

negligence amounted to 50% or more. *Schuster v. Bridgeman*, 225 W 547, 275 NW 440.

331.37 does not abrogate the defenses of assumption of risk and contributory negligence in farm-labor cases. *Haile v. Ellis*, 5 W (2d) 221, 92 NW (2d) 863.

See note to 895.045, citing *Colson v. Rule*, 15 W (2d) 387, 113 NW (2d) 21.

895.375 History: 1953 c. 293; Stats. 1953 s. 331.375; 1965 c. 66 s. 2; Stats. 1965 s. 895.375.

Where a full assignment of causes of action of an injured party and his workmen's compensation insurer, against an insured and its automobile liability insurer, for the alleged negligence of an employe of the insured in using insured trucks, was made to the insured's comprehensive liability insurer which had paid the injured party \$120,000, such assignment was not champertous, but public policy prevents the enforcement of the assignee's rights under such assignment for any amount above the \$120,000, and the assignment is void for any amount in excess of \$120,000, but good to the extent of \$120,000. *D'Angelo v. Cornell P. P. Co.* 19 W (2d) 390, 120 NW (2d) 70.

895.38 History: 1919 c. 655 s. 1; Stats. 1919 s. 1966-33n; 1923 c. 291 s. 3; Stats. 1923 s. 204.15; 1933 c. 487 s. 145; Stats. 1933 s. 331.38; 1965 c. 66 s. 2; Stats. 1965 s. 895.38; 1969 c. 339 s. 27.

Fidelity and surety bonds. *Luick*, 1 MLR 149.

895.39 History: Sup. Ct. Order, 221 W vii; Stats. 1937 s. 331.39; 1965 c. 66 s. 2; Stats. 1965 s. 895.39.

895.40 History: Sup. Ct. Order, 221 W vii; Stats. 1937 s. 331.40; 1965 c. 66 s. 2; Stats. 1965 s. 895.40.

895.41 History: 1937 c. 117; Stats. 1937 s. 331.41; 1939 c. 60; 1953 c. 613; 1965 c. 66 ss. 2, 6; Stats. 1965 s. 895.41; 1969 c. 339 s. 27.

Funds deposited by an employer under 331.41 (1), Stats. 1937, are trust funds. The dollar limitation is without reference to the employer's individual account and is a limitation only upon the amount which may be deposited with respect to any one trust or individual employe. 27 Atty. Gen. 525.

331.41 is not retroactive in effect and does not apply to moneys deposited by employes prior to its effective date. 27 Atty. Gen. 721.

895.42 History: 1943 c. 446; Stats. 1943 s. 331.42; 1965 c. 66 s. 2; Stats. 1965 s. 895.42; 1969 c. 339 s. 27.

895.43 History: 1963 c. 198; Stats. 1963 s. 331.43; 1965 c. 66 s. 2; Stats. 1965 s. 895.43.

895.43 provides for a notice of injury; it does not repeal by implication 62.25 which provides for a notice of claim. Both must be complied with. *Pattermann v. Whitewater*, 32 W (2d) 350, 145 NW (2d) 705.

See note to 81.15, on notice of injury, citing *Raisanen v. Milwaukee*, 35 W (2d) 504, 151 NW (2d) 129.

895.43, Stats. 1965, enacted in response to *Holytz v. Milwaukee*, 17 W (2d) 26 (1962); by

its express terms precludes suit for intentional torts of officers, agents, or employes of political corporations, governmental subdivisions or agencies. Moreover, 270.58 may not be construed to allow a plaintiff to accomplish that which is expressly prohibited by 895.43. *Strong v. Milwaukee*, 38 W (2d) 564, 157 NW (2d) 619.

So much of 895.43 as provides that the failure to give the notice of injury required is no bar to a claim if the defendant has actual notice of the damage or injury and the injured party shows to the satisfaction of the court that the delay or failure to give the requisite notice has not been prejudicial to defendant is construed as requiring the pleading of lack of compliance with the section as a defense. *Majerus v. Milwaukee County*, 39 W (2d) 311, 159 NW (2d) 86.

895.43, Stats. 1963, is applicable to acts of common-law negligence by a municipality that are not embraced within the terms "insufficiency" and "want of repairs", as those terms are used in 81.15, provided the defendant has actual notice and has not been prejudiced by the plaintiff's failure. *Dusek v. Pierce County*, 42 W (2d) 498, 167 NW (2d) 246.

See notes to 81.15, on municipality liable, citing *Schwartz v. Milwaukee*, 43 W (2d) 119, 168 NW (2d) 107.

895.44 History: 1965 c. 375; Stats. 1965 s. 895.44.

CHAPTER 898.

Persons in Jail on Civil Process.

898.01 History: R. S. 1849 c. 129 s. 1; R. S. 1858 c. 162 s. 1; R. S. 1878 s. 4307; Stats. 1898 s. 4307; 1925 c. 4; Stats. 1925 s. 336.01; 1959 c. 560; 1965 c. 66 s. 4; Stats. 1965 s. 898.01.

898.02 History: R. S. 1849 c. 129 s. 2; R. S. 1858 c. 162 s. 2; 1864 c. 50 s. 1; R. S. 1878 s. 4308; Stats. 1898 s. 4308; 1925 c. 4; Stats. 1925 s. 336.02; 1965 c. 66 s. 4; Stats. 1965 s. 898.02.

898.03 History: R. S. 1849 c. 129 s. 3; R. S. 1858 c. 162 s. 3; R. S. 1878 s. 4309; Stats. 1898 s. 4309; 1925 c. 4; Stats. 1925 s. 336.03; 1965 c. 66 s. 4; Stats. 1965 s. 898.03.

898.04 History: R. S. 1849 c. 129 s. 4; R. S. 1858 c. 162 s. 4; 1864 c. 50 s. 2; R. S. 1878 s. 4310; Stats. 1898 s. 4310; 1925 c. 4; Stats. 1925 s. 336.04; 1965 c. 66 s. 4; Stats. 1965 s. 898.04.

898.05 History: R. S. 1849 c. 129 s. 5; R. S. 1858 c. 162 s. 5; 1864 c. 50 s. 3; R. S. 1878 s. 4311; Stats. 1898 s. 4311; 1925 c. 4; Stats. 1925 s. 336.05; 1965 c. 66 s. 4; Stats. 1965 s. 898.05.

898.06 History: R. S. 1849 c. 129 s. 6; R. S. 1858 c. 162 s. 6; 1864 c. 50 s. 4; R. S. 1878 s. 4312; Stats. 1898 s. 4312; 1925 c. 4; Stats. 1925 s. 336.06; 1965 c. 66 s. 4; Stats. 1965 s. 898.06.

898.07 History: R. S. 1849 c. 129 s. 7; R. S. 1858 c. 162 s. 7; 8; 1864 c. 50 s. 5; R. S. 1878 s. 4313; Stats. 1898 s. 4313; 1925 c. 4; Stats. 1925 s. 336.07; 1965 c. 66 s. 4; Stats. 1965 s. 898.07.

898.08 History: R. S. 1849 c. 129 s. 9; R. S. 1858 c. 162 s. 9; 1864 c. 50 s. 6; R. S. 1878 s. 4314; Stats. 1898 s. 4314; 1925 c. 4; Stats. 1925 s. 336.08; 1965 c. 66 s. 4; Stats. 1965 s. 898.08.

898.09 History: R. S. 1849 c. 129 s. 10; R. S. 1858 c. 162 s. 10; 1864 c. 50 s. 7; R. S. 1878 s. 4315; Stats. 1898 s. 4315; 1925 c. 4; Stats. 1925 s. 336.09; 1965 c. 66 s. 4; Stats. 1965 s. 898.09.

898.10 History: R. S. 1849 c. 129 s. 11; R. S. 1858 c. 162 s. 11; R. S. 1878 s. 4316; Stats. 1898 s. 4316; 1925 c. 4; Stats. 1925 s. 336.10; 1965 c. 66 s. 4; Stats. 1965 s. 898.10.

898.11 History: R. S. 1878 s. 4317; Stats. 1898 s. 4317; 1925 c. 4; Stats. 1925 s. 336.11; 1965 c. 66 s. 4; Stats. 1965 s. 898.11.

898.12 History: R. S. 1849 c. 129 s. 12; R. S. 1858 c. 162 s. 12; R. S. 1878 s. 4318; Stats. 1898 s. 4318; 1925 c. 4; Stats. 1925 s. 336.12; 1965 c. 66 s. 4; Stats. 1965 s. 898.12.

898.13 History: R. S. 1849 c. 129 s. 13; R. S. 1858 c. 162 s. 13; R. S. 1878 s. 4319; Stats. 1898 s. 4319; 1925 c. 4; Stats. 1925 s. 336.13; 1965 c. 66 s. 4; Stats. 1965 s. 898.13.

898.14 History: R. S. 1849 c. 129 s. 14; R. S. 1858 c. 162 s. 14; R. S. 1878 s. 4320; Stats. 1898 s. 4320; 1911 c. 153; 1925 c. 4; Stats. 1925 s. 336.14; 1945 c. 256; 1961 c. 336; 1965 c. 66 s. 4; Stats. 1965 s. 898.14.

One imprisoned on execution to enforce a judgment in tort, who gives bond and is out on jail limits, thereby relieves the judgment creditor from the payment of board during the time the prisoner is so out. *Schuijer v. Kuswa*, 176 W 48, 186 NW 148.

898.15 History: 1864 c. 483 s. 1, 2; R. S. 1878 s. 4321; Stats. 1898 s. 4321; 1925 c. 4; Stats. 1925 s. 336.15; 1965 c. 66 s. 4; Stats. 1965 s. 898.15.

898.16 History: 1864 c. 483 s. 3; R. S. 1878 s. 4322; Stats. 1898 s. 4322; 1925 c. 4; Stats. 1925 s. 336.16; 1965 c. 66 s. 4; Stats. 1965 s. 898.16.

Under ch. 483, Laws 1864, a person confined for a contempt in refusing to answer questions on examination by the county judge was not entitled to jail liberties. *Rose v. Tyrrell*, 25 W 563.

Sec. 4322, R. S. 1878, applies to a person imprisoned for a contempt in disobeying an order requiring the delivery of negotiable promissory notes to a receiver appointed in supplementary proceedings. In *re Milburn*, 59 W 24, 17 NW 965.

A proceeding under the illegitimacy statute is not a civil action within the meaning of sec. 4322, R. S. 1878, but is a special proceeding. A commitment for noncompliance with a judgment which requires the payment of money and the giving of a bond for the support of the child is not an attachment for contempt for nonpayment of a sum of money ordered to be paid. *Hodgeson v. Nickell*, 69 W 308, 34 NW 118.

898.17 History: 1864 c. 483 s. 4 to 6; R. S. 1878 s. 4323; Stats. 1898 s. 4323; 1925 c. 4; Stats. 1925 s. 336.17; 1965 c. 66 s. 4; Stats. 1965 s. 898.17.

A bond for the privilege of jail liberties, given by a person committed on a body execution issued on a tort judgment, was not defective because the surety did not justify nor because the bond was not approved in writing by the sheriff, and hence the sheriff was not liable to the judgment creditor on the alleged ground of having permitted the prisoner jail liberties without a proper bond; the statute did not require the surety to justify, and did not require that the sheriff's approval of the bond be in writing. *Rutzen v. Mitten*, 232 W 584, 288 NW 172.

898.18 History: 1864 c. 483 s. 7; R. S. 1878 s. 4324; Stats. 1898 s. 4324; 1925 c. 4; Stats. 1925 s. 336.18; 1965 c. 66 s. 4; Stats. 1965 s. 898.18.

898.19 History: 1864 c. 483 s. 8, 9; R. S. 1878 s. 4325; Stats. 1898 s. 4325; 1925 c. 4; Stats. 1925 s. 336.19; 1965 c. 66 s. 4; Stats. 1965 s. 898.19.

898.20 History: 1864 c. 483 s. 10; R. S. 1878 s. 4326; Stats. 1898 s. 4326; 1925 c. 4; Stats. 1925 s. 336.20; 1965 c. 66 s. 4; Stats. 1965 s. 898.20.

898.21 History: R. S. 1849 c. 10 s. 17; R. S. 1858 c. 13 s. 17; R. S. 1878 s. 657; Stats. 1898 s. 657; 1919 c. 78 s. 14; Stats. 1919 s. 4326a; 1925 c. 4; Stats. 1925 s. 336.21; 1965 c. 66 s. 4; Stats. 1965 s. 898.21.

898.22 History: 1864 c. 483 s. 11; R. S. 1878 s. 4327; Stats. 1898 s. 4327; 1925 c. 4; Stats. 1925 s. 336.22; 1965 c. 66 s. 4; Stats. 1965 s. 898.22.

898.23 History: 1864 c. 483 s. 12; R. S. 1878 s. 4328; Stats. 1898 s. 4328; 1925 c. 4; Stats. 1925 s. 336.23; 1965 c. 66 s. 4; Stats. 1965 s. 898.23.

898.24 History: 1864 c. 483 s. 13, 14; R. S. 1878 s. 4329; Stats. 1898 s. 4329; 1925 c. 4; Stats. 1925 s. 336.24; 1965 c. 66 s. 4; Stats. 1965 s. 898.24.

898.25 History: 1864 c. 483 s. 15, 16; R. S. 1878 s. 4330; Stats. 1898 s. 4330; 1925 c. 4; Stats. 1925 s. 336.25; 1965 c. 66 s. 4; Stats. 1965 s. 898.25.

898.26 History: 1864 c. 483 s. 17; R. S. 1878 s. 4331; Stats. 1898 s. 4331; 1925 c. 4; Stats. 1925 s. 336.26; 1965 c. 66 s. 4; Stats. 1965 s. 898.26.

898.27 History: 1864 c. 483 s. 18; R. S. 1878 s. 4332; Stats. 1898 s. 4332; 1925 c. 4; Stats. 1925 s. 336.27; 1965 c. 66 s. 4; Stats. 1965 s. 898.27.

A prison-limits bond may be assigned by the sheriff only after breach. *Muirhead v. Bruns*, 198 W 104, 223 NW 565.

898.28 History: 1864 c. 483 s. 19; R. S. 1878 s. 4333; Stats. 1898 s. 4333; 1925 c. 4; Stats. 1925 s. 336.28; 1965 c. 66 s. 4; Stats. 1965 s. 898.28.

Damages recoverable for breach of a jail-limits bond consist of the amount of the judgment for which execution was issued, with costs and interest. *Muirhead v. Bruns*, 198 W 104, 223 NW 565.

898.29 History: 1864 c. 483 s. 20; R. S. 1878 s. 4334; Stats. 1898 s. 4334; 1925 c. 4; Stats. 1925 s. 336.29; 1965 c. 66 s. 4; Stats. 1965 s. 898.29.

898.30 History: 1864 c. 483 s. 21; R. S. 1878 s. 4335; Stats. 1898 s. 4335; 1925 c. 4; Stats. 1925 s. 336.30; 1965 c. 66 s. 4; Stats. 1965 s. 898.30.

898.31 History: 1864 c. 483 s. 22, 23; R. S. 1878 s. 4336; Stats. 1898 s. 4336; 1925 c. 4; Stats. 1925 s. 336.31; 1965 c. 66 s. 4; Stats. 1965 s. 898.31.

THE CRIMINAL CODE

Editor's Notes: (1) The criminal code enacted by ch. 696, Laws 1955, became effective July 1, 1956. Sec. 939.74, fixing time limitations on prosecutions, presumably applies to prosecutions for crimes defined in sections in force until July 1, 1956, as well as to prosecutions for crimes defined in the criminal code effective July 1, 1956.

(2) The criminal code enacted by ch. 696, Laws 1955, and subsequently amended does not cover all conduct made criminal by statute. Various chapters of Wis. Statutes, 1969, notably ch. 12 (on corrupt practices), ch. 29 (on fish and game), ch. 52 (on abandonment and failure to support dependents), ch. 71 (on income and franchise taxes), ch. 97 (on food regulation), ch. 133 (on trusts and monopolies), ch. 138 (on money and rates of interest), ch. 139 (on beverage and cigarette taxes), ch. 161 (on narcotics), ch. 164 (on machine guns), ch. 176 (on intoxicating liquors), ch. 221 (on state banks), ch. 245 (on marriage), chs. 340-350 (the vehicle code), and ch. 551 (on securities), contain sections which make specific kinds of acts (or omissions) punishable as misdemeanors or felonies.

(3) In a situation involving a "federal area" in respect to which the United States exercises jurisdiction (exclusive, concurrent or partial) over civil and criminal matters, see *Jurisdiction Over Federal Areas Within The States: Report of the Interdepartmental Committee for the Study of Jurisdiction Over Federal Areas Within the States* (U. S. Govt. Printing Office, Washington, D. C., 1956) and relevant statutes and cases of subsequent dates.

(4) In a situation involving an Indian reservation see 18 U. S. C., sec. 1162, and related sections. See also the advisory opinions published in 53 Atty. Gen. 222 and 56 Atty. Gen. 11. The decisions in *State v. Rufus*, 205 W 317, 237 NW 67, and *United States v. Sosseur*, 87 F Supp. 255, affirmed 181 F (2d) 873, both rendered prior to the adoption of Pub. Law 280 of Aug. 15, 1953, which created sec. 1162, are obsolete.

(5) Table I shows what happened to the sections of Wis. Statutes, 1953, repealed or renumbered by ch. 696, Laws 1955. It does not include statutory sections repealed and recreated, amended, or created by the act. Statutory sections repealed and recreated or amended are treated in numerical order in the act, beginning with section 5. Statutory sections created by the act (other than those in the criminal code) are also treated in numer-

ical order beginning with section 2 of the act. In cases where new sections are derived from old sections, this table will show that fact.

(6) Please note that Table I is designed to assist in tracing 1953 statute sections into 1955 statute sections and does not indicate the technical bill-drafting process, e. g., repeal of the old section and separate creation of the new section. Wherever the word "None" appears in Table I it denotes that the substance of the 1953 section has no counterpart in the 1955 law but this does not necessarily mean that the conduct prohibited by the 1953 section would not be criminal under the 1955 law.

(7) Table II shows the sources of the 1955 criminal code sections. This table takes each section of the criminal code created by ch. 696, Laws 1955, and indicates its counterpart in the 1953 statutes. This table is designed to assist tracing 1955 statute sections into 1953 statute sections.

(8) For the legislative histories of sections of Wis. Statutes, 1953, listed in the tables it is necessary to consult Wis. Annotations, 1950, and Wis. Statutes, 1953.

CONVERSION TABLE I

1953 Stats.	1955 Stats.
13.20	13.20 (1)
29.63 (3) (e)	29.63 (3) (d)
56.07 (4)	946.42
85.08 (36)	946.32
85.30	85.30 (1)
86.03 (5)	86.03 (6)
86.17	86.17 (1)
94.34	943.20
133.21	133.21 (1)
159.14 (1)	946.31 or 946.32
175.03	173.31
175.04	None
175.05	134.35
175.06	196.625
175.10	134.50
175.12	134.51
213.095 (2), (3)	941.12
215.385	946.31
221.20	946.31
325.26	325.34
340.01	None
340.02	940.01
340.03	940.02
340.04	940.01 or 940.02 or 940.03 or 940.05 or 940.06 or 940.07
340.05	939.05
340.06	940.01 or 940.02 or 940.06 or 941.03
340.07	940.01 or 940.02 or 940.03 or 940.06
340.08	940.02
340.09	940.03
340.095	940.04
340.10	None
340.11	940.04