



1995 ASSEMBLY BILL 118

February 8, 1995 - Introduced by Representatives GREEN, ALBERS, HUBLER, KELSO, JENSEN, FREESE, GARD, LEHMAN, GOETSCH, LADWIG, DUFF, MUSSER, BRANDEMUEHL, SILBAUGH, WILDER, URBAN, SCHNEIDERS, OWENS, WALKER, KREIBICH, AINSWORTH, VRAKAS, WARD, F. LASEE, OLSEN, POWERS, LAZICH, HANDRICK, HAHN, BRANCEL, GROTHMAN, GRONEMUS, KAUFERT, KLUSMAN, NASS, RYBA, SERATTI and DOBYNS, cosponsored by Senators HUELSMAN, DRZEWIECKI, DARLING, PETAK, ZIEN, ANDREA, BUETTNER, SCHULTZ, A. LASEE, PANZER, COWLES, LEEAN, FARROW, RUDE, WEEDEN, ROSENZWEIG, FITZGERALD and ELLIS. Referred to Committee on Judiciary.

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

Analysis by the Legislative Reference Bureau

This bill revises the standards and procedures for awarding punitive damages in certain civil cases. Under present law, the plaintiff sues for damages, including punitive damages, and submits evidence as to the defendant's behavior and ability to pay. If the defendant acted maliciously or in a wilful or wanton manner in reckless disregard of the rights or interests of the plaintiff, punitive damages may be awarded. The plaintiff uses the rule of joint and several liability to collect punitive damages against any defendant found liable for the plaintiff's loss.

The following changes are made in civil actions covered by the bill:

1. The rule of joint and several liability is abolished as to punitive damages.
2. The reference to wanton or reckless action by the defendant is omitted from the standard of conduct necessary to prove punitive damages, allowing the plaintiff to receive punitive damages if the defendant acts maliciously or in a wilful disregard of the plaintiff's rights.
3. Evidence of the defendant's wealth, an indicator of ability to pay, is admissible only after the plaintiff has established a legally sufficient case for the allowance of punitive damages.
4. The judge is required to issue a special verdict for punitive damages if legally sufficient evidence is introduced to allow those damages.

Wisconsin has a modified system of comparative negligence. Contributory negligence does not bar recovery for an action unless the negligence of the person seeking recovery (plaintiff) is greater than the negligence of the person against whom recovery is sought (defendant). In the situation where more than one party contributes to an injury (joint tort-feasors), Wisconsin generally follows a rule of

joint and several liability. That is, a plaintiff may collect the total damages against any of the joint tort-feasors whose negligence combines to cause the injury, as reduced by the plaintiff's percentage of the negligence. A joint tort-feasor who pays more than his or her proportionate share has a cause of action for contribution against the other joint tort-feasors.

This bill modifies the comparative negligence system in several ways. The bill requires that the negligence of the plaintiff be measured separately against each of the joint tort-feasors. Under this bill, a joint tort-feasor's liability is limited to the percentage of the total causal negligence attributed to that party.

The bill specifies that the changes in the rule of joint and several liability do not apply to parties whose concerted action results in damages or to causes of action resulting from environmental pollution, hazardous waste or substances or waste disposal sites.

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

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

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

3 895.045 (1) (title) COMPARATIVE NEGLIGENCE. Contributory negligence shall
4 does not bar recovery in an action by any person or the ~~person's~~ person's legal
5 representative to recover damages for negligence resulting in death or in injury to
6 person or property, if such that negligence was not greater than the negligence of the
7 person against whom recovery is sought, but any damages allowed shall be
8 diminished in the proportion to the amount of negligence ~~attributable~~ attributed to
9 the person recovering. The negligence of the plaintiff shall be measured separately
10 against the negligence of each party found to be causally negligent. The liability of
11 each party found to be causally negligent is limited to the percentage of the total
12 causal negligence attributed to that party.

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

1 895.045 **(2)** CONCERTED ACTION. Notwithstanding sub. (1), if 2 or more parties
2 act in accordance with a common scheme or plan, those parties are jointly and
3 severally liable for all damages resulting from that action, except as provided in s.
4 895.85 (5).

5 **(3)** JOINT AND SEVERAL LIABILITY. Except as provided in s. 895.85 (5), nothing in
6 this section prohibits the imposition of joint and several liability in a cause of action
7 for damages resulting from environmental pollution, hazardous waste or substances
8 or waste disposal sites.

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

10 **895.85 Punitive damages. (1) DEFINITIONS.** In this section:

11 (a) “Defendant” means the party against whom punitive damages are sought.

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

15 (c) “Plaintiff” means the party seeking to recover punitive damages.

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

18 **(2) SCOPE.** This section does not apply to awards of double damages or treble
19 damages, or to the award of exemplary damages under ss. 46.90 (6) (c), 51.30 (9),
20 51.61 (7), 103.96 (2), 153.85, 252.14 (4), 252.15 (8) (a), 943.245 (2) and (3) and 943.51
21 (2) and (3).

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

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

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

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

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

9 **SECTION 4. Initial applicability.**

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

12 (END)