

State of Wisconsin



1995 Senate Bill 11

Date of enactment: **May 16, 1995**

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1995 WISCONSIN ACT 17

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

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

SECTION 1. 895.045 of the statutes is renumbered 895.045 (1) and amended to read:

895.045 (1) (title) COMPARATIVE NEGLIGENCE. Contributory negligence ~~shall~~ **does** not bar recovery in an action by any person or the person's legal representative to recover damages for negligence resulting in death or in injury to person or property, if ~~such~~ **that** negligence was not greater than the negligence of the person against whom recovery is sought, but any damages allowed shall be diminished in the proportion to the amount of negligence ~~attributable~~ **attributed** to the person recovering. The negligence of the plaintiff shall be measured separately against the negligence of each person found to be causally negligent. The liability of each person found to be causally negligent whose percentage of causal negligence is less than 51% is limited to the percentage of the total causal negligence attributed to that person. A person found to be causally negligent whose percentage of causal negligence is 51% or more shall be jointly and severally liable for the damages allowed.

SECTION 2. 895.045 (2) of the statutes is created 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 several-

ly liable for all damages resulting from that action, except as provided in s. 895.85 (5).

SECTION 3. 895.85 of the statutes is created to read:
895.85 Punitive damages. (1) DEFINITIONS. In this section:

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

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

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

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

(2) **SCOPE.** This section does not apply to awards of double damages or treble damages, or to the award of exemplary damages under ss. 46.90 (6) (c), 51.30 (9), 51.61 (7), 103.96 (2), 153.85, 252.14 (4), 252.15 (8) (a), 943.245 (2) and (3) and 943.51 (2) and (3).

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

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

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

* Section 991.11, WISCONSIN STATUTES 1993-94: Effective date of acts. "Every act and every portion of an act enacted by the legislature over the governor's partial veto which does not expressly prescribe the time when it takes effect shall take effect on the day after its date of publication as designated" by the secretary of state [the date of publication may not be more than 10 working days after the date of enactment].

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

(5) APPLICATION OF JOINT AND SEVERAL LIABILITY.

The rule of joint and several liability does not apply to punitive damages.

SECTION 4. Initial applicability.

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