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TODAY 11-5-05

PRELIMINARY DRAFT – NOT READY FOR INTRODUCTION

Revisor's bill
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AN ACT **relating to:** renumbering and reorganizing various provisions of chapter 895 of the statutes and creating chapter 995 of the statutes. (Revisor's Revision Bill).

Analysis by the Legislative Reference Bureau

This bill is proposed under authority of s. 13.93 (1) (b) for the purpose of renaming chapter 895 of the statutes from "Miscellaneous General Provisions" to "Damages, Liability, and Miscellaneous Provisions Regarding Actions in Courts" to more accurately reflect the chapter's contents, to reorganize statutes within chapter 895 of the statutes into subchapters, and to move unrelated material into a new chapter 995 of the statutes titled "Miscellaneous Statutes." Chapter 895 was originally numbered as chapter 331 by Chapter 4, Laws of 1925, as part of Title XXX, Provisions Common to Actions and Proceedings in all Courts, indicating that the original intent was to create a chapter for miscellaneous provisions relating to court proceedings. Over time miscellaneous provisions unrelated to courts have been placed in chapter 895, apparently due to its title. This bill returns chapter 895 to being a chapter related to court proceedings and creates a new chapter for truly miscellaneous statutes unrelated to courts and not falling within the subject area of any other chapter. In accordance with current drafting style, commas before the last item in a series are added throughout this bill. "Which" is replaced by "that" where

grammatically correct. Specific changes are explained in the NOTES provided by the revisor of statutes in the body of the bill.

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

NOTE: This bill is not intended to make any substantive changes.

SECTION 1. 35.095 (1) (c) of the statutes is amended to read:

35.095 **(1)** (c) "Working day" means each day except Saturdays, Sundays, and federal and statewide legal holidays designated in s. ~~895.20~~ 995.20.

NOTE: Section 895.20 is renumbered s. 995.20 by this bill.

SECTION 2. 66.0601 (2) of the statutes is amended to read:

66.0601 **(2)** CELEBRATION OF HOLIDAYS. A town, county, school board, or school district may appropriate money for the purpose of initiating or participating in appropriate celebrations of any legal holiday listed in s. ~~895.20~~ 995.20.

NOTE: Section 895.20 is renumbered s. 995.20 by this bill.

SECTION 3. 101.58 (2) (g) of the statutes is amended to read:

101.58 **(2)** (g) "Legal holiday" has the meaning provided in s. ~~895.20~~ 995.20.

NOTE: Section 895.20 is renumbered s. 995.20 by this bill.

SECTION 4. 106.52 (3) (d) of the statutes is amended to read:

106.52 **(3)** (d) Nothing in this subsection prohibits a domestic abuse services organization, as defined in s. ~~895.67~~ 995.67 (1) (b), from providing separate shelter facilities, private home shelter care, advocacy, counseling or other care, treatment or services for persons of different sexes or from providing for separate treatment of persons based on sex with regard to the provision of shelter facilities, private home shelter care, advocacy, counseling or other care, treatment or services for persons of different sexes.

NOTE: Section 895.67 is renumbered s. 995.67 by this bill.

****NOTE: I removed the scored commas because it is possible that "counseling or other care" is intended to be a single element in the list. CJS

****NOTE: Please reply to 4–star note above (it looked like you may not have read it on the last go–around). CJS

SECTION 5. 134.43 (3) of the statutes is amended to read:

134.43 **(3)** Any person who is the victim of an intrusion of privacy under this section is entitled to relief under s. ~~895.50~~ 995.50 (1) and (4) unless the act is permissible under ss. 968.27 to 968.37.

NOTE: Section 895.50 is renumbered s. 995.50 by this bill.

SECTION 6. 146.38 (3) (dm) of the statutes is amended to read:

146.38 **(3)** (dm) With regard to an action under s. ~~895.70~~ 895.441, to a court of record after issuance of a subpoena;

NOTE: Section 895.70 is renumbered s. 895.441 by this bill.

SECTION 7. 146.38 (3) (e) of the statutes is amended to read:

146.38 **(3)** (e) With regard to any criminal matter, to a court of record, in accordance with chs. 885 to 895 and 995 and after issuance of a subpoena; and

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~~**NOTE:** Please add revisor's note. CJS~~ Parts of ch. 895 are renumbered to ch. 995 by this bill.

NOTE:

SECTION 8. 168.05 (2) and (4) of the statutes are amended to read:

168.05 **(2)** If such petroleum product is received on a regular business day between the hours of 7:45 a.m. and 4:30 p.m., such notice shall be given forthwith upon receipt of such petroleum product. If received at any other time, such notice shall be given between the next succeeding hours of 7:45 a.m. and 10 a.m. of a regular business day. Provided, that if any petroleum product is received on Saturday, Sunday, or any legal holiday, designated in s. ~~895.20~~ 995.20, such notice shall be given on the next following regular business day between the hours of 7:45 a.m. and 10 a.m.

(4) For the purpose of this section, the following shall constitute a reasonable length of time in which an inspector shall take the sample herein required: If notice

is properly given to an inspector before the hour of 11:45 a.m., the inspector shall take such sample before the hour of 4:30 p.m. of the day; if notice is properly given between the hours of 11:45 a.m. and 4:30 p.m., such sample shall be taken before the hour of 11:45 a.m. of the next following regular business day. Saturdays, Sundays, and legal holidays, designated in s. ~~895.20~~ 995.20, shall not be considered regular business days.

NOTE: Section 895.20 is renumbered s. 995.20 by this bill.

SECTION 9. 175.35 (1) (c) of the statutes is amended to read:

175.35 **(1)** (c) "Working day" means each day except Saturday, Sunday, or a legal holiday under s. ~~895.20~~ 995.20.

NOTE: Section 895.20 is renumbered s. 995.20 by this bill.

SECTION 10. 187.33 (3) (a) 5. of the statutes is amended to read:

187.33 **(3)** (a) 5. Proceedings based upon a cause of action for which the volunteer is immune from liability under s. 146.31 (2) and (3), 146.37, ~~895.44~~ 895.475, 895.48, 895.4802, 895.4803, 895.482, 895.51, or 895.52.

NOTE: Section 895.44 is renumbered s. 895.475, and s. 895.48 (2) and (3) are renumbered ss. 895.4802 and 895.4803, by this bill.

SECTION 11. 187.43 (3) (a) 5. of the statutes is amended to read:

187.43 **(3)** (a) 5. Proceedings based upon a cause of action for which the volunteer is immune from liability under s. 146.31 (2) and (3), 146.37, ~~895.44~~ 895.475, 895.48, 895.4802, 895.4803, 895.482, 895.51, or 895.52.

NOTE: Section 895.44 is renumbered s. 895.475, and s. 895.48 (2) and (3) are renumbered ss. 895.4802 and 895.4803, by this bill.

SECTION 12. 215.26 (5) of the statutes is amended to read:

215.26 **(5)** LEGAL HOLIDAYS. The division shall designate such of the legal holidays listed in s. ~~895.20~~ 995.20 as days on which no association may transact business or be open for the purpose of transacting business. For purposes of this

subsection, operation of a remote service unit as defined in s. 215.13 (46) (a) 1. or an unstaffed facility does not constitute the transaction of business.

NOTE: Section 895.20 is renumbered s. 995.20 by this bill.

SECTION 13. Subchapter IV (title) of chapter 230 [precedes 230.90] of the statutes is created to read:

CHAPTER 230

SUBCHAPTER IV

EMPLOYEE FREEDOM OF SPEECH

PROTECTION

NOTE: Section 895.65 is renumbered s. 230.90 by this bill. Because that section is about a subject of the same kind as that in subch. III of ch. 230, but with a different legal and constitutional framework and history, subch. IV of ch. 230 is created for it by this bill.

~~****NOTE: Please review new revisor's note. CJS~~

SECTION 14. 252.15 (5) (a) 11. of the statutes is amended to read:

252.15 **(5)** (a) 11. To a person, including a person exempted from civil liability under the conditions specified under s. 895.48 895.4802, or 895.4803, who renders to the victim of an emergency or accident emergency care during the course of which the emergency caregiver is significantly exposed to the emergency or accident victim, if a physician, based on information provided to the physician, determines and certifies in writing that the emergency caregiver has been significantly exposed and if the certification accompanies the request for disclosure.

NOTE: Section 895.48 (2) and (3) are renumbered ss. 895.4802 and 895.4803 by this bill.

SECTION 15. 252.15 (5m) (a) of the statutes is amended to read:

252.15 **(5m)** (a) If a person, including a person exempted from civil liability under the conditions specified under s. 895.48 895.4802, or 895.4803, who renders to the victim of an emergency or accident emergency care during the course of which

the emergency caregiver is significantly exposed to the emergency or accident victim and the emergency or accident victim subsequently dies prior to testing for the presence of HIV, antigen or nonantigenic products of HIV or an antibody to HIV, and if a physician, based on information provided to the physician, determines and certifies in writing that the emergency caregiver has been significantly exposed and if the certification accompanies the request for testing and disclosure. Testing of a corpse under this paragraph shall be ordered by the coroner, medical examiner or physician who certifies the victim's cause of death under s. 69.18 (2) (b), (c) or (d).

NOTE: Section 895.48 (2) and (3) are renumbered ss. 895.4802 and 895.4803 by this bill.

SECTION 16. 253.10 (6) (b) of the statutes is amended to read:

253.10 **(6)** (b) A person who has been awarded damages under par. (a) shall, in addition to any damages awarded under par. (a), be entitled to not less than $1,000 nor more than $10,000 in punitive damages for a violation that satisfies a standard under s. ~~895.85~~ 895.043 (3).

NOTE: Section 895.85 is renumbered s. 895.043 by this bill.

SECTION 17. 285.61 (2) (a) 1. of the statutes is amended to read:

285.61 **(2)** (a) 1. Within 20 days, excluding statewide legal holidays specified in s. ~~895.20~~ 995.20, after receipt of the application the department shall provide written notice to the applicant describing specifically all of the plans, specifications, and any other information necessary to determine if the proposed construction, reconstruction, replacement, or modification will meet the requirements of this chapter and s. 299.15 and rules promulgated under this chapter and s. 299.15.

NOTE: Section 895.20 is renumbered s. 995.20 by this bill.

SECTION 18. 285.62 (2) (a) 1. of the statutes is amended to read:

285.62 **(2)** (a) 1. Within 20 days, excluding statewide legal holidays specified in s. ~~895.20~~ 995.20, after receipt of the application the department shall provide written notice to the applicant describing specifically any additional information required under sub. (1) necessary to determine if the source, upon issuance of the permit, will meet the requirements of this chapter and s. 299.15 and rules promulgated under this chapter and s. 299.15.

NOTE: Section 895.20 is renumbered s. 995.20 by this bill.

SECTION 19. 345.48 (1) of the statutes is amended to read:

345.48 **(1)** In this section, "working days" means all days except Saturdays, Sundays, and legal holidays under s. ~~895.20~~ 995.20.

NOTE: Section 895.20 is renumbered s. 995.20 by this bill.

SECTION 20. 562.01 (3m) of the statutes is amended to read:

562.01 **(3m)** "Business day" means a business day, as defined in s. 421.301 (6), that is not a legal holiday under s. ~~895.20~~ 995.20 or a federal legal holiday.

NOTE: Section 895.20 is renumbered s. 995.20 by this bill.

SECTION 21. 801.15 (1) (a) of the statutes is amended to read:

801.15 **(1)** (a) In this subsection, "holiday" means any day ~~which~~ that is a holiday provided in s. 230.35 (4) (a) or a statewide legal holiday provided in s. ~~895.20~~ 995.20 or both, and a full day on Good Friday.

NOTE: Section 895.20 is renumbered s. 995.20 by this bill.

SECTION 22. 813.122 (3) (b) 2. of the statutes is amended to read:

813.122 **(3)** (b) 2. That all persons, other than the parties, their attorneys, witnesses, child victim advocates, service representatives, as defined in s. ~~895.73~~ 895.45 (1) (c), court personnel and any guardian ad litem, be excluded from any hearing under this section.

NOTE: Section 895.73 is renumbered s. 895.45 by this bill.

SECTION 23. 814.04 (intro.) of the statutes, as affected by Supreme Court Order 03–06, is amended to read:

814.04 Items of costs. (intro.) Except as provided in ss. 93.20, 100.30 (5m), 106.50 (6) (i) and (6m) (a), 115.80 (9), 281.36 (2) (b) 1., 767.33 (4) (d), 769.313, 814.025, 802.05, 895.035 (4), ~~895.10 (3), 895.75~~ 895.443 (3), ~~895.77~~ 895.444 (2), ~~895.79~~ 895.445 (3), ~~895.80~~ 895.446 (3), 943.212 (2) (b), 943.245 (2) (d) ~~and~~, 943.51 (2) (b), and 995.10 (3), when allowed costs shall be as follows:

NOTE: Sections 895.10, 895.75, 895.77, 895.79, and 895.80 are renumbered ss. 995.10, 895.443, 895.444, 895.445, and 895.446 by this bill.

SECTION 24. 893.585 of the statutes is amended to read:

893.585 Sexual exploitation by a therapist. (1) Notwithstanding ss. 893.54, 893.55, and 893.57, an action under s. ~~895.70~~ 895.441 for damages shall be commenced within 3 years after the cause of action accrues or be barred.

(2) If a person entitled to bring an action under s. ~~895.70~~ 895.441 is unable to bring the action due to the effects of the sexual contact or due to any threats, instructions, or statements from the therapist, the period of inability is not part of the time limited for the commencement of the action, except that this subsection shall not extend the time limitation by more than 15 years.

(3) This section does not apply to damages incurred under s. ~~895.71~~ 895.442.

NOTE: Section 895.70 is renumbered s. 895.441 by this bill, and s. 895.71 is renumbered s. 895.442 by this bill.

SECTION 25. 893.587 of the statutes is amended to read:

893.587 Sexual assault of a child; limitation. An action to recover damages for injury caused by an act that would constitute a violation of s. 948.02, 948.025, 948.06, or 948.095 or would create a cause of action under s. ~~895.71~~ 895.442 shall be commenced before the injured party reaches the age of 35 years or be barred.

NOTE: Section 895.71 is renumbered s. 895.442 by this bill.

SECTION 26. 893.93 (1) (e) of the statutes is amended to read:

893.93 **(1)** (e) An action under s. ~~895.77~~ 895.444.

NOTE: Section 895.77 is renumbered s. 895.444 by this bill.

SECTION 27. Chapter 895 (title) of the statutes is amended to read:

CHAPTER 895

DAMAGES, LIABILITY, AND

MISCELLANEOUS ~~GENERAL~~ PROVISIONS

REGARDING ACTIONS IN COURTS

NOTE: Makes chapter 895 (title) more specific.

SECTION 28. Subchapter I (title) of chapter 895 [precedes 895.01] of the statutes is created to read:

CHAPTER 895

SUBCHAPTER I

DAMAGES, RECOVERY, AND

MISCELLANEOUS PROVISIONS

REGARDING ACTIONS IN COURTS

NOTE: Chapter 895 is divided into two subchapters, one for exemptions to liability and one for all other provisions currently contained in chapter 895 that are directly related to court actions.

SECTION 29. 895.045 (2) of the statutes is amended to read:

895.045 **(2)** CONCERTED ACTION. Notwithstanding sub. (1), if 2 or more parties act in accordance with a common scheme or plan, those parties are jointly and severally liable for all damages resulting from that action, except as provided in s. ~~895.85~~ 895.043 (5).

NOTE: Section 895.85 is renumbered s. 895.043 by this bill.

SECTION 30. 895.10 of the statutes is renumbered 995.10.

NOTE: Moves s. 895.10, Tobacco product agreement, to new Chapter 995, Miscellaneous Statutes.

SECTION 31. 895.11 of the statutes is renumbered 995.11.

NOTE: Moves s. 895.11, Payments under the tobacco settlement agreement, to new Chapter 995, Miscellaneous Statutes.

SECTION 32. 895.12 of the statutes is renumbered 995.12, and 995.12 (1) (b), (e), (h), (j) and (k), (2) (a) 1., 5. c., d. and g., 7. and 8. and (b) 2. a. and b., (3) (a), (4) (b) and (c) and (12) as renumbered, are amended to read:

995.12 **(1)** (b) "Cigarette" has the meaning given in s. ~~895.10~~ 995.10 (1) (d).

(e) "Master settlement agreement" has the meaning given in s. ~~895.10~~ 995.10 (1) (e).

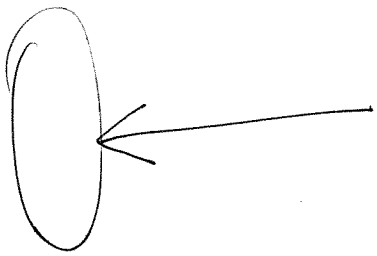
(h) "Qualified escrow fund" has the meaning given in s. ~~895.10~~ 995.10 (1) (f).

(j) "Tobacco product manufacturer" has the meaning given in s. ~~895.10~~ 995.10 (1) (i).

(k) "Units sold" has the meaning given in s. ~~895.10~~ 995.10 (1) (j).

(2) (a) 1. Every tobacco product manufacturer whose cigarettes are sold in this state, whether directly or through a distributor, retailer, or similar intermediary or intermediaries, shall execute and deliver in the manner prescribed by the attorney general a certification to the department and attorney general, no later than the 30th day of April each year, certifying that as of that date the tobacco product manufacturer is either a participating manufacturer or is in full compliance with s. ~~895.10~~ 995.10 (2) (b).

5. c. That the nonparticipating manufacturer is in full compliance with this section and s. ~~895.10~~ 995.10.



d. The name, address, and telephone number of the financial institution where the nonparticipating manufacturer has established the qualified escrow fund required under s. ~~895.10~~ 995.10 (2) (b).

g. The amount and date of any withdrawal or transfer of funds the nonparticipating manufacturer made at any time from the fund or from any other qualified escrow fund into which it ever made escrow payments under s. ~~895.10~~ 995.10 (2) (b).

7. A nonparticipating manufacturer may not include a brand family in its certification unless it affirms that the brand family constitutes its cigarettes for purposes of s. ~~895.10~~ 995.10.

8. Nothing in this section shall be construed as limiting or otherwise affecting the state's right to maintain that a brand family constitutes cigarettes of a different tobacco product manufacturer for purposes of calculating payments under the master settlement agreement or for purposes of s. ~~895.10~~ 995.10.

(b) 2. a. An escrow payment required under s. ~~895.10~~ 995.10 (2) (b) for any period for any brand family, whether or not listed by such nonparticipating manufacturer, has not been fully paid into a qualified escrow fund governed by a qualified escrow agreement that has been approved by the attorney general.

b. Any outstanding final judgment, including interest on that judgment, for a violation of s. ~~895.10~~ 995.10 has not been fully satisfied for the brand family or manufacturer.

(3) (a) *Requirement for agent for service of process.* Any nonresident or foreign nonparticipating manufacturer that has not registered to do business in this state as a foreign corporation or business entity shall, as a condition precedent to having its brand families included or retained in the directory under sub. (2) (b), appoint and

continually engage the services of an agent in this state to act as agent for the service of process on whom all processes, and any action or proceeding against it concerning or arising out of the enforcement of this section and s. ~~895.10~~ 995.10, may be served in any manner authorized by law. That service shall constitute legal and valid service of process on the nonparticipating manufacturer. The nonparticipating manufacturer shall provide the name, address, phone number, and proof of the appointment and availability of the agent to the attorney general.

(4) (b) *Disclosure of information.* The department is authorized to disclose to the attorney general any information received under this section and requested by the attorney general for purposes of determining compliance with and enforcing the provisions of this section. The department and attorney general shall share with each other the information received under this section, and may share such information with other federal, state, or local agencies only for purposes of enforcement of this section, s. ~~895.10~~ 995.10, or corresponding laws of other states.

(c) *Verification of qualified escrow fund.* The attorney general may require at any time from the nonparticipating manufacturer proof, from the financial institution in which the manufacturer has established a qualified escrow fund for the purpose of compliance with s. ~~895.10~~ 995.10, of the amount of money in that fund, exclusive of interest, the amount and date of each deposit into the fund, and the amount and date of each withdrawal from the fund.

(12) CONSTRUCTION. If a court finds that the provisions of this section and of s. ~~895.10~~ 995.10 conflict and cannot be harmonized, then the provisions of s. ~~895.10~~ 995.10 shall control. If any part of this section causes s. ~~895.10~~ 995.10 to no longer constitute a qualifying or model statute, as those terms are defined in the master settlement agreement, then that portion of this section is not valid.

NOTE: Moves s. 895.12, Certification under the tobacco settlement agreement, to new Chapter 995, Miscellaneous Statutes. Section 895.10 is renumbered to s. 995.10 by this bill.

SECTION 33. 895.20 of the statutes is renumbered 995.20.

NOTE: Moves s. 895.20, Legal holidays, to new Chapter 995, Miscellaneous Statutes.

SECTION 34. 895.22 of the statutes is renumbered 995.22.

NOTE: Moves s. 895.22, Wisconsin family month, week and Sunday, to new Chapter 995, Miscellaneous Statutes.

SECTION 35. 895.225 of the statutes is renumbered 995.225.

NOTE: Moves s. 895.225, Fire Prevention Week, to new Chapter 995, Miscellaneous Statutes.

SECTION 36. 895.23 of the statutes is renumbered 995.23.

NOTE: Moves s. 895.23 Indian Rights Day, to new Chapter 995, Miscellaneous Statutes.

SECTION 37. 895.36 (title) of the statutes is amended to read:

895.36 (title) **Process against** **corporation or limited liability company** **officer.**

NOTE: Makes title more specific to clarify the applicability of the statute.

SECTION 38. 895.37 (title) of the statutes is amended to read:

895.37 (title) **Abrogation of defenses** **in employee personal injury** **actions.**

NOTE: Makes title more specific to clarify the applicability of the statute.

SECTION 39. 895.38 of the statutes is renumbered 112.09.

NOTE: Moves s. 895.38, Surety, how discharged, to Chapter 112, Fiduciaries, for more logical placement.

SECTION 40. 895.41 of the statutes is renumbered 103.165.

NOTE: Moves s. 895.41, Employee's cash bonds to be held in trust; duty of employer; penalty, to Chapter 103, Employment Regulations, for more logical placement.

SECTION 41. 895.437 of the statutes is renumbered 134.96.

NOTE: Moves s. 895.437, Use of lodging establishments, which contains various regulations relating to the use of lodging establishments for purposes relating to alcohol consumption by minors and illegal use of controlled substances and allowing lodging

establishments to require a deposit when lodging is applied for, to Chapter 134, Miscellaneous Trade Regulations, for more logical placement.

SECTION 42. 895.44 of the statutes is renumbered 895.475.

NOTE: Moves s. 895.44, Exemption from civil liability for furnishing safety inspection or advisory services, so that it is located in Subchapter II, Exemptions From Liability.

SECTION 43. Subchapter II (title) of Chapter 895 [precedes 895.475] of the statutes is created to read:

CHAPTER 895

SUBCHAPTER II

EXEMPTIONS FROM, AND LIMITATIONS

ON, LIABILITY

NOTE: Ch. 895 is divided into two subchapters, one for exemptions to liability and one for all other provisions currently contained in ch. 895 that are directly related to court actions.

SECTION 44. 895.48 (title) of the statutes is amended to read:

895.48 (title) **Civil liability exemption; emergency medical care, ~~athletic events health care, hazardous substances and information concerning paternity.~~**

NOTE: This bill renumbers s. 895.48 (2) and (3) to be separate sections because the subject matter of each, actions regarding hazardous materials emergencies and distributing information to new parents about paternity, does not relate to emergency medical care. The bill retains under s. 895.48 subsections (1), (1m), and (4), which relate to emergency medical care.

SECTION 45. 895.48 (2) of the statutes is renumbered 895.4802, and 895.4802 (1) (intro.), (3) (intro.) and (4) (b) and (c) as renumbered, are amended to read:

895.4802 **(1)** (intro.) In this ~~subsection~~ section:

(3) (intro.) The immunity under ~~par. (b)~~ sub. (2) does not extend to any person:

(4) (b) The good faith of any hazardous substance predictor or any person who provides the technology to make a prediction is presumed in any civil action. Any person who asserts that the acts or omissions under ~~subd. 1.~~ par. (a) were not made

in good faith has the burden of proving that assertion by clear and convincing evidence.

(c) The immunity under ~~subd. 1.~~ par. (a) does not extend to any person described under ~~par. (c) 1., 2. or 3~~ sub. (3) (a), (b), or (c).

NOTE: This bill renumbers s. 895.48 (2) to be a separate section, s. 895.4802, because the subject matter, actions regarding hazardous materials emergencies, does not relate to emergency medical care, the subject of s. 895.48 after treatment by this bill.

SECTION 46. 895.48 (3) of the statutes is renumbered 895.4803.

NOTE: This bill renumbers s. 895.48 (3) to be a separate section, s. 895.4803, because the subject matter, distributing information to new parents about paternity, does not relate to emergency medical care, the subject of s. 895.48 after treatment by this bill.

SECTION 47. 895.4802 (title) of the statutes is created to read:

895.4802 (title) **Civil liability exemption; hazardous materials.**

NOTE: This bill renumbers s. 895.48 (2) to be a separate section, s. 895.4802, because the subject matter, actions regarding hazardous materials emergencies, does not relate to emergency medical care, the subject of s. 895.48 after treatment by this bill.

SECTION 48. 895.4803 (title) of the statutes is created to read:

895.4803 (title) **Civil liability exemption; information concerning paternity.**

NOTE: This bill renumbers s. 895.48 (3) to be a separate section, s. 895.4803, because the subject matter, distributing information to new parents about paternity, does not relate to emergency medical care, the subject of s. 895.48 after treatment by this bill.

SECTION 49. 895.49 of the statutes is renumbered 895.447.

NOTE: Moves s. 895.49, Certain agreements to limit or eliminate tort liability void, so that it is not located in Subchapter II, Exemptions From Liability, and is located in Subchapter I, Damages, Recovery, And Miscellaneous Provisions Regarding Actions In Courts.

~~****NOTE: See my change to revisor's note. CJS~~ OK

SECTION 50. 895.495 of the statutes is renumbered 895.448.

NOTE: Moves s. 895.495, Safety devices on farm equipment, ordinary negligence, so that it is not located in Subchapter II, Exemptions From Liability, and is located in Subchapter I, Damages, Recovery, And Miscellaneous Provisions Regarding Actions In Courts.

~~****NOTE: See my change to revisor's note.~~ CJS OK

SECTION 51. 895.50 of the statutes is renumbered 995.50.

NOTE: Moves s. 895.50, Right of privacy, to new Chapter 995, Miscellaneous Statutes.

SECTION 52. 895.505 of the statutes is renumbered 134.97.

NOTE: Moves s. 895.505, Disposal of records containing personal information, which is applicable to financial institutions, medical businesses, and tax preparation businesses, to Chapter 134, Miscellaneous Trade Regulations, for more logical placement.

SECTION 53. 895.51 (title) of the statutes is amended to read:

895.51 (title) ~~**Liability**~~ **Civil liability exemption: food donation, sale or distribution.**

NOTE: Conforms title to other section titles within Subchapter II of Chapter 895, consistent with the subject matter of the section.

SECTION 54. 895.515 (title) of the statutes is amended to read:

895.515 (title) ~~**Liability**~~ **Civil liability exemption; equipment or technology donation.**

NOTE: Conforms title to other section titles within Subchapter II of Chapter 895, consistent with the subject matter of the section.

SECTION 55. 895.517 (title) of the statutes is amended to read:

895.517 (title) ~~**Liability**~~ **Civil liability exemption: solid waste donation or sale.**

NOTE: Conforms title to other section titles within Subchapter II of Chapter 895, consistent with the subject matter of the section.

SECTION 56. 895.525 (title) of the statutes is amended to read:

895.525 (title) **Participation in recreational activities; restrictions on civil liability, assumption of risk.**

NOTE: Makes title more specific to clarify the applicability of the statute.

SECTION 57. 895.527 (title) of the statutes is amended to read:

895.527 (title) **Sport shooting range activities; limitations on liability and restrictions on operation.**

NOTE: Makes title more specific to clarify the applicability of the statute.

SECTION 58. 895.53 (title) of the statutes is amended to read:

895.53 (title) ~~Liability~~ Civil and criminal liability **exemption; tests for intoxication.**

NOTE: Conforms title to other section titles within Subchapter II of Chapter 895, consistent with the subject matter of the section.

SECTION 59. 895.555 (title) of the statutes is amended to read:

895.555 (title) ~~Liability~~ Civil liability **exemption; anhydrous ammonia.**

NOTE: Conforms title to other section titles within Subchapter II of Chapter 895, consistent with the subject matter of the section.

SECTION 60. 895.65 of the statutes is renumbered 230.90.

NOTE: Moves s. 895.65, Government employer retaliation prohibited, which prohibits government employers from retaliating, by engaging in disciplinary action, against employees lawfully disclosing information, to ch. 230, State Employment Relations, for more logical placement.

~~****NOTE: See my change to revisor's note. CJS~~ OK

SECTION 61. 895.67 of the statutes is renumbered 995.67.

NOTE: Moves s. 895.67, Domestic abuse services; prohibited disclosures, to new Chapter 995, Miscellaneous Statutes.

SECTION 62. 895.70 of the statutes is renumbered 895.441, and 895.441 (title), as renumbered, is amended to read:

895.441 (title) ~~Sexual~~ Action for ~~sexual~~ **exploitation by a therapist.**

NOTE: Moves s. 895.70, Sexual exploitation by a therapist, which provides a cause of action, so that it is not located in Subchapter II, Exemptions From Liability, and is located in Subchapter I, Damages, Recovery, and Miscellaneous Provisions Regarding Actions in Courts. Makes title more specific to clarify the applicability of the statute.

~~***NOTE: See my change to revisor's note. CJS~~ OK

SECTION 63. 895.71 of the statutes is renumbered 895.442, and 895.442 (title) and (5), as renumbered, are amended to read:

895.442 (title) ~~Sexual~~ Action for ~~sexual~~ **exploitation by a member of the clergy.**

(5) SILENCE AGREEMENTS. Any contract or agreement concerning the settlement of any claim under this section that limits or eliminates the right of the injured person to disclose the sexual contact described under sub. (2) to another member of

the religious organization to which the member of the clergy under sub. (2) belongs, to a therapist, as defined in s. ~~895.70~~ 895.441 (1) (e), to a person listed under s. 48.981 (2) (a), or to a district attorney, is void.

NOTE: Moves s. 895.71, Sexual exploitation by a member of the clergy, which provides a cause of action, so that it is not located in Subchapter II, Exemptions From Liability, and is located in Subchapter I, Damages, Recovery, and Miscellaneous Provisions Regarding Actions in Courts. Makes title more specific to clarify the applicability of the statute. Section 895.70 is renumbered s. 895.441 by this bill.

~~****NOTE: See my change to revisor's note. CJS~~

SECTION 64. 895.73 of the statutes is renumbered 895.45, and 895.45 (title), as renumbered, is amended to read:

895.45 (title) **Service representatives for adult abusive conduct complainants.**

NOTE: Moves s. 895.73, Service representatives, which allows adult abuse victims appearing in court to have a service representative present, so that it is not located in Subchapter II, Exemptions From Liability, and is located in Subchapter I, Damages, Recovery, and Miscellaneous Provisions Regarding Actions in Courts. Makes title more specific to clarify the applicability of the statute.

~~****NOTE: See my change to revisor's note. CJS~~

SECTION 65. 895.75 of the statutes is renumbered 895.443, and 895.443 (title), as renumbered, is amended to read:

895.443 (title) ~~**Physical Action for physical**~~ **injury, emotional distress, loss or damage suffered by members of certain groups.**

NOTE: Moves s. 895.75, Physical injury, emotional distress, loss or damage suffered by members of certain groups, which allows for recovery for emotional damages in certain actions, so that it is not located in Subchapter II, Exemptions From Liability, and is located in Subchapter I, Damages, Recovery, and Miscellaneous Provisions Regarding Actions in Courts. Makes title more specific to clarify the applicability of the statute.

~~****NOTE: See my change to revisor's note. CJS~~

SECTION 66. 895.76 of the statutes is renumbered 895.455.

NOTE: Moves s. 895.76, Limits on recovery by prisoners, so that it is not located in Subchapter II, Exemptions From Liability, and is located in Subchapter I, Damages, Recovery, and Miscellaneous Provisions Regarding Actions in Courts.

~~****NOTE: See my change to revisor's note. CJS~~

SECTION 67. 895.77 of the statutes is renumbered 895.444, and 895.444 (title), as renumbered, is amended to read:

895.444 (title) ~~**Injury**~~ ~~**Action for injury**~~ **caused by criminal gang activity.**

NOTE: Moves s. 895.77, Injury caused by criminal gang activity, which creates a cause of action, so that it is not located in Subchapter II, Exemptions From Liability, and is located in Subchapter I, Damages, Recovery, and Miscellaneous Provisions Regarding Actions in Courts. Makes title more specific to clarify the applicability of the statute.

~~****NOTE: See my change to revisor's note. CJS~~

SECTION 68. 895.78 of the statutes is renumbered 895.457.

NOTE: Moves s. 895.78, Limiting felon's right to damages, so that it is not located in Subchapter II, Exemptions From Liability, and is located in Subchapter I, Damages, Recovery, and Miscellaneous Provisions Regarding Actions in Courts.

~~****NOTE: See my change to revisor's note.~~ CJS

SECTION 69. 895.79 of the statutes is renumbered 895.445, and 895.445 (title), as renumbered, is amended to read:

895.445 (title) ~~**Damage**~~ ~~**Action for damage**~~ **to certain machines.**

NOTE: Moves s. 895.79, Damage to certain machines, which creates a cause of action, so that it is not located in Subchapter II, Exemptions From Liability, and is located in Subchapter I, Damages, Recovery, and Miscellaneous Provisions Regarding Actions in Courts. Makes title more specific to clarify the applicability of the statute.

~~****NOTE: See my change to revisor's note. CJS~~

SECTION 70. 895.80 of the statutes is renumbered 895.446, and 895.446 (title), as renumbered, is amended to read:

895.446 (title) ~~**Property**~~ ~~**Action for property**~~ **damage or loss caused by crime.**

NOTE: Moves s. 895.80, Property damage or loss, which creates a cause of action, so that it is not located in Subchapter II, Exemptions From Liability, and is located in Subchapter I, Damages, Recovery, and Miscellaneous Provisions Regarding Actions in Courts. Makes title more specific to clarify the applicability of the statute.

~~****NOTE: See my change to revisor's note. CJS~~

SECTION 71. 895.85 of the statutes is renumbered 895.043.

NOTE: Moves s. 895.85, Punitive damages, so it is not located in Subchapter II, Exemptions From Liability and is located in Subchapter I, Damages, Recovery, and Miscellaneous Provisions Regarding Actions in Courts.

~~****NOTE: See my change to revisor's note. CJS~~

SECTION 72. 938.346 (1) (h) 1. of the statutes is amended to read:

938.346 **(1)** (h) 1. The right to be accompanied by a service representative, as provided under s. ~~895.73~~ 895.45.

NOTE: Section 895.73 is renumbered s. 895.45 by this bill.

SECTION 73. 950.04 (1v) (c) of the statutes is amended to read:

950.04 **(1v)** (c) To be accompanied by a service representative, as provided under s. ~~895.73~~ 895.45.

NOTE: Section 895.73 is renumbered s. 895.45 by this bill.

SECTION 74. 970.03 (4) (a) of the statutes is amended to read:

970.03 **(4)** (a) If the defendant is accused of a crime under s. 940.225, 948.02, 948.025, 948.05, 948.06, or 948.095, the court may exclude from the hearing all persons who are not officers of the court, members of the complainant's or defendant's families, or others considered by the court to be supportive of the complainant or defendant, the service representative, as defined in s. ~~895.73~~ 895.45 (1) (c), or other persons required to attend, if the court finds that the state or the defendant has established a compelling interest that would likely be prejudiced if the persons were not excluded. The court may consider as a compelling interest, among others, the need to protect a complainant from undue embarrassment and emotional trauma.

NOTE: Section 895.73 is renumbered s. 895.45 by this bill.

SECTION 75. 972.11 (1) of the statutes is amended to read:

972.11 **(1)** Except as provided in subs. (2) to (4), the rules of evidence and practice in civil actions shall be applicable in all criminal proceedings unless the context of a section or rule manifestly requires a different construction. No guardian ad litem need be appointed for a defendant in a criminal action. Chapters 885 to 895

and 995, except ss. 804.02 to 804.07 and 887.23 to 887.26, shall apply in all criminal proceedings.

use note: std

Note: Parts of ch. 895 are renumbered to ch. 995 by this bill.

****NOTE: Please add revisor's note. CJS

SECTION 76. 990.001 (4) (e) of the statutes is amended to read:

990.001 **(4)** (e) "Legal holiday" as used in this section means any statewide legal holiday provided in s. ~~895.20~~ 995.20. When an act is permitted to be done by the use of the postal service, and the last day within the time prescribed by law for performing such act falls on a legal public holiday under federal law, or other holiday designated by the president such that the postal service does not receive registered mail or make regular deliveries on that day, the day shall be considered a legal holiday for purposes of this section.

NOTE: Section 895.20 is renumbered s. 995.20 by this bill.

SECTION 77. Chapter 995 (title) of the statutes is created to read:

CHAPTER 995

MISCELLANEOUS STATUTES

(END)

State of Wisconsin
2005 – 2006 LEGISLATURE

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PRELIMINARY DRAFT – NOT READY FOR INTRODUCTION

Revisor's bill
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AN ACT **relating to:** renumbering and reorganizing various provisions of chapter 895 of the statutes and creating chapter 995 of the statutes. (Revisor's Revision Bill).

Analysis by the Legislative Reference Bureau

This bill is proposed under authority of s. 13.93 (1) (b) for the purpose of renaming chapter 895 of the statutes from "Miscellaneous General Provisions" to "Damages, Liability, and Miscellaneous Provisions Regarding Actions in Courts" to more accurately reflect the chapter's contents, to reorganize statutes within chapter 895 of the statutes into subchapters, and to move unrelated material into a new chapter 995 of the statutes titled "Miscellaneous Statutes." Chapter 895 was originally numbered as chapter 331 by Chapter 4, Laws of 1925, as part of Title XXX, Provisions Common to Actions and Proceedings in all Courts, indicating that the original intent was to create a chapter for miscellaneous provisions relating to court proceedings. Over time miscellaneous provisions unrelated to courts have been placed in chapter 895, apparently due to its title. This bill returns chapter 895 to being a chapter related to court proceedings and creates a new chapter for truly miscellaneous statutes unrelated to courts and not falling within the subject area of any other chapter. In accordance with current drafting style, commas before the last item in a series are added throughout this bill. "Which" is replaced by "that" where

grammatically correct. Specific changes are explained in the NOTES provided by the revisor of statutes in the body of the bill.

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

NOTE: This bill is not intended to make any substantive changes.

SECTION 1. 35.095 (1) (c) of the statutes is amended to read:

35.095 **(1)** (c) "Working day" means each day except Saturdays, Sundays, and federal and statewide legal holidays designated in s. ~~895.20~~ 995.20.

NOTE: Section 895.20 is renumbered s. 995.20 by this bill.

SECTION 2. 66.0601 (2) of the statutes is amended to read:

66.0601 **(2)** CELEBRATION OF HOLIDAYS. A town, county, school board, or school district may appropriate money for the purpose of initiating or participating in appropriate celebrations of any legal holiday listed in s. ~~895.20~~ 995.20.

NOTE: Section 895.20 is renumbered s. 995.20 by this bill.

SECTION 3. 101.58 (2) (g) of the statutes is amended to read:

101.58 **(2)** (g) "Legal holiday" has the meaning provided in s. ~~895.20~~ 995.20.

NOTE: Section 895.20 is renumbered s. 995.20 by this bill.

SECTION 4. 106.52 (3) (d) of the statutes is amended to read:

106.52 **(3)** (d) Nothing in this subsection prohibits a domestic abuse services organization, as defined in s. ~~895.67~~ 995.67 (1) (b), from providing separate shelter facilities, private home shelter care, advocacy, counseling or other care, treatment or services for persons of different sexes or from providing for separate treatment of persons based on sex with regard to the provision of shelter facilities, private home shelter care, advocacy, counseling or other care, treatment or services for persons of different sexes.

NOTE: Section 895.67 is renumbered s. 995.67 by this bill.

SECTION 5. 134.43 (3) of the statutes is amended to read:

134.43 **(3)** Any person who is the victim of an intrusion of privacy under this section is entitled to relief under s. ~~895.50~~ 995.50 (1) and (4) unless the act is permissible under ss. 968.27 to 968.37.

NOTE: Section 895.50 is renumbered s. 995.50 by this bill.

SECTION 6. 146.38 (3) (dm) of the statutes is amended to read:

146.38 **(3)** (dm) With regard to an action under s. ~~895.70~~ 895.441, to a court of record after issuance of a subpoena;

NOTE: Section 895.70 is renumbered s. 895.441 by this bill.

SECTION 7. 146.38 (3) (e) of the statutes is amended to read:

146.38 **(3)** (e) With regard to any criminal matter, to a court of record, in accordance with chs. 885 to 895 and 995 and after issuance of a subpoena; and

NOTE: Parts of ch. 895 are renumbered to ch. 995 by this bill.

SECTION 8. 168.05 (2) and (4) of the statutes are amended to read:

168.05 **(2)** If such petroleum product is received on a regular business day between the hours of 7:45 a.m. and 4:30 p.m., such notice shall be given forthwith upon receipt of such petroleum product. If received at any other time, such notice shall be given between the next succeeding hours of 7:45 a.m. and 10 a.m. of a regular business day. Provided, that if any petroleum product is received on Saturday, Sunday, or any legal holiday, designated in s. ~~895.20~~ 995.20, such notice shall be given on the next following regular business day between the hours of 7:45 a.m. and 10 a.m.

(4) For the purpose of this section, the following shall constitute a reasonable length of time in which an inspector shall take the sample herein required: If notice is properly given to an inspector before the hour of 11:45 a.m., the inspector shall take such sample before the hour of 4:30 p.m. of the day; if notice is properly given between

the hours of 11:45 a.m. and 4:30 p.m., such sample shall be taken before the hour of 11:45 a.m. of the next following regular business day. Saturdays, Sundays, and legal holidays, designated in s. ~~895.20~~ 995.20, shall not be considered regular business days.

NOTE: Section 895.20 is renumbered s. 995.20 by this bill.

SECTION 9. 175.35 (1) (c) of the statutes is amended to read:

175.35 **(1)** (c) "Working day" means each day except Saturday, Sunday, or a legal holiday under s. ~~895.20~~ 995.20.

NOTE: Section 895.20 is renumbered s. 995.20 by this bill.

SECTION 10. 187.33 (3) (a) 5. of the statutes is amended to read:

187.33 **(3)** (a) 5. Proceedings based upon a cause of action for which the volunteer is immune from liability under s. 146.31 (2) and (3), 146.37, ~~895.44~~ 895.475, 895.48, 895.4802, 895.4803, 895.482, 895.51, or 895.52.

NOTE: Section 895.44 is renumbered s. 895.475, and s. 895.48 (2) and (3) are renumbered ss. 895.4802 and 895.4803, by this bill.

SECTION 11. 187.43 (3) (a) 5. of the statutes is amended to read:

187.43 **(3)** (a) 5. Proceedings based upon a cause of action for which the volunteer is immune from liability under s. 146.31 (2) and (3), 146.37, ~~895.44~~ 895.475, 895.48, 895.4802, 895.4803, 895.482, 895.51, or 895.52.

NOTE: Section 895.44 is renumbered s. 895.475, and s. 895.48 (2) and (3) are renumbered ss. 895.4802 and 895.4803, by this bill.

SECTION 12. 215.26 (5) of the statutes is amended to read:

215.26 **(5)** LEGAL HOLIDAYS. The division shall designate such of the legal holidays listed in s. ~~895.20~~ 995.20 as days on which no association may transact business or be open for the purpose of transacting business. For purposes of this subsection, operation of a remote service unit as defined in s. 215.13 (46) (a) 1. or an unstaffed facility does not constitute the transaction of business.

NOTE: Section 895.20 is renumbered s. 995.20 by this bill.

SECTION 13. Subchapter IV (title) of chapter 230 [precedes 230.90] of the statutes is created to read:

CHAPTER 230

SUBCHAPTER IV

EMPLOYEE FREEDOM OF SPEECH

PROTECTION

NOTE: Section 895.65 is renumbered s. 230.90 by this bill. Because that section is about a subject of the same kind as that in subch. III of ch. 230, but with a different legal and constitutional framework and history, subch. IV of ch. 230 is created for it by this bill.

SECTION 14. 252.15 (5) (a) 11. of the statutes is amended to read:

252.15 **(5)** (a) 11. To a person, including a person exempted from civil liability under the conditions specified under s. 895.48 895.4802, or 895.4803, who renders to the victim of an emergency or accident emergency care during the course of which the emergency caregiver is significantly exposed to the emergency or accident victim, if a physician, based on information provided to the physician, determines and certifies in writing that the emergency caregiver has been significantly exposed and if the certification accompanies the request for disclosure.

NOTE: Section 895.48 (2) and (3) are renumbered ss. 895.4802 and 895.4803 by this bill.

SECTION 15. 252.15 (5m) (a) of the statutes is amended to read:

252.15 **(5m)** (a) If a person, including a person exempted from civil liability under the conditions specified under s. 895.48 895.4802, or 895.4803, who renders to the victim of an emergency or accident emergency care during the course of which the emergency caregiver is significantly exposed to the emergency or accident victim and the emergency or accident victim subsequently dies prior to testing for the presence of HIV, antigen or nonantigenic products of HIV or an antibody to HIV, and

if a physician, based on information provided to the physician, determines and certifies in writing that the emergency caregiver has been significantly exposed and if the certification accompanies the request for testing and disclosure. Testing of a corpse under this paragraph shall be ordered by the coroner, medical examiner or physician who certifies the victim's cause of death under s. 69.18 (2) (b), (c) or (d).

NOTE: Section 895.48 (2) and (3) are renumbered ss. 895.4802 and 895.4803 by this bill.

SECTION 16. 253.10 (6) (b) of the statutes is amended to read:

253.10 **(6)** (b) A person who has been awarded damages under par. (a) shall, in addition to any damages awarded under par. (a), be entitled to not less than $1,000 nor more than $10,000 in punitive damages for a violation that satisfies a standard under s. ~~895.85~~ 895.043 (3).

NOTE: Section 895.85 is renumbered s. 895.043 by this bill.

SECTION 17. 285.61 (2) (a) 1. of the statutes is amended to read:

285.61 **(2)** (a) 1. Within 20 days, excluding statewide legal holidays specified in s. ~~895.20~~ 995.20, after receipt of the application the department shall provide written notice to the applicant describing specifically all of the plans, specifications, and any other information necessary to determine if the proposed construction, reconstruction, replacement, or modification will meet the requirements of this chapter and s. 299.15 and rules promulgated under this chapter and s. 299.15.

NOTE: Section 895.20 is renumbered s. 995.20 by this bill.

SECTION 18. 285.62 (2) (a) 1. of the statutes is amended to read:

285.62 **(2)** (a) 1. Within 20 days, excluding statewide legal holidays specified in s. ~~895.20~~ 995.20, after receipt of the application the department shall provide written notice to the applicant describing specifically any additional information required under sub. (1) necessary to determine if the source, upon issuance of the

permit, will meet the requirements of this chapter and s. 299.15 and rules promulgated under this chapter and s. 299.15.

NOTE: Section 895.20 is renumbered s. 995.20 by this bill.

SECTION 19. 345.48 (1) of the statutes is amended to read:

345.48 **(1)** In this section, "working days" means all days except Saturdays, Sundays, and legal holidays under s. ~~895.20~~ 995.20.

NOTE: Section 895.20 is renumbered s. 995.20 by this bill.

SECTION 20. 562.01 (3m) of the statutes is amended to read:

562.01 **(3m)** "Business day" means a business day, as defined in s. 421.301 (6), that is not a legal holiday under s. ~~895.20~~ 995.20 or a federal legal holiday.

NOTE: Section 895.20 is renumbered s. 995.20 by this bill.

SECTION 21. 801.15 (1) (a) of the statutes is amended to read:

801.15 **(1)** (a) In this subsection, "holiday" means any day ~~which~~ that is a holiday provided in s. 230.35 (4) (a) or a statewide legal holiday provided in s. ~~895.20~~ 995.20 or both, and a full day on Good Friday.

NOTE: Section 895.20 is renumbered s. 995.20 by this bill.

SECTION 22. 813.122 (3) (b) 2. of the statutes is amended to read:

813.122 **(3)** (b) 2. That all persons, other than the parties, their attorneys, witnesses, child victim advocates, service representatives, as defined in s. ~~895.73~~ 895.45 (1) (c), court personnel and any guardian ad litem, be excluded from any hearing under this section.

NOTE: Section 895.73 is renumbered s. 895.45 by this bill.

SECTION 23. 814.04 (intro.) of the statutes, as affected by Supreme Court Order 03–06, is amended to read:

814.04 Items of costs. (intro.) Except as provided in ss. 93.20, 100.30 (5m), 106.50 (6) (i) and (6m) (a), 115.80 (9), 281.36 (2) (b) 1., 767.33 (4) (d), 769.313, 814.025,

802.05, 895.035 (4), ~~895.10 (3), 895.75~~ 895.443 (3), ~~895.77~~ 895.444 (2), ~~895.79~~ 895.445 (3), ~~895.80~~ 895.446 (3), 943.212 (2) (b), 943.245 (2) (d) ~~and~~, 943.51 (2) (b), and 995.10 (3), when allowed costs shall be as follows:

NOTE: Sections 895.10, 895.75, 895.77, 895.79, and 895.80 are renumbered ss. 995.10, 895.443, 895.444, 895.445, and 895.446 by this bill.

SECTION 24. 893.585 of the statutes is amended to read:

893.585 Sexual exploitation by a therapist. **(1)** Notwithstanding ss. 893.54, 893.55, and 893.57, an action under s. ~~895.70~~ 895.441 for damages shall be commenced within 3 years after the cause of action accrues or be barred.

(2) If a person entitled to bring an action under s. ~~895.70~~ 895.441 is unable to bring the action due to the effects of the sexual contact or due to any threats, instructions, or statements from the therapist, the period of inability is not part of the time limited for the commencement of the action, except that this subsection shall not extend the time limitation by more than 15 years.

(3) This section does not apply to damages incurred under s. ~~895.71~~ 895.442.

NOTE: Section 895.70 is renumbered s. 895.441 by this bill, and s. 895.71 is renumbered s. 895.442 by this bill.

SECTION 25. 893.587 of the statutes is amended to read:

893.587 Sexual assault of a child; limitation. An action to recover damages for injury caused by an act that would constitute a violation of s. 948.02, 948.025, 948.06, or 948.095 or would create a cause of action under s. ~~895.71~~ 895.442 shall be commenced before the injured party reaches the age of 35 years or be barred.

NOTE: Section 895.71 is renumbered s. 895.442 by this bill.

SECTION 26. 893.93 (1) (e) of the statutes is amended to read:

893.93 **(1)** (e) An action under s. ~~895.77~~ 895.444.

NOTE: Section 895.77 is renumbered s. 895.444 by this bill.

SECTION 27. Chapter 895 (title) of the statutes is amended to read:

CHAPTER 895

DAMAGES, LIABILITY, AND

MISCELLANEOUS ~~GENERAL~~ PROVISIONS

REGARDING ACTIONS IN COURTS

NOTE: Makes chapter 895 (title) more specific.

SECTION 28. Subchapter I (title) of chapter 895 [precedes 895.01] of the statutes is created to read:

CHAPTER 895

SUBCHAPTER I

DAMAGES, RECOVERY, AND

MISCELLANEOUS PROVISIONS

REGARDING ACTIONS IN COURTS

NOTE: Chapter 895 is divided into two subchapters, one for exemptions to liability and one for all other provisions currently contained in chapter 895 that are directly related to court actions.

SECTION 29. 895.045 (2) of the statutes is amended to read:

895.045 **(2)** CONCERTED ACTION. Notwithstanding sub. (1), if 2 or more parties act in accordance with a common scheme or plan, those parties are jointly and severally liable for all damages resulting from that action, except as provided in s. ~~895.85~~ 895.043 (5).

NOTE: Section 895.85 is renumbered s. 895.043 by this bill.

SECTION 30. 895.10 of the statutes is renumbered 995.10.

NOTE: Moves s. 895.10, Tobacco product agreement, to new Chapter 995, Miscellaneous Statutes.

SECTION 31. 895.11 of the statutes is renumbered 995.11.

NOTE: Moves s. 895.11, Payments under the tobacco settlement agreement, to new Chapter 995, Miscellaneous Statutes.

SECTION 32. 895.12 of the statutes is renumbered 995.12, and 995.12 (1) (b), (e), (h), (j) and (k), (2) (a) 1., 5. c., d. and g., 7. and 8. and (b) 2. a. and b., (3) (a), (4) (b) and (c) and (12) as renumbered, are amended to read:

995.12 **(1)** (b) "Cigarette" has the meaning given in s. ~~895.10~~ 995.10 (1) (d).

(e) "Master settlement agreement" has the meaning given in s. ~~895.10~~ 995.10 (1) (e).

(h) "Qualified escrow fund" has the meaning given in s. ~~895.10~~ 995.10 (1) (f).

(j) "Tobacco product manufacturer" has the meaning given in s. ~~895.10~~ 995.10 (1) (i).

(k) "Units sold" has the meaning given in s. ~~895.10~~ 995.10 (1) (j).

(2) (a) 1. Every tobacco product manufacturer whose cigarettes are sold in this state, whether directly or through a distributor, retailer, or similar intermediary or intermediaries, shall execute and deliver in the manner prescribed by the attorney general a certification to the department and attorney general, no later than the 30th day of April each year, certifying that as of that date the tobacco product manufacturer is either a participating manufacturer or is in full compliance with s. ~~895.10~~ 995.10 (2) (b).

5. c. That the nonparticipating manufacturer is in full compliance with this section and s. ~~895.10~~ 995.10.

d. The name, address, and telephone number of the financial institution where the nonparticipating manufacturer has established the qualified escrow fund required under s. ~~895.10~~ 995.10 (2) (b).

g. The amount and date of any withdrawal or transfer of funds the nonparticipating manufacturer made at any time from the fund or from any other

qualified escrow fund into which it ever made escrow payments under s. ~~895.10~~ 995.10 (2) (b).

7. A nonparticipating manufacturer may not include a brand family in its certification unless it affirms that the brand family constitutes its cigarettes for purposes of s. ~~895.10~~ 995.10.

8. Nothing in this section shall be construed as limiting or otherwise affecting the state's right to maintain that a brand family constitutes cigarettes of a different tobacco product manufacturer for purposes of calculating payments under the master settlement agreement or for purposes of s. ~~895.10~~ 995.10.

(b) 2. a. An escrow payment required under s. ~~895.10~~ 995.10 (2) (b) for any period for any brand family, whether or not listed by such nonparticipating manufacturer, has not been fully paid into a qualified escrow fund governed by a qualified escrow agreement that has been approved by the attorney general.

b. Any outstanding final judgment, including interest on that judgment, for a violation of s. ~~895.10~~ 995.10 has not been fully satisfied for the brand family or manufacturer.

(3) (a) *Requirement for agent for service of process.* Any nonresident or foreign nonparticipating manufacturer that has not registered to do business in this state as a foreign corporation or business entity shall, as a condition precedent to having its brand families included or retained in the directory under sub. (2) (b), appoint and continually engage the services of an agent in this state to act as agent for the service of process on whom all processes, and any action or proceeding against it concerning or arising out of the enforcement of this section and s. ~~895.10~~ 995.10, may be served in any manner authorized by law. That service shall constitute legal and valid service of process on the nonparticipating manufacturer. The nonparticipating

manufacturer shall provide the name, address, phone number, and proof of the appointment and availability of the agent to the attorney general.

(4) (b) *Disclosure of information.* The department is authorized to disclose to the attorney general any information received under this section and requested by the attorney general for purposes of determining compliance with and enforcing the provisions of this section. The department and attorney general shall share with each other the information received under this section, and may share such information with other federal, state, or local agencies only for purposes of enforcement of this section, s. ~~895.10~~ 995.10, or corresponding laws of other states.

(c) *Verification of qualified escrow fund.* The attorney general may require at any time from the nonparticipating manufacturer proof, from the financial institution in which the manufacturer has established a qualified escrow fund for the purpose of compliance with s. ~~895.10~~ 995.10, of the amount of money in that fund, exclusive of interest, the amount and date of each deposit into the fund, and the amount and date of each withdrawal from the fund.

(12) CONSTRUCTION. If a court finds that the provisions of this section and of s. ~~895.10~~ 995.10 conflict and cannot be harmonized, then the provisions of s. ~~895.10~~ 995.10 shall control. If any part of this section causes s. ~~895.10~~ 995.10 to no longer constitute a qualifying or model statute, as those terms are defined in the master settlement agreement, then that portion of this section is not valid.

NOTE: Moves s. 895.12, Certification under the tobacco settlement agreement, to new Chapter 995, Miscellaneous Statutes. Section 895.10 is renumbered to s. 995.10 by this bill.

SECTION 33. 895.20 of the statutes is renumbered 995.20.

NOTE: Moves s. 895.20, Legal holidays, to new Chapter 995, Miscellaneous Statutes.

SECTION 34. 895.22 of the statutes is renumbered 995.22.

NOTE: Moves s. 895.22, Wisconsin family month, week and Sunday, to new Chapter 995, Miscellaneous Statutes.

SECTION 35. 895.225 of the statutes is renumbered 995.225.

NOTE: Moves s. 895.225, Fire Prevention Week, to new Chapter 995, Miscellaneous Statutes.

SECTION 36. 895.23 of the statutes is renumbered 995.23.

NOTE: Moves s. 895.23 Indian Rights Day, to new Chapter 995, Miscellaneous Statutes.

SECTION 37. 895.36 (title) of the statutes is amended to read:

895.36 (title) **Process against corporation or limited liability company officer.**

NOTE: Makes title more specific to clarify the applicability of the statute.

SECTION 38. 895.37 (title) of the statutes is amended to read:

895.37 (title) **Abrogation of defenses in employee personal injury actions.**

NOTE: Makes title more specific to clarify the applicability of the statute.

SECTION 39. 895.38 of the statutes is renumbered 112.09.

NOTE: Moves s. 895.38, Surety, how discharged, to Chapter 112, Fiduciaries, for more logical placement.

SECTION 40. 895.41 of the statutes is renumbered 103.165.

NOTE: Moves s. 895.41, Employee's cash bonds to be held in trust; duty of employer; penalty, to Chapter 103, Employment Regulations, for more logical placement.

SECTION 41. 895.437 of the statutes is renumbered 134.96.

NOTE: Moves s. 895.437, Use of lodging establishments, which contains various regulations relating to the use of lodging establishments for purposes relating to alcohol consumption by minors and illegal use of controlled substances and allowing lodging establishments to require a deposit when lodging is applied for, to Chapter 134, Miscellaneous Trade Regulations, for more logical placement.

SECTION 42. 895.44 of the statutes is renumbered 895.475.

NOTE: Moves s. 895.44, Exemption from civil liability for furnishing safety inspection or advisory services, so that it is located in Subchapter II, Exemptions From Liability.

SECTION 43. Subchapter II (title) of Chapter 895 [precedes 895.475] of the statutes is created to read:

CHAPTER 895

SUBCHAPTER II

EXEMPTIONS FROM, AND LIMITATIONS

ON, LIABILITY

NOTE: Ch. 895 is divided into two subchapters, one for exemptions to liability and one for all other provisions currently contained in ch. 895 that are directly related to court actions.

SECTION 44. 895.48 (title) of the statutes is amended to read:

895.48 (title) **Civil liability exemption; emergency** medical **care, ~~athletic events health care, hazardous substances and information concerning paternity.~~**

NOTE: This bill renumbers s. 895.48 (2) and (3) to be separate sections because the subject matter of each, actions regarding hazardous materials emergencies and distributing information to new parents about paternity, does not relate to emergency medical care. The bill retains under s. 895.48 subsections (1), (1m), and (4), which relate to emergency medical care.

SECTION 45. 895.48 (2) of the statutes is renumbered 895.4802, and 895.4802 (1) (intro.), (3) (intro.) and (4) (b) and (c) as renumbered, are amended to read:

895.4802 **(1)** (intro.) In this ~~subsection~~ section:

(3) (intro.) The immunity under ~~par. (b)~~ sub. (2) does not extend to any person:

(4) (b) The good faith of any hazardous substance predictor or any person who provides the technology to make a prediction is presumed in any civil action. Any person who asserts that the acts or omissions under ~~subd. 1.~~ par. (a) were not made in good faith has the burden of proving that assertion by clear and convincing evidence.

(c) The immunity under ~~subd. 1.~~ par. (a) does not extend to any person described under ~~par. (c) 1., 2. or 3~~ sub. (3) (a), (b), or (c).

NOTE: This bill renumbers s. 895.48 (2) to be a separate section, s. 895.4802, because the subject matter, actions regarding hazardous materials emergencies, does not relate to emergency medical care, the subject of s. 895.48 after treatment by this bill.

SECTION 46. 895.48 (3) of the statutes is renumbered 895.4803.

NOTE: This bill renumbers s. 895.48 (3) to be a separate section, s. 895.4803, because the subject matter, distributing information to new parents about paternity, does not relate to emergency medical care, the subject of s. 895.48 after treatment by this bill.

SECTION 47. 895.4802 (title) of the statutes is created to read:

895.4802 (title) **Civil liability exemption; hazardous materials.**

NOTE: This bill renumbers s. 895.48 (2) to be a separate section, s. 895.4802, because the subject matter, actions regarding hazardous materials emergencies, does not relate to emergency medical care, the subject of s. 895.48 after treatment by this bill.

SECTION 48. 895.4803 (title) of the statutes is created to read:

895.4803 (title) **Civil liability exemption; information concerning paternity.**

NOTE: This bill renumbers s. 895.48 (3) to be a separate section, s. 895.4803, because the subject matter, distributing information to new parents about paternity, does not relate to emergency medical care, the subject of s. 895.48 after treatment by this bill.

SECTION 49. 895.49 of the statutes is renumbered 895.447.

NOTE: Moves s. 895.49, Certain agreements to limit or eliminate tort liability void, so that it is not located in Subchapter II, Exemptions From Liability, and is located in Subchapter I, Damages, Recovery, And Miscellaneous Provisions Regarding Actions In Courts.

SECTION 50. 895.495 of the statutes is renumbered 895.448.

NOTE: Moves s. 895.495, Safety devices on farm equipment, ordinary negligence, so that it is not located in Subchapter II, Exemptions From Liability, and is located in Subchapter I, Damages, Recovery, And Miscellaneous Provisions Regarding Actions In Courts.

SECTION 51. 895.50 of the statutes is renumbered 995.50.

NOTE: Moves s. 895.50, Right of privacy, to new Chapter 995, Miscellaneous Statutes.

SECTION 52. 895.505 of the statutes is renumbered 134.97.

NOTE: Moves s. 895.505, Disposal of records containing personal information, which is applicable to financial institutions, medical businesses, and tax preparation businesses, to Chapter 134, Miscellaneous Trade Regulations, for more logical placement.

SECTION 53. 895.51 (title) of the statutes is amended to read:

895.51 (title) ~~**Liability**~~ **Civil liability exemption: food donation, sale or distribution.**

NOTE: Conforms title to other section titles within Subchapter II of Chapter 895, consistent with the subject matter of the section.

SECTION 54. 895.515 (title) of the statutes is amended to read:

895.515 (title) ~~**Liability**~~ **Civil liability exemption; equipment or technology donation.**

NOTE: Conforms title to other section titles within Subchapter II of Chapter 895, consistent with the subject matter of the section.

SECTION 55. 895.517 (title) of the statutes is amended to read:

895.517 (title) ~~**Liability**~~ **Civil liability exemption: solid waste donation or sale.**

NOTE: Conforms title to other section titles within Subchapter II of Chapter 895, consistent with the subject matter of the section.

SECTION 56. 895.525 (title) of the statutes is amended to read:

895.525 (title) **Participation in recreational activities; restrictions on civil liability, assumption of risk.**

NOTE: Makes title more specific to clarify the applicability of the statute.

SECTION 57. 895.527 (title) of the statutes is amended to read:

895.527 (title) **Sport shooting range activities; limitations on liability and restrictions on operation.**

NOTE: Makes title more specific to clarify the applicability of the statute.

SECTION 58. 895.53 (title) of the statutes is amended to read:

895.53 (title) ~~**Liability**~~ **Civil and criminal liability exemption; tests for intoxication.**

NOTE: Conforms title to other section titles within Subchapter II of Chapter 895, consistent with the subject matter of the section.

SECTION 59. 895.555 (title) of the statutes is amended to read:

895.555 (title) ~~**Liability**~~ **Civil liability exemption; anhydrous ammonia.**

NOTE: Conforms title to other section titles within Subchapter II of Chapter 895, consistent with the subject matter of the section.

SECTION 60. 895.65 of the statutes is renumbered 230.90.

NOTE: Moves s. 895.65, Government employer retaliation prohibited, which prohibits government employers from retaliating, by engaging in disciplinary action, against employees lawfully disclosing information, to ch. 230, State Employment Relations, for more logical placement.

SECTION 61. 895.67 of the statutes is renumbered 995.67.

NOTE: Moves s. 895.67, Domestic abuse services; prohibited disclosures, to new Chapter 995, Miscellaneous Statutes.

SECTION 62. 895.70 of the statutes is renumbered 895.441, and 895.441 (title), as renumbered, is amended to read:

895.441 (title) **Sexual exploitation by a therapist; action for.**

NOTE: Moves s. 895.70, Sexual exploitation by a therapist, which provides a cause of action, so that it is not located in Subchapter II, Exemptions From Liability, and is located in Subchapter I, Damages, Recovery, and Miscellaneous Provisions Regarding Actions in Courts. Makes title more specific to clarify the applicability of the statute.

SECTION 63. 895.71 of the statutes is renumbered 895.442, and 895.442 (title) and (5), as renumbered, are amended to read:

895.442 (title) **Sexual exploitation by a member of the clergy; action for.**

(5) SILENCE AGREEMENTS. Any contract or agreement concerning the settlement of any claim under this section that limits or eliminates the right of the injured person to disclose the sexual contact described under sub. (2) to another member of the religious organization to which the member of the clergy under sub. (2) belongs, to a therapist, as defined in s. ~~895.70~~ 895.441 (1) (e), to a person listed under s. 48.981 (2) (a), or to a district attorney, is void.

NOTE: Moves s. 895.71, Sexual exploitation by a member of the clergy, which provides a cause of action, so that it is not located in Subchapter II, Exemptions From Liability, and is located in Subchapter I, Damages, Recovery, and Miscellaneous Provisions Regarding Actions in Courts. Makes title more specific to clarify the applicability of the statute. Section 895.70 is renumbered s. 895.441 by this bill.

SECTION 64. 895.73 of the statutes is renumbered 895.45, and 895.45 (title), as renumbered, is amended to read:

895.45 (title) **Service representatives for adult abusive conduct complainants.**

NOTE: Moves s. 895.73, Service representatives, which allows adult abuse victims appearing in court to have a service representative present, so that it is not located in Subchapter II, Exemptions From Liability, and is located in Subchapter I, Damages, Recovery, and Miscellaneous Provisions Regarding Actions in Courts. Makes title more specific to clarify the applicability of the statute.

SECTION 65. 895.75 of the statutes is renumbered 895.443, and 895.443 (title), as renumbered, is amended to read:

895.443 (title) **Physical injury, emotional distress, loss or damage suffered by members of certain groups; action for.**

NOTE: Moves s. 895.75, Physical injury, emotional distress, loss or damage suffered by members of certain groups, which allows for recovery for emotional damages in certain actions, so that it is not located in Subchapter II, Exemptions From Liability, and is located in Subchapter I, Damages, Recovery, and Miscellaneous Provisions Regarding Actions in Courts. Makes title more specific to clarify the applicability of the statute.

SECTION 66. 895.76 of the statutes is renumbered 895.455.

NOTE: Moves s. 895.76, Limits on recovery by prisoners, so that it is not located in Subchapter II, Exemptions From Liability, and is located in Subchapter I, Damages, Recovery, and Miscellaneous Provisions Regarding Actions in Courts.

SECTION 67. 895.77 of the statutes is renumbered 895.444, and 895.444 (title), as renumbered, is amended to read:

895.444 (title) **Injury caused by criminal gang activity; action for.**

NOTE: Moves s. 895.77, Injury caused by criminal gang activity, which creates a cause of action, so that it is not located in Subchapter II, Exemptions From Liability, and is located in Subchapter I, Damages, Recovery, and Miscellaneous Provisions Regarding Actions in Courts. Makes title more specific to clarify the applicability of the statute.

SECTION 68. 895.78 of the statutes is renumbered 895.457.

NOTE: Moves s. 895.78, Limiting felon's right to damages, so that it is not located in Subchapter II, Exemptions From Liability, and is located in Subchapter I, Damages, Recovery, and Miscellaneous Provisions Regarding Actions in Courts.

SECTION 69. 895.79 of the statutes is renumbered 895.445, and 895.445 (title), as renumbered, is amended to read:

895.445 (title) **Damage to certain machines; action for.**

NOTE: Moves s. 895.79, Damage to certain machines, which creates a cause of action, so that it is not located in Subchapter II, Exemptions From Liability, and is located in Subchapter I, Damages, Recovery, and Miscellaneous Provisions Regarding Actions in Courts. Makes title more specific to clarify the applicability of the statute.

SECTION 70. 895.80 of the statutes is renumbered 895.446, and 895.446 (title), as renumbered, is amended to read:

895.446 (title) **Property damage or loss caused by crime; action for.**

NOTE: Moves s. 895.80, Property damage or loss, which creates a cause of action, so that it is not located in Subchapter II, Exemptions From Liability, and is located in Subchapter I, Damages, Recovery, and Miscellaneous Provisions Regarding Actions in Courts. Makes title more specific to clarify the applicability of the statute.

SECTION 71. 895.85 of the statutes is renumbered 895.043.

NOTE: Moves s. 895.85, Punitive damages, so it is not located in Subchapter II, Exemptions From Liability and is located in Subchapter I, Damages, Recovery, and Miscellaneous Provisions Regarding Actions in Courts.

SECTION 72. 938.346 (1) (h) 1. of the statutes is amended to read:

938.346 **(1)** (h) 1. The right to be accompanied by a service representative, as provided under s. ~~895.73~~ 895.45.

NOTE: Section 895.73 is renumbered s. 895.45 by this bill.

SECTION 73. 950.04 (1v) (c) of the statutes is amended to read:

950.04 **(1v)** (c) To be accompanied by a service representative, as provided under s. ~~895.73~~ 895.45.

NOTE: Section 895.73 is renumbered s. 895.45 by this bill.

SECTION 74. 970.03 (4) (a) of the statutes is amended to read:

970.03 **(4)** (a) If the defendant is accused of a crime under s. 940.225, 948.02, 948.025, 948.05, 948.06, or 948.095, the court may exclude from the hearing all persons who are not officers of the court, members of the complainant's or defendant's families, or others considered by the court to be supportive of the complainant or defendant, the service representative, as defined in s. ~~895.73~~ 895.45 (1) (c), or other persons required to attend, if the court finds that the state or the defendant has established a compelling interest that would likely be prejudiced if the persons were

not excluded. The court may consider as a compelling interest, among others, the need to protect a complainant from undue embarrassment and emotional trauma.

NOTE: Section 895.73 is renumbered s. 895.45 by this bill.

SECTION 75. 972.11 (1) of the statutes is amended to read:

972.11 **(1)** Except as provided in subs. (2) to (4), the rules of evidence and practice in civil actions shall be applicable in all criminal proceedings unless the context of a section or rule manifestly requires a different construction. No guardian ad litem need be appointed for a defendant in a criminal action. Chapters 885 to 895 and 995, except ss. 804.02 to 804.07 and 887.23 to 887.26, shall apply in all criminal proceedings.

NOTE: Parts of ch. 895 are renumbered to ch. 995 by this bill.

SECTION 76. 990.001 (4) (e) of the statutes is amended to read:

990.001 **(4)** (e) "Legal holiday" as used in this section means any statewide legal holiday provided in s. ~~895.20~~ 995.20. When an act is permitted to be done by the use of the postal service, and the last day within the time prescribed by law for performing such act falls on a legal public holiday under federal law, or other holiday designated by the president such that the postal service does not receive registered mail or make regular deliveries on that day, the day shall be considered a legal holiday for purposes of this section.

NOTE: Section 895.20 is renumbered s. 995.20 by this bill.

SECTION 77. Chapter 995 (title) of the statutes is created to read:

CHAPTER 995

MISCELLANEOUS STATUTES

(END)

MEMORANDUM

from DON DYKE
Legislative Council

11/17/05

Please jacket for introduction in Senate the following Law Revision bills:

LRB - 0864/1
LRB - 0869/2
LRB - 0870/2
LRB - 0874/1

Thanks,

Don

plus → over

Per Don Dyke @ Leg. Council

~~LRB - 0953/1~~
LRB - 0953/1