CHAPTER 893

LIMITATIONS OF COMMENCEMENT OF ACTIONS AND PROCEEDINGS AND PROCEDURE FOR CLAIMS AGAINST GOVERNMENTAL UNITS

NOTE: See the note at the end of this chapter containing indexes to statutes outside this chapter which impose time restrictions on asserting a claim or cause of action and statutes outside this chapter which govern claims against governmental entities.

SUBCHAPTER I

COMMENCEMENT, COMPUTATION, ACTION IN NON−WISCONSIN FORUM AND MISCELLANEOUS PROVISIONS

893.01 Civil actions; objection as to time of commencing. Civil actions may be commenced only within the periods prescribed in this chapter, except when, in special cases, a different limitation is provided by statute. An objection that the action was not commenced within the time limited may only be taken by answer or motion to dismiss under s. 802.06 (2) in proper cases.

History: Sup. Ct. Order, 67 W (2d) 585, 770 (1975); 1979 c. 323.

Judicial Council Committee's Note, 1979: This section remains from previous ch. 893 and is revised only for purposes of textual clarity. [Bill 326−A]

Estoppel can be invoked to preclude a defense based on a statute of limitations (a) when a defendant has been guilty of fraudulent or inequitable conduct; (b) the conduct need not constitute actual fraud in a technical sense, but may be equivalent to a representation upon which the plaintiff may have relied to his disadvantage by not commencing his action within the statutory period; but (c) must have occurred before the expiration of the limitation period with no unreasonable delay by the aggrieved party after the inducement therefor has ceased to operate. State ex rel. Susedik v. Knutson, 52 W (2d) 593, 191 NW (2d) 23.

See note to 801.15, citing Pulchinski v. Strnad, 88 W (2d) 423, 276 NW (2d) 781 (1979).

When limitation period would otherwise expire on legal holiday, 990.001 (4) (b) permits commencement of action on next secular day. Cuisinier v. Sattler, 88 W (2d) 654, 277 NW (2d) 776 (1979).

Retroactivity of statutes of limitations discussed. Betthauser v. Medical Protective Co. 172 W (2d) 141, 493 NW (2d) 40 (1992).

Defendant was estopped from pleading statute of limitations by fraudulent conduct which prevented plaintiff from filing timely suit. Bell v. City of Milwaukee, 746 F (2d) 1205 (1984).

893.02 Action, when commenced. An action is commenced, within the meaning of any provision of law which limits the time for the commencement of an action, as to each defendant, when the summons naming the defendant and the complaint are filed with the court, but no action shall be deemed commenced as to any defendant upon whom service of authenticated copies of the summons and complaint has not been made within 60 days after filing.

History: Sup. Ct. Order, 67 W (2d) 585, 770 (1975); 1975 c. 218; 1979 c. 323.

Judicial Council Committee's Note, 1979: This section is previous s. 893.39 of the statutes renumbered for more logical placement in restructured ch. 893. [Bill 326−A]

See note to 802.09, citing Wussow v. Commercial Mechanisms, Inc. 97 W (2d) 136, 293 NW (2d) 897 (1980).

Where action against unnamed defendant under 807.12 was filed on last day of limitation period and amended process naming defendant was served within 60 days after filing, action was not barred. Relation back requirements of 802.09 (3) were inapplicable. Lak v. Richardson−Merrell, Inc. 100 W (2d) 641, 302 NW (2d) 483 (1981).

Service of process did not commence action where plaintiff failed to file summons and complaint. Defendant's answer did not waive statute of limitations defense or estop defendant from raising it after limitation period expired. Hester v. Williams, 117 W (2d) 634, 345 NW (2d) 426 (1984).

Fictitiously designated defendant's right to extinction of action doesn't effectively vest until 60 days after statute of limitations runs. Lavine v. Hartford Acc. & Indemnity, 140 W (2d) 434, 410 NW (2d) 623 (Ct. App. 1987).

See note to 227.40, citing Richards v. Young, 150 W (2d) 549, 441 NW (2d) 742 (1989).

893.03 Presenting claims. The presentation of any claim, in cases where by law such presentment is required, to the circuit court shall be deemed the commencement of an action within the meaning of any law limiting the time for the commencement of an action thereon.

History: 1977 c. 449 s. 497; 1979 c. 323.

Judicial Council Committee's Note, 1979: This section is previous s. 893.41 renumbered for more logical placement in restructured ch. 893. [Bill 326−A]

Statute of limitations is not tolled by filing action in court completely lacking jurisdiction and later refiling in proper court after statute has run. Schafer v. Wegner, 78 W (2d) 127, 254 NW (2d) 193.

893.04 Computation of period within which action may be commenced. Unless otherwise specifically prescribed by law, a period of limitation within which an action may be commenced is computed from the time that the cause of action accrues until the action is commenced.

History: 1979 c. 323.

Judicial Council Committee's Note, 1979: Previous section 893.48 is repealed and sections 893.04 and 893.14 created for the purpose of clarity. See Denzer v. Rouse, 48 Wis. 2d 528, 180 N.W. 2d 521 (1970) for a discussion of when a cause of action accrues, citing Holifield v. Setco Industries, Inc. 42 Wis. 2d 750, 168 N.W. 2d 177 (1969). [Bill 326−A]

In attorney malpractice actions as in medical malpractice cases where the date of negligence and the date of injury are the same, the statute of limitations runs from that date, for that is the time when the cause of action accrues. Denzer v. Rouse, 48 W (2d) 528, 180 NW (2d) 521.

The loss of the right to a patent is the loss of the right to exclude others and, therefore, the injury occurred on that date the right to a patent was lost. Boehm v. Wheeler, 65 W (2d) 668, 223 NW (2d) 536.

Because 67.11 requires moneys in sinking fund remain inviolate until bonds are retired, cause of action regarding fund could only accrue at retirement. Joint School Dist. No. 1 v. City of Chilton, 78 W (2d) 52, 253 NW (2d) 879.

Tort claim accrues when injury is discovered or reasonably should have been discovered. Court adopts this "discovery rule" for all tort actions other than those already governed by statutory discovery rule. Hansen v. A. H. Robins, Inc. 113 W (2d) 550, 335 NW (2d) 578 (1983).

See note to 893.54, citing Borello v. U.S. Oil Co. 130 W (2d) 397, 388 NW (2d) 140 (1986).

The day upon which a cause of action accrues is not included in computing the period of limitation. Pufahl v. Williams, 179 W (2d) 104, 506 NW (2d) 747 (1993).

Computing time in tort statutes of limitation. Ghiardi, 64 MLR 575 (1981).

Computing Time. Ghiardi. Wis. Law. March 1993.

893.05 Relation of statute of limitations to right and remedy. When the period within which an action may be commenced on a Wisconsin cause of action has expired, the right is extinguished as well as the remedy.

History: 1979 c. 323.

Judicial Council Committee's Note, 1979: This new section is a codification of Wisconsin case law. See Maryland Casualty Company v. Beleznay, 245 Wis. 390, 14 N.W. 2d 177 (1944), in which it is stated at page 393: "In Wisconsin the running of the statute of limitations absolutely extinguishes the cause of action for in Wisconsin limitations are not treated as statutes of repose. The limitation of actions is a right as well as a remedy, extinguishing the right on one side and creating a right on the other, which is as of high dignity as regards judicial remedies as any other right and it is a right which enjoys constitutional protection". [Bill 326−A]

893.07 Application of foreign statutes of limitation. (1) If an action is brought in this state on a foreign cause of action and the foreign period of limitation which applies has expired, no action may be maintained in this state.

(2) If an action is brought in this state on a foreign cause of action and the foreign period of limitation which applies to that action has not expired, but the applicable Wisconsin period of limitation has expired, no action may be maintained in this state.

History: 1979 c. 323.

Judicial Council Committee's Note, 1979: Sub. (1) applies the provision of s. 893.05 that the running of a statute of limitations extinguishes the right as well as the remedy to a foreign cause of action on which an action is attempted to be brought in Wisconsin in a situation where the foreign period has expired. Sub. (1) changes the law of prior s. 893.205 (1), which provided that a resident of Wisconsin could sue in this state on a foreign cause of action to recover damages for injury to the person even if the foreign period of limitation had expired.

Sub. (2) applies the Wisconsin statute of limitations to a foreign cause of action if the Wisconsin period is shorter than the foreign period and the Wisconsin period has run. [Bill 326−A]

Borrowing statute properly applied to injury received without this state; conflict of laws analysis was not appropriate. Guertin v. Harbour Assur. Co. 141 W (2d) 622, 415 NW (2d) 831 (1987).

See note to 893.16, citing Scott v. First State Ins. Co. 155 W (2d) 608, 456 NW (2d) 312 (1990).

This section refers to periods of limitations, not periods of repose. Leverence v. U.S. Fidelity & Guaranty, 158 W (2d) 64, 462 NW (2d) 218 (Ct. App. 1990).

This section does not borrow foreign tolling statutes. Johnson v. Johnson, 179 W (2d) 574, 508 NW (2d) 19 (Ct. App. 1993).

Tort action based on injury received outside state was "foreign". Johnson v. Deltadynamics, Inc. 813 F (2d) 944 (7th Cir. 1987).

A tort action is foreign for purposes of this section when the injury giving rise to liability is incurred outside this state. Terranova v. Terranova, 883 F Supp. 1273 (1995).

Under this section, foreign jurisdiction's period of limitations is borrowed, but not its period of repose. Beard v. J. I. Case Co. 823 F (2d) 1095 (7th Cir. 1987).

Wisconsin's borrowing statute: Did we shortchange ourselves? 70 MLR 120 (1986).

SUBCHAPTER II

LIMITATIONS TOLLED OR EXTENDED

893.10 Actions, time for commencing. The period within which an action may be commenced shall not be considered to have expired when the court before which the action is pending is satisfied that the person originally served knowingly gave false information to the officer with intent to mislead the officer in the performance of his or her duty in the service of any summons or civil process. If the court so finds, the period of limitation is extended for one year.

History: 1979 c. 323.

Judicial Council Committee's Note, 1979: This section is previous s. 893.14 renumbered for more logical placement in restructured ch. 893. [Bill 326−A]

893.11 Extension of time if no person to sue. The fact that there is no person in existence who is authorized to bring an action on a cause of action at the time it accrues shall not extend the time within which, according to this chapter, an action may be commenced upon the cause of action to more than double the period otherwise prescribed by law.

History: 1979 c. 323.

Judicial Council Committee's Note, 1979: This section is previous s. 893.50 renumbered for more logical placement in restructured ch. 893 and revised for the purpose of textual clarity only. [Bill 326−A]

893.12 Advance payment of damages; limitation extended. The period fixed for the limitation for the commencement of actions, if a payment is made as described in s. 885.285 (1), shall be either the period of time remaining under the original

statute of limitations or 3 years from the date of the last payment made under s. 885.285 (1), whichever is greater.

History: 1979 c. 323.

Judicial Council Committee's Note, 1979: This section is created to place the statute extending statute of limitations when there has been a settlement and advance payment of claim for damages into the subchapter of chapter 893 on extension of statute of limitations. The provisions of prior s. 885.285 (4) are contained without change in newly created s. 893.12. [Bill 326−A]

Property payment under 885.285 (1) extends limitation under 893.12, but only if made within 3−year limit of 893.54 (1). Abraham v. Milwaukee Mutual Insurance Co. 115 W (2d) 678, 341 NW (2d) 414 (Ct. App. 1983).

Section does not apply to foreign cause of action; 893.07 (1) prevents 893.12 from extending foreign statutes of limitation. Thimm v. Automatic Sprinkler Corp. 148 W (2d) 332, 434 NW (2d) 842 (Ct. App. 1988).

Tolling provision applies only to party that received settlement or advance payment under 885.285; it does not apply to stranger to settlement. Riley v. Doe, 152 W (2d) 766, 449 NW (2d) 83 (Ct. App. 1989).

For a period of limitations to be extended under this section as the result of a "payment" by check, the check must be accepted and negotiated. Parr v. Milwaukee Bldg. & Const. Trades, 177 W (2d) 140, 501 NW (2d) 858 (Ct. App. 1993).

To be a payment under s. 885.285 which will toll or extend the statute of limitations, a payment must be related to fault or liability. Gurney v. Heritage Mutual Insurance Co. 188 W (2d) 68, 523 NW (2d) 193 (Ct. App. 1994).

893.13 Tolling of statutes of limitation. (1) In this section and ss. 893.14 and 893.15 "final disposition" means the end of the period in which an appeal may be taken from a final order or judgment of the trial court, the end of the period within which an order for rehearing can be made in the highest appellate court to which an appeal is taken, or the final order or judgment of the court to which remand from an appellate court is made, whichever is latest.

(2) A law limiting the time for commencement of an action is tolled by the commencement of the action to enforce the cause of action to which the period of limitation applies. The law limiting the time for commencement of the action is tolled for the period from the commencement of the action until the final disposition of the action.

(3) If a period of limitation is tolled under sub. (2) by the commencement of an action and the time remaining after final disposition in which an action may be commenced is less than 30 days, the period within which the action may be commenced is extended to 30 days from the date of final disposition.

History: 1979 c. 323.

Judicial Council Committee's Note, 1979: Section 893.35 is repealed and this section created to clarify the ending of the tolled period of a statute of limitations in the various situations which can arise when an appeal is taken.

Sub. (3) would apply when, for example, an action was commenced when the period of limitation has only 5 days left to run. The running of the period of limitation is tolled for the period from commencement of the action until the day of its final disposition, such as dismissal of the action based on the pleadings. A 30−day period is then provided (rather than the 5 days left on the original period of limitation) in order to provide a reasonable time for a party to consider whether to recommence the action. [Bill 326−A]

This section does not toll the statute to allow an independent claim by an insurer. It simply insures that the joinder of constituent parts of a cause of action, during the pendency of the action, is not frustrated by the application of the appropriate statute of limitations. Aetna Casualty & Surety Co. v. Owens, 191 W (2d) 745, 530 NW (2d) 51 (Ct. App. 1995).

The filing of an action subsequently voluntarily dismissed tolls the statute of limitations under sub. (2) for the period specified in sub. (1) for cases where no appeal is taken. Johnson v. County of Crawford, 195 W (2d) 374, 536 NW (2d) 167 (Ct. App. 1995).

Filing suit prior to expiration of 120−day period or denial of claim is not truly commenced and does not toll the statute of limitations when filed. Colby v. Columbia County, 202 W (2d) 342, 550 NW (2d) 124 (1996).

893.135 Tolling of statute of limitations for marital property agreements. Any statute of limitations applicable to an action to enforce a marital property agreement under ch. 766 is tolled as provided under s. 766.58 (13).

History: 1985 a. 37; 1987 a. 393.

893.137 Tolling of statute of limitations for certain time−share actions. Any statute of limitations affecting the right of an association organized under s. 707.30 (2) or a time−share owner, as defined in s. 707.02 (31), against a developer, as defined in s. 707.02 (11), is tolled as provided in s. 707.34 (1) (bm).

History: 1987 a. 399.

893.14 Limitation on use of a right of action as a defense or counterclaim. Unless otherwise specifically prescribed by law, the period within which a cause of action may be used as a defense or counterclaim is computed from the time of the accrual of the cause of action until the time that the plaintiff commences the action in which the defense or counterclaim is made. A law limiting the time for commencement of an action is tolled by the assertion of the defense or the commencement of the counterclaim until final disposition of the defense or counterclaim. If a period of limitation is tolled under this section and the time remaining after final disposition in which an action may be commenced is less than 30 days, the period within which the action may be commenced is extended to 30 days from the date of final disposition.

History: 1979 c. 323.

Judicial Council Committee's Note, 1979: This section is based upon previous ss. 893.48 and 893.49. The section provides, however, that a statute of limitations is tolled only from the assertion of the defense or counterclaim until the final disposition of the defense or counterclaim. Under previous s. 893.49 a statute of limitations was tolled from the commencement of the action in which the defense or counterclaim was asserted until the termination of the action. [Bill 326−A]

893.15 Effect of an action in a non−Wisconsin forum on a Wisconsin cause of action. (1) In this section "a non−Wisconsin forum" means all courts, state and federal, in states other than this state and federal courts in this state.

(2) In a non−Wisconsin forum, the time of commencement or final disposition of an action is determined by the local law of the forum.

(3) A Wisconsin law limiting the time for commencement of an action on a Wisconsin cause of action is tolled from the period of commencement of the action in a non−Wisconsin forum until the time of its final disposition in that forum.

(4) Subsection (3) does not apply to an action commenced on a Wisconsin cause of action in a non−Wisconsin forum after the time when the action is barred by a law of the forum limiting the time for commencement of an action.

(5) If an action is commenced in a non−Wisconsin forum on a Wisconsin cause of action after the time when the Wisconsin period of limitation has expired but before the foreign period of limitation has expired, the action in the non−Wisconsin forum has no effect on the Wisconsin period of limitation.

History: 1979 c. 323.

Judicial Council Committee's Note, 1979: Sub. (1) defines the term "a non−Wisconsin forum". "State" is defined in s. 990.01 (40) to include the District of Columbia, Puerto Rico, and territories of the United States.

Sub. (2) determines the commencement and termination of an action in a non−Wisconsin forum by the law of that forum. "Local law" is referred to so that the non−Wisconsin court determining the commencement of an action in, for example, Illinois will use Illinois law, not including any other law which an Illinois court might use under a choice of law theory.

Sub. (3) applies the tolling effect of Wisconsin statutes to actions on Wisconsin causes of action brought in federal courts in Wisconsin and to all other courts, state and federal, in the United States.

Sub. (4) prevents the commencement of an action in a forum whose statute of limitations has run from extending the Wisconsin tolling period.

Sub. (5) prevents the maintenance of an action in a non−Wisconsin forum from extending a Wisconsin statute of limitations. [Bill 326−A]

893.16 Person under disability. (1) If a person entitled to bring an action is, at the time the cause of action accrues, either under the age of 18 years, except for actions against health care providers; or insane, or imprisoned on a criminal charge the action may be commenced within 2 years after the disability ceases, except that where the disability is due to insanity or imprisonment, the period of limitation prescribed in this chapter may not be extended for more than 5 years.

(2) Subsection (1) does not shorten a period of limitation otherwise prescribed.

(3) A disability does not exist, for the purposes of this section, unless it existed when the cause of action accrues.

(4) When 2 or more disabilities coexist at the time the cause of action accrues, the 2−year period specified in sub. (1) does not begin until they all are removed.

(5) This section applies only to statutes in this chapter limiting the time for commencement of an action or assertion of a defense or counterclaim except it does not apply to:

(a) Actions for the recovery of a penalty or forfeiture or against a sheriff or other officer for escape;

(b) Extend the time limited by s. 893.33, 893.41, 893.59, 893.62, 893.73 to 893.76, 893.77 (3), 893.86 or 893.91 or subch. VIII for commencement of an action or assertion of a defense or counterclaim; or

(c) A cause of action which accrues prior to July 1, 1980.

History: 1979 c. 323.

Judicial Council Committee's Note, 1979: This section is based on present ss. 893.135, 893.33, 893.37 and 893.38. Previous ss. 893.135 and 893.33 stated that the time of disability is not counted as the running of a statute of limitation and further stated that an action could be brought within a specified time after the disability ceased. This is inherently inconsistent and is replaced in s. 893.16 by the simple provision that the action may be commenced within 2 years after the disability ceases. Changes from previous s. 893.135 are:

(a) The period within which to sue after the period of disability ends is reduced from 5 years to 2 years.

(b) The maximum extension time available to those under disability of insanity or imprisonment is limited to 5 years. This means that such individuals must sue within 5 years after the basic applicable statute of limitations would have run against one not under disability, or within 2 years after the disability ends, whichever period is shorter.

(c) The phrase in previous s. 893.135, "at the time such title shall first descend or accrue" is changed to "at the time the cause of action accrues," and this is reinforced by subsection (3). Despite appearances, this represents no change in substance because of the decision in Swearingen v. Roberts, 39 Wis. 462 (1876).

Other changes include:

(a) A specific provision provides that no limitation period is shortened by the application of this section. This represents no substantive change.

(b) In view of the 5−year extension provision reasons for excluding those imprisoned for life from the benefits of the disability provision disappear and the exclusion has been dropped.

(c) The period within which to sue provided in previous s. 893.33 has been increased from one year to 2 years.

To illustrate some of the effects of these revisions:

(a) If a statute of limitation has run on a cause of action of a minor for a personal injury the minor would have one year to commence an action after attaining age 18 under previous s. 893.33. Under s. 893.16 the minor has 2 years to commence an action after attaining age 18.

(b) If a minor has a cause of action affecting title to real estate and the statute of limitation has run the minor has 5 years to commence an action after attaining age 18 under previous s. 893.135. Under s. 893.16 the minor has 2 years to commence the action. [Bill 326−A]

Sub. (1) is effective to toll running of statute of limitation even where, pursuant to 893.07, plaintiff would be barred from bringing suit under applicable foreign law. Scott v. First State Ins. Co., 155 W (2d) 608, 456 NW (2d) 312 (1990).

If a party wishes the benefit of the disability tolling statute, then the party does not get the benefit of the discovery rule. Kilaab v. Prudential Insurance Co. 198 W (2d) 700, 543 NW (2d) 538 (Ct. App. 1995).

Prisoner is entitled to tolling provision under (1) when bringing 42 USC 1983 action. Hardin v. Straub, 490 US 536, 104 LEd 2d 582 (1989).

893.17 Transition; limitation if disability exists; temporary. (1) This section does not apply to a cause of action which accrues on or after July 1, 1980.

(2) If a person entitled to commence any action for the recovery of real property or to make an entry or defense founded on the title to real property or to rents or services out of the same is, at the time such title shall first descend or accrue, either: within the age of 18 years; or insane; or imprisoned on a criminal charge or in execution upon conviction of a criminal offense, for a term less than for life, the time during which such disability shall continue shall not be deemed any portion of the time in this chapter limited for the commencement of such action or the making of such entry or defense; but such action may be commenced or entry or defense made, after the time limited and within 5 years after the disability shall cease or after the death of the person entitled, who shall die under such disability; but such action shall not be commenced or entry or defense made after that period.

(3) This section shall not operate to extend the time for commencing any action or assertion of a defense or counterclaim with respect to which a limitation period established in s. 893.33 has expired and does not apply to s. 893.41, 893.59, 893.62, 893.73 to 893.76, 893.77 (3), 893.86 or 893.91 or subch. VIII.

History: 1971 c. 213 s. 5; 1979 c. 323.

Judicial Council Committee's Note, 1979: This section is previous s. 893.135 of the statutes renumbered for more logical placement into restructured ch. 893 and amended to make its disability provisions applicable only to a cause of action for recovery of real property or to make an entry or defense founded on the title to real property or to its rents or services which accrues prior to July 1, 1980. The general disability provisions in s. 893.16 applicable to all statutes of limitation in ch. 893 apply to all causes of action which accrue on or after July 1, 1980. [Bill 326−A]

893.18 Transition; persons under disability. (1) This section does not apply to a cause of action which accrues on or after July 1, 1980 or to s. 893.41, 893.59, 893.62, 893.73 to 893.76, 893.77 (3), 893.86 or 893.91 or subch. VIII.

(2) If a person entitled to bring an action mentioned in this chapter, except actions for the recovery of a penalty or forfeiture or against a sheriff or other officer for an escape, or for the recovery of real property or the possession thereof is, at the time the cause of action accrued, either

(a) Within the age of 18 years, except for actions against health care providers; or

(b) Insane; or

(c) Imprisoned on a criminal charge or in execution under sentence of a criminal court for a term less than life, the time of such disability is not a part of the time limited for the commencement of the action, except that the period within which the action must be brought cannot be extended more than 5 years by any such disability, except infancy; nor can it be so extended in any case longer than one year after the disability ceases.

(3) A disability does not exist, for the purpose of this section, unless it existed when the cause of action accrued.

(4) When 2 or more disabilities coexist at the time the cause of action accrues the period of limitation does not attach until they all are removed.

History: 1971 c. 213 s. 5; 1977 c. 390; 1979 c. 323; 1981 c. 314.

Judicial Council Committee's Note, 1979: This section is previous s. 893.33 of the statutes renumbered for more logical placement in restructured ch. 893 and amended to make its disability provisions applicable only to a cause of action which accrues prior to July 1, 1980. The general disability provisions in s. 893.16 applicable to all statutes of limitation in ch. 893 apply to all causes of action which occur on or after July 1, 1980. [Bill 326−A]

Because parents' claim arising from injury to minor child was filed along with child's claim within time period for child's claim, parents' claim was not barred by 893.54. Korth v. American Family Ins. Co., 115 W (2d) 326, 340 NW (2d) 494 (1983).

Parent's claim for negligent infliction of emotional distress arising from same act as child's injury benefits from the child's tolling period. Jendrzjek v. Tschopp−Durch−Camastral, 755 F Supp. 1162 (1991).

893.19 Limitation when person out of state. (1) If a person is out of this state when the cause of action accrues against the person an action may be commenced within the terms of this chapter respectively limited after the person returns or removes to this state. But the foregoing provision shall not apply to any case where, at the time the cause of action accrues, neither the party against nor the party in favor of whom the same accrues is a resident of this state; and if, after a cause of action accrues against any person, he or she departs from and resides out of this state the time of absence is not any part of the time limited for the commencement of an action; provided, that no foreign corporation which files with the department of financial institutions, or any other state official or body, pursuant to the requirements of any applicable statute of this state, an instrument appointing a registered agent as provided in ch. 180, a resident or any state official or body of this state, its attorney or agent, on whom, pursuant to such instrument or any applicable statute, service of process may be made in connection with such cause of action, is deemed a person out of this state within the meaning of this section for the period during which such appointment is effective, excluding from such period the time of absence from this state of any registered agent, resident agent or attorney so appointed who departs from and resides outside of this state.

(2) This section shall not apply to any person who, while out of this state, may be subjected to personal jurisdiction in the courts of this state on any of the grounds specified in s. 801.05.

History: 1971 c. 154; 1977 c. 176; 1979 c. 323; 1995 a. 27.

Judicial Council Committee's Note, 1979: This section is previous s. 893.30 renumbered for more logical placement in restructured ch. 893 and revised for purposes of clarity only. [Bill 326−A]

Validity of defense, under s. 893.205 (1), 1969 stats., of bar to the action by the North Carolina 3−year limitation statute, is determined in light of analysis of North

Carolina products liability case law. Central Mut. Ins. Co. v. H. O., Inc. 63 W (2d) 54, 216 NW (2d) 239.

893.20 Application to alien enemy. When a person is an alien subject or citizen of a country at war with the United States the time of the continuance of the war is not a part of the time limited for the commencement of the action.

History: 1979 c. 323.

Judicial Council Committee's Note, 1979: This section is previous s. 893.31 renumbered for more logical placement in restructured ch. 893. [Bill 326−A]

893.21 Effect of military exemption from civil process. The time during which any resident of this state has been exempt from the service of civil process on account of being in the military service of the United States or of this state, shall not be taken as any part of the time limited by law for the commencement of any civil action in favor of or against such person.

History: 1979 c. 323.

Judicial Council Committee's Note, 1979: This section is previous s. 893.32 renumbered for more logical placement in restructured ch. 893. [Bill 326−A]

893.22 Limitation in case of death. If a person entitled to bring an action dies before the expiration of the time limited for the commencement of the action and the cause of action survives an action may be commenced by the person's representatives after the expiration of that time and within one year from the person's death. If a person against whom an action may be brought dies before the expiration of the time limited for the commencement of the action and the cause of action survives an action may be commenced after the expiration of that time and within one year after the issuing, within this state, of letters testamentary or of administration.

History: 1979 c. 323.

Judicial Council Committee's Note, 1979: This section is previous s. 893.34 renumbered for more logical placement in restructured ch. 893 and revised for the purpose of clarity only. [Bill 326−A]

893.23 When action stayed. When the commencement of an action is stayed by injunction or statutory prohibition the time of the continuance of the injunction or prohibition is not part of the time limited for the commencement of the action.

History: 1979 c. 323.

Judicial Council Committee's Note, 1979: This section is previous s. 893.36 renumbered for more logical placement in restructured ch. 893. [Bill 326−A]

The interplay between s. 893.23 and s. 893.80 creates a statute of limitations equal to 3 years and 120 days when filing a claim under s. 893.80. Colby v. Columbia County, 202 W (2d) 342, 550 NW (2d) 124 (1996).

SUBCHAPTER III

ACTIONS CONCERNING REAL OR PERSONAL PROPERTY

Judicial Council Committee's Note, 1979: This subchapter assembles sections affecting real or personal property in a single location in ch. 893. It revises some present provisions; rearranges others; adds a 7−year limitation statute under certain circumstances and a codification of case−law relating to obtaining prescriptive rights by adverse user; and deletes several present sections considered unnecessary.

Notes following the sections of the subchapter explain the rearrangements, changes, and additions. However, specific discussion of those sections eliminated follows:

(1) Previous ss. 893.02 and 893.03 were judged duplicative of the principal operative sections and possibly confusing. Nelson v. Jacobs, 99 Wis. 547, 75 N.W. 406 (1898), appears to rely in part on these sections for the proposition that one who has adversely possessed for 20 years has marketable title which can be forced on a vendee who objects, even though not established of record. This is undesirable and contrary to current understanding; see Baldwin v. Anderson, 40 Wis. 2d 33, 161 N.W. 2d 553 (1968). In addition, Zellmer v. Martin, 157 Wis. 341, 147 N.W. 371 (1914) suggests that these sections may mean that 20 years of continuous disseisin of a true owner may bar that owner even if the claiming adverse possessor has not possessed in one of the ways required by previous s. 893.09. This may be confusing, since the language of previous s. 893.09 precluded other forms of possession under the 20−year statute. Other than as here noted, ss. 893.02 and 893.03 have been rarely cited and are not significant. In view of the presumption of possession by the true owner provided by previous s. 893.05, which this subchapter retains, previous ss. 893.02 and 893.03 contributed no needed substance to the subchapter.

(2) Previous s. 893.075 was enacted as a companion to s. 700.30, which was held unconstitutional in Chicago & N.W. Transportation Co. v. Pedersen, 80 Wis. 2d 566, 259 N.W. 2d 316 (1977). No new s. 700.30 has been enacted. Therefore, s. 893.075 is surplusage and repealed.

(3) The ancient doctrine of "descent cast" is no longer of practical importance, especially since the passage of the new probate code in 1971. Therefore, the need for a response to that doctrine in previous s. 893.13 has disappeared, and the section has been repealed.

(4) Previous s. 893.18 (7) limited the time within which title to real estate could be attacked based on a defect in the jurisdiction of a court of record which entered a judgment affecting the title. That section is repealed as its application is preempted by s. 706.09 (1) (g). [Bill 326−A]

893.24 Adverse possession; section lines. (1) A written instrument or judgment that declares the boundaries of real estate adversely possessed under s. 893.25, 893.26, 893.27 or 893.29 does not affect any section line or any section subdivision line established by the United States public land survey or any section or section subdivision line based upon it.

(2) Occupation lines that the court declares to be property lines by adverse possession under s. 893.25, 893.26, 893.27 or 893.29 shall, by order of the court, be described by a retraceable description providing definite and unequivocal identification of the lines or boundaries. The description shall contain data of dimensions sufficient to enable the description to be mapped and retraced and shall describe the land by government lot, recorded private claim, quarter−quarter section, section, township, range and county, and by metes and bounds commencing with a corner marked and established by the United States public land survey or a corner of the private claim.

History: 1985 a. 247.

893.25 Adverse possession, not founded on written instrument. (1) An action for the recovery or the possession of real estate and a defense or counterclaim based on title to real estate are barred by uninterrupted adverse possession of 20 years, except as provided by s. 893.14 and 893.29. A person who, in connection with his or her predecessors in interest, is in uninterrupted adverse possession of real estate for 20 years, except as provided by s. 893.29, may commence an action to establish title under ch. 841.

(2) Real estate is possessed adversely under this section:

(a) Only if the person possessing it, in connection with his or her predecessors in interest, is in actual continued occupation under claim of title, exclusive of any other right; and

(b) Only to the extent that it is actually occupied and:

1. Protected by a substantial enclosure; or

2. Usually cultivated or improved.

History: 1979 c. 323.

Judicial Council Committee's Note, 1979: This provision collects in one section all material relating to 20−year adverse possession, without change in substance. Previous ss. 893.08 and 893.09, together with part of previous s. 893.10, are integrated here. The words "and a defense or counterclaim based on title to real estate" are added in subsection (1) to assure that deletion of present section 893.03 results in no loss of substance. This section covers the substance of previous s. 893.02, also deleted. Reference to ch. 843 describes the action which an adverse possessor may bring to establish title. The words "in connection with his or her predecessors in interest" are intended to express, but not change, the well−established common law doctrine of "tacking" together periods of possession by adverse possessors in privity with each other. The word "interest" has been substituted for "title" used in previous s. 893.10 (2) because it more accurately expresses the nature of an adverse possessor's rights until the 20−year period has run, and better reflects the substance of the privity required for tacking between successive adverse possessors. There is no requirement of good faith entry under this section. Entry, for example, under a deed known by the adverse possessor to be fraudulent would start this 20−year period running, but not the 10−year period provided by s. 893.26. [Bill 326−A]

Exceptions to the 20−year rule discussed. Buza v. Wojtalewicz, 48 W (2d) 557, 180 NW (2d) 556.

See note to 893.33, citing Leimert v. McCann, 79 W (2d) 289, 255 NW (2d) 526.

Grantor can assert adverse possession against grantee. Lindl v. Ozanne, 85 W (2d) 424, 270 NW (2d) 249 (Ct. App. 1978).

Where survey established that disputed lands were not within calls of possessor's deed, possessor's claim to property was not under color of title by written instrument. Beasley v. Konczal, 87 W (2d) 233, 275 NW (2d) 634 (1979).

Acts which are consistent with sporadic trespass are insufficient to appraise owner of adverse claim. Pierz v. Gorski, 88 W (2d) 131, 276 NW (2d) 352 (Ct. App. 1979).

Where evidence is presented as to extent of occupancy of only portion of land, only that portion may be awarded in adverse possession proceedings. Droege v. Daymaker Cranberries, Inc. 88 W (2d) 140, 276 NW (2d) 356 (Ct. App. 1979).

See note to 75.521, citing Leciejewski v. Sedlak, 116 W (2d) 629, 342 NW (2d) 734 (1984).

A railroad right−of−way is subject to adverse possession, the same as other lands. Maiers v. Wang, 192 W (2d) 115, 531 NW (2d) 54 (1995).

893.26 Adverse possession, founded on recorded written instrument. (1) An action for the recovery or the possession of real estate and a defense or counterclaim based upon title to real estate are barred by uninterrupted adverse possession of 10 years, except as provided by s. 893.14 and 893.29. A person

who in connection with his or her predecessors in interest is in uninterrupted adverse possession of real estate for 10 years, except as provided by s. 893.29, may commence an action to establish title under ch. 841.

(2) Real estate is held adversely under this section or s. 893.27 only if:

(a) The person possessing the real estate or his or her predecessor in interest, originally entered into possession of the real estate under a good faith claim of title, exclusive of any other right, founded upon a written instrument as a conveyance of the real estate or upon a judgment of a competent court;

(b) The written instrument or judgment under which entry was made is recorded within 30 days of entry with the register of deeds of the county where the real estate lies; and

(c) The person possessing the real estate, in connection with his or her predecessors in interest, is in actual continued occupation of all or a material portion of the real estate described in the written instrument or judgment after the original entry as provided by par. (a), under claim of title, exclusive of any other right.

(3) If sub. (2) is satisfied all real estate included in the written instrument or judgment upon which the entry is based is adversely possessed and occupied under this section, except if the real estate consists of a tract divided into lots the possession of one lot does not constitute the possession of any other lot of the same tract.

(4) Facts which constitute possession and occupation of real estate under this section and s. 893.27 include, but are not limited to, the following:

(a) Where it has been usually cultivated or improved;

(b) Where it has been protected by a substantial inclosure;

(c) Where, although not inclosed, it has been used for the supply of fuel or of fencing timber for the purpose of husbandry or for the ordinary use of the occupant; or

(d) Where a known farm or single lot has been partly improved the portion of the farm or lot that is left not cleared or not inclosed, according to the usual course and custom of the adjoining country, is deemed to have been occupied for the same length of time as the part improved or cultivated.

(5) For the purpose of this section and s. 893.27 it is presumed, unless rebutted, that entry and claim of title are made in good faith.

History: 1979 c. 323; 1981 c. 314.

Judicial Council Committee's Note, 1979: This section collects in one place all material relating to 10−year adverse possession, integrating previous ss. 893.06 and 893.07, together with part of previous s. 893.10. Several language changes are the same as in s. 893.25, and the comments in the note following that section apply here. Three changes may work some change in substance, and should be particularly noted:

Sub. (2) (a) requires original entry on the adversely possessed premises to be "in good faith," language not included in the previous s. 893.06. The addition is designed to make clear that one who enters under a deed, for example, knowing it to be forged or given by one not the owner, should not have the benefit of the 10−year statute. Some Wisconsin case law (contrary to the nationwide weight of authority) suggests otherwise, and the change is intended to reverse these cases. See Polanski v. Town of Eagle Point, 30 Wis. 2d 507, 141 N.W. 2d 281 (1966); Peters v. Kell, 12 Wis. 2d 32, 106 N.W. 2d 407 (1960); McCann v. Welch, 106 Wis. 142, 81 N.W. 996 (1900). Note, however, that good faith is required only at the time of entry, and need not continue for the full 10 years of adverse possession.

Sub. (2) (b) adds a requirement not contained in previous s. 893.10 that the written instrument or judgment under which original entry is made must be recorded within 30 days after the entry.

Sub. (2) (c) adds the requirement that the adverse possession be of all or "a material portion" of the premises described in the written instrument or judgment, replacing "some part" found in previous s. 893.06. This probably represents no change in present law, but is intended to make clear that possession of an insubstantial fragment of land described in a written instrument will not suffice as constructive possession of all the land described. [Bill 326−A]

Where a deed granted a right of way but the claimed user was of a different strip, no right based on use for 10 years is created. New v. Stock, 49 W (2d) 469, 182 NW (2d) 276.

Adverse possession of relicted land discussed. Perpignani v. Vonasek, 139 W (2d) 695, 408 NW (2d) 1 (1987).

For purposes of determining "claim of title", a deed based upon a recorded official government survey meets the requirements of this statute. Ivalis v. Curtis, 173 W (2d) 751, 496 NW (2d) 690 (Ct. App. 1993).

893.27 Adverse possession; founded on recorded title claim and payment of taxes. (1) An action for the recovery or the possession of real estate and a defense or counterclaim based upon title to real estate are barred by uninterrupted adverse possession of 7 years, except as provided by s. 893.14 or 893.29. A person who in connection with his or her predecessors in interest is in uninterrupted adverse possession of real estate for 7 years, except as provided by s. 893.29, may commence an action to establish title under ch. 841.

(2) Real estate is possessed adversely under this section as provided by s. 893.26 (2) to (5) and only if:

(a) Any conveyance of the interest evidenced by the written instrument or judgment under which the original entry was made is recorded with the register of deeds of the county in which the real estate lies within 30 days after execution; and

(b) The person possessing it or his or her predecessor in interest pays all real estate taxes, or other taxes levied, or payments required, in lieu of real estate taxes for the 7−year period after the original entry.

History: 1979 c. 323.

Judicial Council Committee's Note, 1979: This section is new. It provides a 7−year limitation period in favor of an adverse possessor who has met all the requirements for the 10−year provision and who also has a recorded chain of title and paid the property taxes for the full 7 years. Many states provide similar or shorter periods under the same circumstances, while Wisconsin has given no statutory recognition to the importance of paying the taxes. One valuable role of adverse possession statutes is in title clearance. When a party enters in good faith, maintains possession, records all conveyances within 30 days and pays taxes for 7 years, the likelihood of genuine competing claims is small, and the gains in assurance of title from this section may well be significant. Some language from ss. 893.25 and 893.26 is repeated here; see notes to those sections for explanation. [Bill 326−A]

893.28 Prescriptive rights by adverse user. (1) Continuous adverse use of rights in real estate of another for at least 20 years, except as provided in s. 893.29 establishes the prescriptive right to continue the use. Any person who in connection with his or her predecessor in interest has made continuous adverse use of rights in the land of another for 20 years, except as provided by s. 893.29, may commence an action to establish prescriptive rights under ch. 843.

(2) Continuous use of rights in real estate of another for at least 10 years by a domestic corporation organized to furnish telegraph or telecommunications service or transmit heat, power or electric current to the public or for public purposes, or a cooperative association organized under ch. 185 to furnish telegraph or telecommunications service or transmit heat, power or electric current to its members, establishes the prescriptive right to continue the use, except as provided by s. 893.29. A person who has established a prescriptive right under this subsection may commence an action to establish prescriptive rights under ch. 843.

(3) The mere use of a way over unenclosed land is presumed to be permissive and not adverse.

History: 1979 c. 323; 1985 a. 297 s. 76.

893.29 Adverse possession against the state or political subdivisions, special provision. (1) Title to or interest in real property belonging to the state or a city, village, town, county, school district, sewerage commission, sewerage district or any other unit of government within this state may be obtained by adverse possession, prescription or user under s. 893.25, 893.26, 893.27 or 893.28 only if the adverse possession, prescription or user continues uninterruptedly for more than 20 years.

(2) Notwithstanding sub. (1), no title to or interest in any of the following property shall be obtained by adverse possession, prescription or user:

(a) Real property held in trust by the state under s. 24.01 (1), (5), (7), (9) and (10).

(b) Real property of an abandoned railroad acquired by the state under s. 85.09.

(c) Real property of a highway as defined in s. 340.01 (22) and including property held by the state or a political subdivision for highway purposes, including but not limited to widening, alteration, relocation, improvement, reconstruction and construction.

History: 1979 c. 323; 1983 a. 178; 1983 a. 189 s. 329 (16).

Judicial Council Committee's Note, 1979: This section is based on present s. 893.10 (1), but the period for adverse possession against the state is reduced from 40 to 30 [20] years. The previous provision presumably applied to the property of political subdivisions of the state, but this has been made express in this section. Note that

regardless of which of ss. 893.25 to 893.28 apply against a private owner, this section requires 30 [20] years for the obtaining of any rights in public land.

Because of the 30−year [20−year] period, adverse possession of the kind described in the 20−year statute is sufficient so that recording and good faith affect only the type of possession required and the amount of land possessed (see s. 893.26 (3) and (4)). Payment of taxes is irrelevant. [Bill 326−A]

Adverse possession provisions have prospective application only; possession must be taken after provision goes into effect. Petropoulos v. City of West Allis, 148 W (2d) 762, 436 NW (2d) 880 (Ct. App. 1989).

This section does not apply to a railroad. A railroad right−of−way is subject to adverse possession, the same as other lands. Maiers v. Wang, 192 W (2d) 115, 531 NW (2d) 54 (1995).

893.30 Presumption from legal title. In every action to recover or for the possession of real property, and in every defense based on legal title, the person establishing a legal title to the premises is presumed to have been in possession of the premises within the time required by law, and the occupation of such premises by another person shall be deemed to have been under and in subordination to the legal title unless it appears that such premises have been held and possessed adversely to the legal title for 7 years under s. 893.27, 10 years under s. 893.26 or 20 years under s. 893.25, before the commencement of the action.

History: 1979 c. 323.

Judicial Council Committee's Note, 1979: This section is based on previous s. 893.05. The last sentence is expanded to recognize the new 7−year statute in s. 893.27. The words "and in every defense based on legal title" are added to make clear that the presumption of this section applies whether the holder of legal title is suing to recover the land, or a claiming adverse possessor is suing to establish title to it. [Bill 326−A]

Lowest burden of proof applies in adverse possession cases. Kruse v. Horlamus Industries, 130 W (2d) 357, 387 NW (2d) 64 (1986).

893.31 Tenant's possession that of landlord. Whenever the relation of landlord and tenant exists between any persons the possession of the tenant is the possession of the landlord until the expiration of 10 years from the termination of the tenancy; or if there is no written lease until the expiration of 10 years from the time of the last payment of rent, notwithstanding that the tenant may have acquired another title or may have claimed to hold adversely to his or her landlord. The period of limitation provided by s. 893.25, 893.26 or 893.27 shall not commence until the period provided in this section expires.

History: 1979 c. 323.

Judicial Council Committee's Note, 1979: This is present s. 893.11 renumbered for more logical placement and revised slightly for the purpose of textual clarity only. It complements and supplements s. 893.30 (previous s. 893.05). The 10−year period is retained as the period during which adverse possession (for any statutory period) cannot begin to run in favor of a tenant. Adoption of a 7−year statute in s. 893.27 does not affect the policy of this section. [Bill 326−A]

893.32 Entry upon real estate, when valid as interruption of adverse possession. No entry upon real estate is sufficient or valid as an interruption of adverse possession of the real estate unless an action is commenced against the adverse possessor within one year after the entry and before the applicable adverse possession period of limitation specified in this subchapter has run, or unless the entry in fact terminates the adverse possession and is followed by possession by the person making the entry.

History: 1979 c. 323.

Judicial Council Committee's Note, 1979: This section replaces previous s. 893.04, which was very difficult to interpret with certainty. No change in substance is intended from the most reasonable probable interpretation of s. 893.04; indeed, the intention is to articulate that policy with greater clarity, consistent with the one decided case applying that section, Brockman v. Brandenburg, 197 Wis. 51, 221 N.W. 397 (1928). [Bill 326−A]

893.33 Action concerning real estate. (1) In this section "purchaser" means a person to whom an estate, mortgage, lease or other interest in real estate is conveyed, assigned or leased for a valuable consideration.

(2) Except as provided in subs. (5) to (9), no action affecting the possession or title of any real estate may be commenced, and no defense or counterclaim may be asserted, by any person, the state or a political subdivision or municipal corporation of the state after January 1, 1943, which is founded upon any unrecorded instrument executed more than 30 years prior to the date of commencement of the action, or upon any instrument recorded more than 30 years prior to the date of commencement of the action, or upon any transaction or event occurring more than 30 years prior to the date of commencement of the action, unless within 30 years after the execution of the unrecorded instrument or within 30 years after the date of recording of the recorded instrument, or within 30 years after the date of the transaction or event there is recorded in the office of the register of deeds of the county in which the real estate is located, some instrument expressly referring to the existence of the claim or defense, or a notice setting forth the name of the claimant, a description of the real estate affected and of the instrument or transaction or event on which the claim or defense is founded, with its date and the volume and page of its recording, if it is recorded, and a statement of the claims made. This notice may be discharged the same as a notice of pendency of action. Such notice or instrument recorded after the expiration of 30 years shall be likewise effective, except as to the rights of a purchaser of the real estate or any interest in the real estate which may have arisen after the expiration of the 30 years and prior to the recording.

(3) The recording of a notice under sub. (2), or of an instrument expressly referring to the existence of the claim, extends for 30 years from the date of recording the time in which any action, defense or counterclaim founded upon the written instrument or transaction or event referred to in the notice or recorded instrument may be commenced or asserted. Like notices or instruments may thereafter be recorded with the same effect before the expiration of each successive 30−year period.

(4) This section does not extend the right to commence any action or assert any defense or counterclaim beyond the date at which the right would be extinguished by any other statute.

(5) This section bars all claims to an interest in real property, whether rights based on marriage, remainders, reversions and reverter clauses in covenants restricting the use of real estate, mortgage liens, old tax deeds, death and income or franchise tax liens, rights as heirs or under will, or any claim of any nature, however denominated, and whether such claims are asserted by a person sui juris or under disability, whether such person is within or without the state, and whether such person is natural or corporate, or private or governmental, unless within the 30−year period provided by sub. (2) there has been recorded in the office of the register of deeds some instrument expressly referring to the existence of the claim, or a notice pursuant to this section. This section does not apply to any action commenced or any defense or counterclaim asserted, by any person who is in possession of the real estate involved as owner at the time the action is commenced. This section does not apply to any real estate or interest in real estate while the record title to the real estate or interest in real estate remains in a railroad corporation, a public service corporation as defined in s. 184.01, an electric cooperative organized and operating on a nonprofit basis under ch. 185, or any trustee or receiver of a railroad corporation, a public service corporation or an electric cooperative, or to claims or actions founded upon mortgages or trust deeds executed by that cooperative or corporation, or trustees or receivers of that cooperative or corporation. This section also does not apply to real estate or an interest in real estate while the record title to the real estate or interest in real estate remains in the state or a political subdivision or municipal corporation of this state.

(6) Actions to enforce easements, or covenants restricting the use of real estate, set forth in any recorded instrument shall not be barred by this section for a period of 40 years after the date of recording such instrument, and the timely recording of an instrument expressly referring to the easements or covenants or of notices pursuant to this section shall extend such time for 40−year periods from the recording.

(6m) This section does not apply to any interest in a conservation easement under s. 700.40.

NOTE: See note following s. 700.40.

(7) Only the following may assert this section as a defense or in an action to establish title:

(a) A purchaser of real estate; or

(b) A successor of a purchaser of real estate, if the time for commencement of an action or assertion of a defense or counterclaim under this section had expired at the time the rights of the purchaser in the real estate arose.

(8) If a period of limitation prescribed in s. 893.15 (5), 1977 stats., has begun to run prior to July 1, 1980, an action shall be commenced within the period prescribed by s. 893.15, 1977 stats., or 40 years after July 1, 1980, whichever first terminates.

(9) Section 893.15, 1977 stats., does not apply to extend the time for commencement of an action or assertion of a defense or counterclaim with respect to an instrument or notice recorded on or after July 1, 1980. If a cause of action is subject to sub. (8) the recording of an instrument or notice as provided by this section after July 1, 1980 extends the time for commencement of an action or assertion of a defense or counterclaim as provided in this section, except that the time within which the notice or instrument must be recorded if the time is to be extended as to purchasers is the time limited by sub. (8).

History: 1979 c. 323; 1981 c. 261; 1985 a. 135; 1987 a. 27, 330; 1991 a. 39.

Judicial Council Committee's Note, 1979 [deleted in part]: This section is based primarily on previous 893.15. That section, an interesting combination of limitations statute and marketable title statute, was of significant help to real estate titles since enactment in 1941. The beneficial effects were strengthened and expanded by enactment of s. 706.09 in 1967. This draft preserves the useful essence of previous s. 893.15, while updating some language. Changes which affect substance are:

(1) The 60−year provision relating to easements and covenants is reduced to 40 years.

(2) New subs. (8) and (9) are transitional provisions applying to limitation periods already running the period specified in previous s. 893.15, or the period in this statute, whichever is shorter.

(5) This draft makes explicit that only those who purchase for valuable consideration after the period of limitation has run or their successors may avail themselves of the benefits of this statute. There is no requirement that the purchaser be without notice, which is to be contrasted with s. 706.09 of the statutes where periods far shorter than 30 years are specified in many subsections. [Bill 326−A]

"Transaction or event" under s. 893.15 (1), 1975 stats. as applied to adverse possession means adverse possession for time period necessary to obtain title. Upon expiration of this period, the limitation under s. 893.15 (1), 1975 stats. commences to run. Leimert v. McCann, 79 W (2d) 289, 255 NW (2d) 526.

This section protects purchasers only. State v. Barkdoll, 99 W (2d) 163, 298 NW (2d) 539 (1980).

Public entity land owner was not protected from claim which was older than 30 years. State Historical Society v. Maple Bluff, 112 W (2d) 246, 332 NW (2d) 792 (1983).

Hunting and fishing rights are an easement under sub. (6). There is no distinction between a profit and an easement. Figliuzzi v. Carcajou Shooting Club, 184 W (2d) 572, 516 NW (2d) 410 (1994).

893.34 Immunity for property owners. No suit may be brought against any property owner who, in good faith, terminates a tenancy as the result of receiving a notice from a law enforcement agency under s. 704.17 (1) (c), (2) (c) or (3) (b).

History: 1993 a. 139.

893.35 Action to recover personal property. An action to recover personal property shall be commenced within 6 years after the cause of action accrues or be barred. The cause of action accrues at the time the wrongful taking or conversion occurs, or the wrongful detention begins. An action for damage for wrongful taking, conversion or detention of personal property shall be commenced within the time limited by s. 893.51.

History: 1979 c. 323.

Judicial Council Committee's Note, 1979: This section is based on previous s. 893.19 (6), without change in substance, but with some expansion of language to make clear that accrual of the cause of action is not delayed until the person bringing the action learns of the wrongful taking or detention. The limitation with respect to an action for damages is contained in s. 893.51. [Bill 326−A]

893.36 Secured livestock. (1) An action by a secured party to recover damages or property, based upon the sale of livestock which when sold is the secured party's collateral, against the market agency which in the ordinary course of business conducts the auction of the livestock, or against a buyer in ordinary course of business shall be commenced within 2 years after the date of sale of the livestock, or be barred, if:

(a) The debtor signs or endorses any writing arising from the transaction, including a check or draft, which states that the sale of the livestock is permitted by the secured party; and

(b) The secured party does not commence an action, within 2 years after the date of sale of the livestock against the debtor for purposes of enforcing rights under the security agreement or an obligation secured by the security agreement.

(2) This section does not apply to actions based upon a sale of livestock occurring prior to April 3, 1980, nor to an action by a secured party against its debtor. Section 893.35 or 893.51 applies to any action described in sub. (1) if the limitation described in sub. (1) is not applicable.

(3) In this section:

(a) "Buyer in ordinary course of business" has the meaning provided by s. 401.201 (9).

(b) "Collateral" has the meaning provided by s. 409.105 (1) (c).

(c) "Debtor" has the meaning provided by s. 409.105 (1) (d).

(d) "Market agency" means a person regularly engaged in the business of receiving, buying or selling livestock whether on a commission basis or otherwise.

(e) "Secured party" has the meaning provided by s. 409.105 (1) (L).

(f) "Security agreement" has the meaning provided by s. 409.105 (1) (m).

History: 1979 c. 221 ss. 837m, 2204 (33) (b); 1983 a. 189 s. 329 (24).

893.37 Survey. No action may be brought against an engineer or any land surveyor to recover damages for negligence, errors or omission in the making of any survey nor for contribution or indemnity related to such negligence, errors or omissions more than 6 years after the completion of a survey.

History: 1979 c. 323 s. 3; Stats. 1979 s. 893.36; 1979 c. 355 s. 228; Stats. 1979 s. 893.37.

SUBCHAPTER IV

ACTIONS RELATING TO CONTRACTS AND COURT JUDGMENTS

893.40 Action on judgment or decree; court of record. An action upon a judgment or decree of a court of record of any state or of the United States shall be commenced within 20 years after the judgment or decree is entered or be barred.

History: 1979 c. 323.

Judicial Council Committee's Note, 1979: This section has been created to combine the provisions of repealed ss. 893.16 (1) and 893.18 (1). A substantive change from prior law results as the time period for an action upon a judgment of a court of record sitting without this state is increased from 10 years to 20 years and runs from the time of entry of a judgment. The separate statute of limitations for an action upon a sealed instrument is repealed as unnecessary. [Bill 326−A]

Defendant was prejudiced by unreasonable 16 year delay in bringing suit; thus, laches barred suit even though s. 893.16 (1), 1973 stats. limitation did not. Schafer v. Wegner, 78 W (2d) 127, 254 NW (2d) 193.

893.41 Breach of contract to marry; action to recover property. An action to recover property procured by fraud by a party in representing that he or she intended to marry the party providing the property and not breach the contract to marry, to which s. 768.06 applies, shall be commenced within one year after the breach of the contract to marry.

History: 1979 c. 323; 1981 c. 314 s. 146.

Judicial Council Committee's Note, 1979: This section has been created to place into ch. 893 the statute of limitations for an action to recover property for an alleged breach of a contract to marry. See also note following s. 768.06. [Bill 326−A]

893.42 Action on a judgment of court not of record. An action upon a judgment of a court not of record shall be commenced within 6 years of entry of judgment or be barred.

History: 1979 c. 323.

Judicial Council Committee's Note, 1979: This section is previous s. 893.19 (1) renumbered for more logical placement in restructured ch. 893. [Bill 326−A]

893.425 Fraudulent transfers. An action with respect to a fraudulent transfer or obligation under ch. 242 shall be barred unless the action is commenced:

(1) Under s. 242.04 (1) (a), within 4 years after the transfer is made or the obligation is incurred or, if later, within one year after the transfer or obligation is or could reasonably have been discovered by the claimant.

(2) Under s. 242.04 (1) (b) or 242.05 (1), within 4 years after the transfer is made or the obligation is incurred.

(3) Under s. 242.05 (2), within one year after the transfer is made or the obligation is incurred.

History: 1987 a. 192.

893.43 Action on contract. An action upon any contract, obligation or liability, express or implied, including an action to recover fees for professional services, except those mentioned in s. 893.40, shall be commenced within 6 years after the cause of action accrues or be barred.

History: 1979 c. 323.

Judicial Council Committee's Note, 1979: This section is previous s. 893.19 (3) renumbered for more logical placement in restructured ch. 893. [Bill 326−A]

A bonus plan to compensate for increased profits is a contract under s. 893.19 (3), 1969 stats. Younger v. Rosenow Paper & Supply Co. 51 W (2d) 619, 188 NW (2d) 507.

An action to recover benefits under a pension plan is an action to enforce a contract, not an action for wages. Estate of Schroeder, 53 W (2d) 59, 191 NW (2d) 860.

Section 893.19 (3), 1967 stats. applies to an action to recover contribution arising out of settlement of a tort claim. State Farm Mut. Auto. Ins. Co. v. Schara, 56 W (2d) 262, 201 NW (2d) 758.

An action based on contract for personal injuries resulting from malpractice is subject to the 3−year limitation under s. 893.205, 1969 stats. Estate of Kohls, 57 W (2d) 141, 203 NW (2d) 666.

An action by an insured against an insurance agent in failing to procure requested coverage is not an action against the insurer on the policy but is an action resting upon the agent's contract with the insured to procure the insurance coverage agreed upon, and is subject to the statute of limitations for contract. Estate of Ensz, 66 W (2d) 193, 223 NW (2d) 903.

The cause of action for contribution is based upon a contract implied by law and must be brought within 6 years after the one joint tort−feasor has paid more than his share. Hartford Fire Ins. Co. v. Osborn Plumbing, 66 W (2d) 454, 225 NW (2d) 628.

See note to 893.44, citing Sussmann v. Gleisner, 80 W (2d) 435, 259 NW (2d) 114.

If object of disputed contract is the fruit of human labor rather than the labor per se, s. 893.19 (3), 1973 stats., applies rather than s. 893.21 (5), 1973 stats. Rupp v. O'Connor, 81 W (2d) 436, 261 NW (2d) 815.

Limitation for action based on contract applies to claim for sales commission. Saunders v. DEC International, Inc. 85 W (2d) 70, 270 NW (2d) 176 (1978).

Partial payment of obligation made prior to running of statute of limitations tolls statute and sets it running from date of payment. St. Mary's Hospital Medical Ctr. v. Tarkenton, 103 W (2d) 422, 309 NW (2d) 14 (Ct. App. 1981).

Breach of roofing contract occurred when faulty roof was completed, not when building was completed. Limitations discussed. State v. Holland Plastics Co. 111 W (2d) 497, 331 NW (2d) 320 (1983).

Unjust enrichment claim accrues when cohabitational relationship terminates; court does not determine which statute of limitations, if any, applies. Watts (Bischoff) v. Watts, 152 W (2d) 370, 448 NW (2d) 292 (Ct. App. 1989).

A contract cause of action accrues at the time of the breach; the discovery rule is inapplicable. CLL Associates v. Arrowhead Pacific, 174 W (2d) 604, 497 NW (2d) 115 (1993).

Unconscionability of contract claim is governed by this section rather than 893.18 (4). Dairyland Power Coop. v. Amax Inc. 700 F Supp. 979 (W.D. Wis. 1986).

893.44 Compensation for personal service. (1) Any action to recover unpaid salary, wages or other compensation for personal services, except actions to recover fees for professional services and except as provided in sub. (2), shall be commenced within 2 years after the cause of action accrues or be barred.

(2) An action to recover wages under s. 109.09 shall be commenced within 2 years after the claim is filed with the department of industry, labor and job development or be barred.

History: 1979 c. 323; 1985 a. 220; 1995 a. 27 s. 9130 (4).

Judicial Council Committee's Note, 1979: This section is previous s. 893.21 (5) renumbered for more logical placement in restructured ch. 893. Actions to collect fees for professional services are brought under s. 893.43. [Bill 326−A]

A stock−purchase plan as a reward for increased profits is not subject to s. 893.21 (5), 1969 stats. Younger v. Rosenow Paper & Supply Co. 51 W (2d) 619, 188 NW (2d) 507.

Professional services by a physician or attorney may be nonetheless so categorized, although not customarily performed in his specialized field of activity, if requested by reason of his expertise and professional training, and when he then utilizes such knowledge and training, but whether they are to be so classified depends upon the entire factual context of the particular employment. Lorenz v. Dreske, 62 W (2d) 273, 214 NW (2d) 753.

Section 893.21 (5), 1969 stats. does not apply unless services are actually rendered. Yanta v. Montgomery Ward & Co., Inc. 66 W (2d) 53, 224 NW (2d) 389.

Where employer deducted "hypothetical tax factor" from salaries of its overseas employes so as to equalize compensation of its employes worldwide, action to recover amounts so deducted had to be brought within 2 year limitation period on wage claims, and not 6 year period on other contract claims. Sussmann v. Gleisner, 80 W (2d) 435, 259 NW (2d) 114.

See note to 893.43, citing Rupp v. O'Connor, 81 W (2d) 436, 261 NW (2d) 815.

See note to 859.02, citing In Matter of Estate of Steffes, 95 W (2d) 490, 290 NW (2d) 697 (1980).

See note to 893.43, citing Watts (Bischoff) v. Watts, 152 W (2d) 370, 448 NW (2d) 292 (Ct. App. 1989).

This section applies only to actions for wages already earned. Lovett v. Mt. Senario College, Inc. 154 W (2d) 831, 454 NW (2d) 356 (Ct. App. 1990).

This section does not apply to actions for the recovery of sales commissions. Erdman v. Jovoco, Inc. 181 W (2d) 736, 512 NW (2d) 487 (1994).

The procurement of a lessee to lease the property and broker's claim for commission was not one for personal services and was not barred by this statute. Paulson v. Shapiro, 490 F (2d) 1.

893.45 Acknowledgment or new promise. No acknowledgment or promise shall be sufficient evidence of a new or continuing contract, whereby to take the cause out of the operation of this chapter, unless the same be contained in some writing signed by the party to be charged thereby.

History: 1979 c. 323.

Judicial Council Committee's Note, 1979: This section is previous s. 893.42 renumbered for more logical placement in restructured ch. 893. [Bill 326−A]

893.46 Acknowledgment, who not bound by. If there are 2 or more joint contractors or joint administrators of any contractor no such joint contractor, executor or administrator shall lose the benefit of this chapter so as to be chargeable by reason only of any acknowledgment or promise made by any other of them.

History: 1979 c. 323.

Judicial Council Committee's Note, 1979: This section is previous s. 893.43 renumbered for more logical placement in restructured ch. 893. [Bill 326−A]

893.47 Actions against parties jointly liable. In actions commenced against 2 or more joint contractors or joint executors or administrators of any contractors, if it shall appear, on the trial or otherwise, that the plaintiff is barred by this chapter as to one or more of the defendants, but is entitled to recover against any other or others of them, by virtue of a new acknowledgment or promise, or otherwise, judgment shall be given for the plaintiff as to any of the defendants against whom the plaintiff is entitled to recover and for the other defendant or defendants against the plaintiff.

History: 1979 c. 323.

Judicial Council Committee's Note, 1979: This section is previous s. 893.44 renumbered for more logical placement in restructured ch. 893. [Bill 326−A]

893.48 Payment, effect of, not altered. Nothing contained in ss. 893.44 to 893.47 shall alter, take away or lessen the effect of a payment of any principal or interest made by any person, but no indorsement or memorandum of any such payment, written or made upon any promissory note, bill of exchange or other writing, by or on behalf of the party to whom the payment is made or purports to be made, is sufficient proof of the payment so as to take the case out of the operation of this chapter.

History: Sup. Ct. Order, 67 W (2d) 585, 784 (1975); 1979 c. 323.

Judicial Council Committee's Note, 1979: This section is previous s. 893.46 renumbered for more logical placement in restructured ch. 893. [Bill 326−A]

893.49 Payment by one not to affect others. If there are 2 or more joint contractors or joint executors or administrators of any contractor no one of them shall lose the benefit of this chapter, so as to be chargeable, by reason only of any payment made by any other of them.

History: 1979 c. 323.

Judicial Council Committee's Note, 1979: This section is previous s. 893.47 renumbered for more logical placement in restructured ch. 893. [Bill 326−A]

893.50 Other actions. All personal actions on any contract not limited by this chapter or any other law of this state shall be brought within 10 years after the accruing of the cause of action.

History: 1979 c. 323.

Judicial Council Committee's Note, 1979: This section is previous s. 893.26 renumbered for more logical placement in restructured ch. 893. [Bill 326−A]

SUBCHAPTER V

TORT ACTIONS

893.51 Action for wrongful taking of personal property. (1) Except as provided in sub. (2), an action to recover damages for the wrongful taking, conversion or detention of personal property shall be commenced within 6 years after the cause of action accrues or be barred. The cause of action accrues at the time the wrongful taking or conversion occurs, or the wrongful detention begins.

(2) An action under s. 134.90 shall be commenced within 3 years after the misappropriation of a trade secret is discovered or should have been discovered by the exercise of reasonable diligence. A continuing misappropriation constitutes a single claim.

History: 1979 c. 323; 1985 a. 236.

Judicial Council Committee's Note, 1979: This section is based on previous s. 893.19 (6), without change in substance, but with some expansion of language to make clear that accrual of the cause of action is not delayed until the person bringing the action learns of the wrongful taking or detention. An action for recovery of the personal property is subject to s. 893.35 which is also based on previous s. 893.19 (6). [Bill 326−A]

893.52 Action for damages for injury to property. An action, not arising on contract, to recover damages for an injury to real or personal property shall be commenced within 6 years after the cause of action accrues or be barred, except in the case where a different period is expressly prescribed.

History: 1979 c. 323.

Judicial Council Committee's Note, 1979: This section is based upon previous s. 893.19 (5) which is split into 2 separate provisions. See s. 893.53 for the other provision. [Bill 326−A]

Section 893.19 (5), 1973 stats., applied to actions based on negligent construction of dwellings; statute begins to run when plaintiff suffered injury. Abramowski v. Wm. Kilps Sons Realty, Inc. 80 W (2d) 468, 259 NW (2d) 306.

Limitation period begins when evidence of resultant injury is sufficiently significant to alert injured party to the possibility of a defect. Tallmadge v. Skyline Construction, Inc. 86 W (2d) 356, 272 NW (2d) 404 (Ct. App. 1978).

See note to 893.43, citing State v. Holland Plastics Co. 111 W (2d) 497, 331 NW (2d) 320 (1983).

In actions for legal malpractice, date of injury rather than date of negligent act commences period of limitations. Auric v. Continental Cas. Co. 111 W (2d) 507, 331 NW (2d) 325 (1983).

Cause of action accrues when negligent act occurs, or last in continuum of negligent acts occur, and plaintiff has basis for objectively concluding defendant caused injuries and damages. Koplin v. Pioneer Power & Light, 162 W (2d) 1, 469 NW (2d) 595 (1991).

This section permits parties to contract for lesser limitations periods and to specify the day the period begins to run. In such case the "discovery rule" does not apply. Keiting v. Skauge, 198 W (2d) 887, 543 NW (2d) 565 (Ct. App. 1995).

893.53 Action for injury to character or other rights. An action to recover damages for an injury to the character or rights of another, not arising on contract, shall be commenced within 6 years after the cause of action accrues, except where a different period is expressly prescribed, or be barred.

History: 1979 c. 323.

Judicial Council Committee's Note, 1979: This section is based upon previous s. 893.19 (5) which is split into 2 provisions. See s. 893.52 for the other provision. [Bill 326]

This section applies to legal malpractice actions. Acharya v. Carroll, 152 W (2d) 330, 448 NW (2d) 275 (Ct. App. 1989).

Application of discovery rule to legal malpractice action. Hennekens v. Hoerl, 160 W (2d) 144, 465 NW (2d) 812 (1991).

This section and the discovery rule apply to engineering malpractice actions. Milwaukee Partners v. Collins Engineers, 169 W (2d) 355, 485 NW (2d) 274 (Ct. App. 1992).

This provision is applicable to 42 USC 1983 actions. Gray v. Lacke, 885 F (2d) 399 (1989).

This section applies to federal civil rights actions. Saldivar v. Cadena, 622 F Supp. 949 (1985).

This section applies to actions under Title II of the Americans With Disabilities Act. Doe v. Milwaukee County, 871 F Supp. 1072 (1995).

See also notes to 893.54 for additional treatments of 42 USC 1983.

893.54 Injury to the person. The following actions shall be commenced within 3 years or be barred:

(1) An action to recover damages for injuries to the person.

(2) An action brought to recover damages for death caused by the wrongful act, neglect or default of another.

History: 1979 c. 323.

Judicial Council Committee's Note, 1979: This section is derived from previous s. 893.205 but was amended to eliminate language now covered by newly created s. 893.07. (See note to s. 893.07). [Bill 326−A]

See note to 893.18, citing Korth v. American Family Ins. Co. 115 W (2d) 326, 340 NW (2d) 494 (1983).

See note to 893.12, citing Abraham v. Milwaukee Mutual Insurance Co. 115 W (2d) 678, 341 NW (2d) 414 (Ct. App. 1983).

This section applies to actions under 42 USC 1983. Hanson v. Madison Service Corp. 125 W (2d) 138, 370 NW (2d) 586 (Ct. App. 1985).

See note to 893.80, citing Schwetz v. Employers Ins. of Wausau, 126 W (2d) 32, 374 NW (2d) 241 (Ct. App. 1985).

Where plaintiff's early subjective lay person's belief that furnace caused injury was contradicted by examining physicians, cause of action against furnace company did not accrue until plaintiff's suspicion was confirmed by later medical diagnosis. Borello v. U.S. Oil Co. 130 W (2d) 397, 388 NW (2d) 140 (1986).

While adoptive parents were aware of possibility that child might develop disease in future, cause of action did not accrue until child was diagnosed as having disease. Meracle v. Children's Serv. Soc. 149 W (2d) 19, 437 NW (2d) 532 (1989).

Where doctor initially diagnosed a defective prosthesis, but advised surgery as only way to determine what exactly was wrong, plaintiff's cause of action against prosthesis manufacturer accrued when diagnosis was confirmed by surgery. S.J.D. v. Mentor Corp., 159 W (2d) 261, 463 NW (2d) 873 (Ct. App. 1990).

Brain damaged accident victim's cause of action accrued when he discovered, or when a person of the same degree of mental and physical handicap and under the same or similar circumstances should have discovered, the injury, its cause and nature and the defendants' identities. Carlson v. Pepin County, 167 W (2d) 345, 481 NW (2d) 498 (Ct. App. 1992).

The discovery rule does not allow a plaintiff to delay the statute of limitations until the extent of the injury is known, but provides that the statute begins to run when the plaintiff has sufficient evidence that a wrong has been committed by an identified person. Pritzlaff v. Archdiocese of Milwaukee, 194 W (2d) 303, 533 NW (2d) 780 (1995).

Federal civil rights actions under 42 USC 1983 are best characterized as personal injury actions. Wilson v. Garcia, 471 US 261 (1985).

Residual or general personal injury statute of limitations applies to 42 USC 1983 actions. Owens v. Okure, 488 US 235, 102 LEd 2d 594 (1989).

See also notes to 893.53 for additional treatments of 42 USC 1983.

893.55 Medical malpractice; limitation of actions; limitation of damages; itemization of damages. (1) Except as provided by subs. (2) and (3), an action to recover damages for injury arising from any treatment or operation performed by, or from any omission by, a person who is a health care provider, regardless of the theory on which the action is based, shall be commenced within the later of:

(a) Three years from the date of the injury, or

(b) One year from the date the injury was discovered or, in the exercise of reasonable diligence should have been discovered, except that an action may not be commenced under this paragraph more than 5 years from the date of the act or omission.

(2) If a health care provider conceals from a patient a prior act or omission of the provider which has resulted in injury to the patient, an action shall be commenced within one year from the date the patient discovers the concealment or, in the exercise of reasonable diligence, should have discovered the concealment or within the time limitation provided by sub. (1), whichever is later.

(3) When a foreign object which has no therapeutic or diagnostic purpose or effect has been left in a patient's body, an action shall be commenced within one year after the patient is aware or, in the exercise of reasonable care, should have been aware of the presence of the object or within the time limitation provided by sub. (1), whichever is later.

(4) (a) In this subsection, "noneconomic damages" means moneys intended to compensate for pain and suffering; humiliation; embarrassment; worry; mental distress; noneconomic effects of disability including loss of enjoyment of the normal activities, benefits and pleasures of life and loss of mental or physical health, well−being or bodily functions; loss of consortium, society and companionship; or loss of love and affection.

(b) The total noneconomic damages recoverable for bodily injury or death, including any action or proceeding based on contribution or indemnification, may not exceed the limit under par. (d) for each occurrence on or after May 25, 1995, from all health

care providers and all employes of health care providers acting within the scope of their employment and providing health care services who are found negligent and from the patients compensation fund.

(c) A court in an action tried without a jury shall make a finding as to noneconomic damages without regard to the limit under par. (d). If noneconomic damages in excess of the limit are found, the court shall make any reduction required under s. 895.045 and shall award as noneconomic damages the lesser of the reduced amount or the limit. If an action is before a jury, the jury shall make a finding as to noneconomic damages without regard to the limit under par. (d). If the jury finds that noneconomic damages exceed the limit, the jury shall make any reduction required under s. 895.045 and the court shall award as noneconomic damages the lesser of the reduced amount or the limit.

(d) The limit on total noneconomic damages for each occurrence under par. (b) on or after May 25, 1995, shall be $350,000 and shall be adjusted by the director of state courts to reflect changes in the consumer price index for all urban consumers, U.S. city average, as determined by the U.S. department of labor, at least annually thereafter, with the adjusted limit to apply to awards subsequent to such adjustments.

(e) Economic damages recovered under ch. 655 for bodily injury or death, including any action or proceeding based on contribution or indemnification, shall be determined for the period during which the damages are expected to accrue, taking into account the estimated life expectancy of the person, then reduced to present value, taking into account the effects of inflation.

(f) Notwithstanding the limits on noneconomic damages under this subsection, damages recoverable against health care providers and an employe of a health care provider, acting within the scope of his or her employment and providing health care services, for wrongful death are subject to the limit under s. 895.04 (4). If damages in excess of the limit under s. 895.04 (4) are found, the court shall make any reduction required under s. 895.045 and shall award the lesser of the reduced amount or the limit under s. 895.04 (4).

(5) Every award of damages under ch. 655 shall specify the sum of money, if any, awarded for each of the following for each claimant for the period from the date of injury to the date of award and for the period after the date of award, without regard to the limit under sub. (4) (d):

(a) Pain, suffering and noneconomic effects of disability.

(b) Loss of consortium, society and companionship or loss of love and affection.

(c) Loss of earnings or earning capacity.

(d) Each element of medical expenses.

(e) Other economic injuries and damages.

(6) Damages recoverable under this section against health care providers and an employe of a health care provider, acting within the scope of his or her employment and providing health care services, are subject to the provisions of s. 895.045.

(7) Evidence of any compensation for bodily injury received from sources other than the defendant to compensate the claimant for the injury is admissible in an action to recover damages for medical malpractice. This section does not limit the substantive or procedural rights of persons who have claims based upon subrogation.

History: 1979 c. 323; 1985 a. 340; 1995 a. 10.

Judicial Council Committee's Note, 1979: This section has been created to precisely set out the time periods within which an action to recover damages for medical malpractice must be commenced. The time provisions apply to any health care provider in Wisconsin.

Sub. (1) contains the general time limitations for commencing a malpractice action. The subsection requires that such an action be commenced not later than 3 years from the event constituting the malpractice or not more than one year from the time the malpractice is discovered by the patient or should have been discovered by the patient. The patient has either the 3−year general time period or the one−year time period from the date of discovery, whichever is later. Subsection (1) further provides that in no event may a malpractice action be commenced later than 6 [5] years from the time of the alleged act or omission.

Subs. (2) and (3) provide 2 exceptions to the one−, three−, and six−year time limitations contained in subsection (1). Subsection (2) provides that when a health care provider becomes aware of an act or omission constituting possible malpractice and intentionally conceals the act or omission from the patient, the patient has one year from the time he or she discovers the concealment or should have discovered the concealment to commence a malpractice action.

Sub. (3) gives a patient one year from the time of discovery of a foreign object left in the patient's body or the time in which discovery should have occurred to commence a malpractice action. The subsection also contains a definition of a foreign object similar to the definition recently enacted by the state of California. [Bill 326−A]

Under s. 893.205, 1975 stats., cause of action for medical malpractice occurred at time of misdiagnosis, not when the report transcribing the medical findings was furnished to plaintiff. Koschnik v. Smejkal, 96 W (2d) 145, 291 NW (2d) 574 (1980).

"Continuum of negligent treatment" doctrine is not limited to single negligent actor. Robinson v. Mt. Sinai Medical Center, 137 W (2d) 1, 402 NW (2d) 711 (1987).

While unsubstantiated lay belief of injury is not sufficient for discovery under sub. (1) (b), if plaintiff has information that constitutes basis for an objective belief of the injury and its cause, whether or not that belief resulted from "official" diagnosis from expert, the injury and its cause are discovered. Clark v. Erdmann, 161 W (2d) 428, 468 NW (2d) 18 (1991).

Podiatrist is "health care provider" under 893.55. Clark v. Erdmann, 161 W (2d) 428, 468 NW (2d) 18 (1991).

Physician's intentional improper sexual touching of patient was subject to s. 893.57 governing intentional torts not s. 893.55 governing medical malpractice. Deborah S.S. v. Yogesh N.G. 175 W (2d) 436, 499 NW (2d) 272 (Ct. App. 1993).

A blood bank is not a "health care provider". Doe v. Nat. Red Cross, 176 W (2d) 610, 500 NW (2d) 264 (1993).

Parents who did not obtain a medical opinion until more than three years after their child's death did not exercise reasonable diligence as required by the discovery rule under sub. (1) (b). Awve v. Physicians Ins. Co. 181 W (2d) 815, 512 NW (2d) 216 (Ct. App. 1994).

After January 1, 1991 recovery for loss of society and companionship for death in a medical malpractice case is unlimited; minors may bring separate actions for loss of companionship when malpractice causes a parent's death, including when the decedent is survived by a spouse. Jelinik v. St. Paul Fire & Casualty Ins. Co. 182 W (2d) 1, 512 NW (2d) 764 (1994).

When continuous negligent treatment occurs, the statute begins to run from the date of last negligent conduct. The amount of time which passes between each allegedly negligent act is a primary factor in determining whether there has been a continuum of negligent care. Westphal v. E.I. du Pont de Nemours, 192 W(2d) 347, 531 NW (2d) 361 (Ct. App. 1995).

A plaintiff had not "discovered" her injury upon obtaining legal advice and being told she had no cause of action. Claypool v. Levin, 195 W (2d) 535, 536 NW (2d) 206 (Ct. App. 1995).

Punitive damages in malpractice actions are not authorized by sub. (5) (e). Lund v. Kokemoor, 195 W (2d) 727, 537 NW (2d) 21 (Ct. App. 1995).

Dentists are health care providers under this section. Ritt v. Dental Care Associates, S.C. 199 W (2d) 48, 543 NW (2d) 852 (Ct. App. 1995).

Constitutionality of Wisconsin's Noneconomic Damage Limitation. 72 MLR 235 (1989).

The statute of limitations in medical malpractice actions. 1970 WLR 915.

Recent developments in Wisconsin medical malpractice law. 1974 WLR 893.

Tort Reform: It's Not About Victims. . .It's About Lawyers. Scoptur. Wis. Law. June 1995.

893.56 Health care providers; minors actions.

Any person under the age of 18, who is not under disability by reason of insanity, developmental disability or imprisonment, shall bring an action to recover damages for injuries to the person arising from any treatment or operation performed by, or for any omission by a health care provider within the time limitation under s. 893.55 or by the time that person reaches the age of 10 years, whichever is later. That action shall be brought by the parent, guardian or other person having custody of the minor within the time limit set forth in this section.

History: 1977 c. 390; 1979 c. 323.

Judicial Council Committee's Note, 1979: This section is previous s. 893.235 renumbered for more logical placement in restructured ch. 893. [Bill 326−A]

This section applies only to living minors. Awve v. Physicians Ins. Co. 181 W (2d) 815, 512 NW (2d) 216 (Ct. App. 1994).

893.57 Intentional torts.

An action to recover damages for libel, slander, assault, battery, invasion of privacy, false imprisonment or other intentional tort to the person shall be commenced within 2 years after the cause of action accrues or be barred.

History: 1979 c. 323.

Judicial Council Committee's Note, 1979: This section is previous s. 893.21 (2) renumbered for more logical placement in restructured ch. 893. [Bill 326−A]

This section governs intentional tort of bad faith by insurer. Warmka v. Hartland Cicero Mut. Ins., 136 W (2d) 31, 400 NW (2d) 923 (1987).

Cause of action does not accrue until plaintiff knows tortfeasor's identity or reasonably should have discovered identity. Spitler v. Dean, 148 W (2d) 630, 436 NW (2d) 308 (1989).

Physician's intentional improper sexual touching of patient was subject to s. 893.57 governing intentional torts not s. 893.55 governing medical malpractice. Deborah S.S. v. Yogesh N.G. 175 W (2d) 436, 499 NW (2d) 272 (Ct. App. 1993).

893.58 Actions concerning seduction. All actions for damages for seduction shall be commenced within one year after the cause of action accrues or be barred.

History: 1979 c. 323.

Judicial Council Committee's Note, 1979: This section is previous s. 893.22 (2) renumbered for more logical placement in restructured ch. 893. [Bill 326−A]

Since the mother's counterclaim was served within one year from the date it was alleged the last act of seduction was committed, the cause of action was not barred by the one−year statute of limitations. Slawek v. Stroh, 62 W (2d) 295, 215 NW (2d) 9.

893.585 Sexual exploitation by a therapist. (1) Notwithstanding ss. 893.54, 893.55 and 893.57, an action under s. 895.70 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 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.

History: 1985 a. 275.

893.587 Incest; limitation. An action to recover damages for injury caused by incest shall be commenced within 2 years after the plaintiff discovers the fact and the probable cause, or with the exercise of reasonable diligence should have discovered the fact and the probable cause, of the injury, whichever occurs first.

History: 1987 a. 332.

Where victim's "flashbacks" more than two years prior to commencing suit made her aware of incest which allegedly occurred more than fifty years earlier, the action was barred despite evidence that the victim was unable to shift the blame from herself at the time of discovery. Byrne v. Brecker, 176 W (2d) 1037, 501 NW (2d) 402 (1993).

893.59 Actions concerning damage to highway or railroad grade. An action under s. 88.87 (3) (b) to recover damages to a highway or railroad grade shall be commenced within 90 days after the alleged damage occurred or be barred.

History: 1979 c. 323.

Judicial Council Committee's Note, 1979: This section has been created to place into ch. 893 the statute of limitations for an action to recover damages to a highway or railroad grade. (See note following s. 88.87 (3) (b)). [Bill 326−A]

SUBCHAPTER VI

ACTIONS RELATED TO FINANCIAL TRANSACTIONS OR GOVERNMENTAL OBLIGATIONS

893.60 What actions not affected. Actions against directors or stockholders of a moneyed corporation or banking association or against managers or members of a limited liability company to recover a forfeiture imposed or to enforce a liability created by law shall be commenced within 6 years after the discovery by the aggrieved party of the facts upon which the forfeiture attached or the liability was created or be barred.

History: 1979 c. 323; 1993 a. 112.

Judicial Council Committee's Note, 1979: This section is previous s. 893.51 renumbered for more logical placement in restructured ch. 893. [Bill 326−A]

893.61 Contract for payment of money; governmental subdivisions. An action upon any bond, coupon, interest warrant or other contract for the payment of money, whether sealed or otherwise, made or issued by any town, county, city, village, school district or technical college district in this state shall be commenced within 6 years after the cause of action accrues or be barred.

History: 1979 c. 323; 1993 a. 399.

Judicial Council Committee's Note, 1979: This section is previous s. 893.19 (2) renumbered for more logical placement in restructured ch. 893. [Bill 326−A]

893.62 Action concerning usury. An action under s. 138.06 (3) for interest, principal and charges paid on a loan or forbearance shall be commenced within 2 years after the interest which is at a rate greater than allowed under s. 138.05 is paid or be barred.

History: 1979 c. 323.

Judicial Council Committee's Note, 1979: This section has been created to place into ch. 893 the statute of limitations for an action concerning usury. (See note following s. 138.06 (3)). [Bill 326−A]

893.63 Actions on cashier's check, certified check, or bank money order. (1) Upon the expiration of 2 years from the date of any cashier's check, certified check or bank money order, there having been no presentment for payment of the check or money order by a holder thereof, the maker shall, upon demand, return to the remitter noted thereon, if any, the full face amount of the cashier's check, certified check or bank money order, and thereafter shall be relieved of any and all liability upon the cashier's check, certified check or bank money order, to the remitter, the payee or any other holder thereof.

(2) Subsection (1) applies to all cashier's checks, certified checks and bank money orders, which have been made before November 2, 1969 but were not presented for payment by a holder within 2 years of their date, but an action by the remitter of a cashier's check, certified check and bank money order, to recover moneys held by a bank beyond the time limited by sub. (1) shall be subject to s. 893.43.

History: 1979 c. 323.

Judicial Council Committee's Note, 1979: This section is previous s. 893.215 renumbered for more logical placement in restructured ch. 893. [Bill 326−A]

893.64 Actions upon accounts. In actions brought to recover the balance due upon a mutual and open account current the cause of action shall be deemed to have accrued at the time of the last item proved in such account.

History: 1979 c. 323.

Judicial Council Committee's Note, 1979: This section is previous s. 893.25 renumbered for more logical placement in restructured ch. 893. [Bill 326−A]

There must be mutual debts or setoff before this section applies. Estate of Demos, 50 W (2d) 262, 184 NW (2d) 117.

893.65 Bank bills not affected. This chapter does not apply to any action brought upon any bills, notes or other evidences of debt issued or put into circulation as money by a bank or other person.

History: 1979 c. 323.

Judicial Council Committee's Note, 1979: This section is previous s. 893.29 renumbered for more logical placement in restructured ch. 893 and revised to reflect Lusk v. Stoughton State Bank, 135 Wis. 311, 115 N.W. 813 (1908). [Bill 326−A]

893.66 Accountants; limitations of actions. (1) Except as provided in subs. (1m) to (4), an action to recover damages, based on tort, contract or other legal theory, against any accountant licensed or certified under ch. 442 for an act or omission in the performance of professional accounting services shall be commenced within 6 years from the date of the act or omission or be barred.

(1m) If a person sustains damages covered under sub. (1) during the period beginning on the first day of the 6th year and ending on the last day of the 6th year after the performance of the professional accounting services, the time for commencing the action for damages is extended one year after the date on which the damages occurred.

(2) If a person sustains damages covered under sub. (1) and the statute of limitations applicable to those damages bars commencement of the cause of action before the end of the period specified in sub. (1), then that statute of limitations applies.

(3) This section does not apply to actions subject to s. 551.59 (5) or 553.51 (4).

(4) This section does not apply to any person who commits fraud or concealment in the performance of professional accounting services.

History: 1993 a. 310.

SUBCHAPTER VII

ACTIONS RELATING TO GOVERNMENTAL DECISIONS OR ORGANIZATION

893.70 Action against certain officials. An action against a sheriff, coroner, medical examiner, town clerk, or constable upon a liability incurred by the doing of an act in his or her official capacity and in virtue of his or her office or by the omission of an official duty, including the nonpayment of money collected upon execution, shall be commenced within 3 years after the cause of action accrues or be barred. This section does not apply to an action for an escape.

History: 1979 c. 323.

Judicial Council Committee's Note, 1979: This section is previous s. 893.20 (1) renumbered for more logical placement in restructured ch. 893. [Bill 326−A]

893.71 County seat; contesting change. An action or proceeding to test the validity of a change of any county seat shall be commenced within 3 years after the date of the publication of the governor's proclamation of such change or be barred. Every defense founded upon the invalidity of any such change must be interposed within 3 years after the date of the aforesaid publication, and the time of commencement of the action or proceeding to which any such defense is made shall be deemed the time when such defense is interposed.

History: 1979 c. 323.

Judicial Council Committee's Note, 1979: This section is previous s. 893.20 (3) renumbered for more logical placement in restructured ch. 893. [Bill 326−A]

893.72 Actions contesting special assessment. An action to avoid any special assessment, or taxes levied pursuant to the special assessment, or to restrain the levy of the taxes or the sale of lands for the nonpayment of the taxes, shall be brought within one year from the notice thereof, and not thereafter. This limitation shall cure all defects in the proceedings, and defects of power on the part of the officers making the assessment, except in cases where the lands are not liable to the assessment, or the city, village or town has no power to make any such assessment, or the amount of the assessment has been paid or a redemption made.

History: 1979 c. 323; 1993 a. 246.

Judicial Council Committee's Note, 1979: This section is previous s. 893.24 renumbered for more logical placement in restructured ch. 893. [Bill 326−A]

893.73 Actions contesting governmental decisions. (1) The following actions are barred unless brought within 180 days after the adoption of the order, resolution, ordinance or ordinance amendment contested:

(a) An action to contest the validity of a county zoning ordinance or amendment, if s. 59.69 (14) applies to the action.

(b) An action to review the validity of proceedings for division or dissolution of a town under s. 60.03.

(2) The following actions are barred unless brought within 90 days after the adoption of the order, annexation ordinance or final determination of the action contested:

(a) An action under s. 60.73 contesting an act of a town board or the department of natural resources in the establishment of a town sanitary district.

(b) An action to contest the validity of an annexation, if s. 66.021 (10) (a) applies to the action.

(c) A petition for certiorari or other action under s. 80.34 (2) to contest the validity of an order regarding a highway or highway records.

History: 1979 c. 323; 1981 c. 346; 1983 a. 532; 1995 a. 201.

Judicial Council Committee's Note, 1979: This section has been created to consolidate into one provision of ch. 893 six types of actions presently outside of the chapter involving the contesting of governmental decisions. The actions have been broken down into 2 separate categories, those which must be commenced within 180 days of the adoption of the governmental decision and those that must be commenced within 90 days of the decision.

The previous 180−day period within which to contest a county zoning ordinance or amendment remains unchanged.

The one−year period in which to commence an action to contest the proceedings to constitute or divide a town has been shortened to 180 days (see note following s. 60.05 (4)). The previous 180−day time period to commence an action contesting the validity of the creation of a soil and water district remains unchanged (see note following s. 92.16).

The previous 20−day period to commence an action to set aside an action of a town board to establish a sanitary district has been increased to 90 days (see note following s. 60.304).

The previous 60−day period within which to commence an action to contest the validity of an annexation has been increased to 90 days (see note following s. 66.021 (10) (a)).

The 90−day period to commence an action contesting the validity of an order regarding a highway or highway records remains unchanged (see note following s. 80.34 (2)). [Bill 326−A]

Under (2) "adoption" refers to legislative body's action of voting to approve annexation ordinance and statute of limitations begins to run as of that date. Town of Sheboygan v. City of Sheboygan, 150 W (2d) 210, 441 NW (2d) 752 (Ct. App. 1989).

893.74 School district; contesting validity. No appeal or other action attacking the legality of the formation of a school district, either directly or indirectly, may be commenced after the school district has exercised the rights and privileges of a school district for a period of 90 days.

History: 1979 c. 323.

Judicial Council Committee's Note, 1979: This section has been created to place into ch. 893 the statute of limitations for an action attacking the legality of a formation of a school district (see note following s. 117.01 (7)). [Bill 326−A]

893.75 Limitation of action attacking municipal contracts. Whenever the proper officers of any city, village or town, however incorporated, enter into any contract in manner and form as prescribed by statute, and either party to the contract has procured or furnished materials or expended money under the terms of the contract, no action or proceedings may be maintained to test the validity of the contract unless the action or proceeding is commenced within 60 days after the date of the signing of the contract.

History: 1979 c. 323; 1993 a. 246.

Judicial Council Committee's Note, 1979: This action has been created to place into ch. 893 the statute of limitation for an action contesting the validity in a contract entered into by a city or village (see note following s. 66.13). [Bill 326−A]

893.76 Order to repair or remove building or restore site; contesting. An application under s. 66.05 (3) to a circuit court for an order restraining the inspector of buildings or other designated officer from razing and removing a building or part of a building and restoring a site to a dust−free and erosion−free condition shall be made within 30 days after service of the order issued under s. 66.05 (1m) [66.05 (1)] or be barred.

NOTE: The bracketed language indicates the correct cross−reference.

History: 1979 c. 323; 1989 a. 347; 1991 a. 189; 1993 a. 213.

Judicial Council Committee's Note, 1979: This section has been created to place into ch. 893 the statute of limitations for an application for an order restraining the razing or removing of a building (see note following s. 66.05 (3)). [Bill 326−A]

893.765 Order to remove wharves or piers in navigable waters; contesting. An application under s. 66.0495 (3) to circuit court for a restraining order prohibiting the removal of a wharf or pier shall be made within 30 days after service of the order issued under s. 66.0495 (1) or be barred.

History: 1981 c. 252.

893.77 Validity of municipal obligation. (1) An action to contest the validity of any municipal obligation which has been certified by an attorney in the manner provided in s. 67.025, for other than constitutional reasons, must be commenced within 30 days after the recording of such certificate as provided by s. 67.025. An action to contest the validity of any state or state authority obligation for other than constitutional reasons must be commenced within 30 days after the adoption of the authorizing resolution for such obligation.

(2) An action or proceeding to contest the validity of any municipal bond or other financing, other than an obligation certified as described in sub. (1), for other than constitutional reasons, must be commenced within 30 days after the date on which the issuer publishes in the issuer's official newspaper, or, if none exists, in a newspaper having general circulation within the issuer's boundaries, a class 1 notice, under ch. 985, authorized by the governing body of the issuer, and setting forth the name of the issuer, that the notice is given under this section, the amount of the bond issue or other financing and the anticipated date of closing of the bond or other financing and that a copy of proceedings had to date of the notice are on file and available for inspection in a

designated office of the issuer. The notice may not be published until after the issuer has entered into a contract for sale of the bond or other financing.

(3) An action contesting bonds of a municipal power district organized under ch. 198, for other than constitutional reasons, shall be commenced within 30 days after the date of their issuance or be barred.

History: 1971 c. 40 s. 93; 1971 c. 117, 211; 1973 c. 265; 1975 c. 221; 1979 c. 323; 1983 a. 192.

Judicial Council Committee's Note, 1979: This section is previous s. 893.23 renumbered for more logical placement in the restructured chapter. Section 893.77 (3) is created to place into ch. 893 of the statutes the statute of limitations for an action contesting the bonds of a municipal power district (see note following s. 198.18 (3)). [Bill 326−A]

SUBCHAPTER VIII

CLAIMS AGAINST GOVERNMENTAL BODIES, OFFICERS AND EMPLOYES

893.80 Claims against governmental bodies or officers, agents or employes; notice of injury; limitation of damages and suits. (1) Except as provided in subs. (1g), (1m), (1p) and (8), no action may be brought or maintained against any volunteer fire company organized under ch. 213, political corporation, governmental subdivision or agency thereof nor against any officer, official, agent or employe of the corporation, subdivision or agency for acts done in their official capacity or in the course of their agency or employment upon a claim or cause of action unless:

(a) Within 120 days after the happening of the event giving rise to the claim, written notice of the circumstances of the claim signed by the party, agent or attorney is served on the volunteer fire company, political corporation, governmental subdivision or agency and on the officer, official, agent or employe under s. 801.11. Failure to give the requisite notice shall not bar action on the claim if the fire company, corporation, subdivision or agency had actual notice of the claim and the claimant shows to the satisfaction of the court that the delay or failure to give the requisite notice has not been prejudicial to the defendant fire company, corporation, subdivision or agency or to the defendant officer, official, agent or employe; and

(b) A claim containing the address of the claimant and an itemized statement of the relief sought is presented to the appropriate clerk or person who performs the duties of a clerk or secretary for the defendant fire company, corporation, subdivision or agency and the claim is disallowed.

(1g) Notice of disallowance of the claim submitted under sub. (1) shall be served on the claimant by registered or certified mail and the receipt therefor, signed by the claimant, or the returned registered letter, shall be proof of service. Failure of the appropriate body to disallow a claim within 120 days after presentation of the written notice of the claim is a disallowance. No action on a claim under this section against any defendant fire company, corporation, subdivision or agency nor against any defendant officer, official, agent or employe, may be brought after 6 months from the date of service of the notice of disallowance, and the notice of disallowance shall contain a statement to that effect.

(1m) With regard to a claim to recover damages for medical malpractice, the time period under sub. (1) (a) shall be 180 days after discovery of the injury or the date on which, in the exercise of reasonable diligence, the injury should have been discovered, rather than 120 days after the happening of the event giving rise to the claim.

(1p) No action may be brought or maintained with regard to a claim to recover damages against any political corporation, governmental subdivision or agency thereof for the negligent inspection of any property, premises, place of employment or construction site for the violation of any statute, rule, ordinance or health and safety code unless the alleged negligent act or omission occurred after November 30, 1976. In any such action, the time period under sub. (1) (a) shall be one year after discovery of the negligent act or omission or the date on which, in the exercise of reasonable diligence the negligent act or omission should have been discovered.

(1t) Only one action for property damage may be brought under sub. (1p) by 2 or more joint tenants of a single−family dwelling.

(2) The claimant may accept payment of a portion of the claim without waiving the right to recover the balance. No interest may be recovered on any portion of a claim after an order is drawn and made available to the claimant. If in an action the claimant recovers a greater sum than was allowed, the claimant shall recover costs, otherwise the defendant shall recover costs.

(3) Except as provided in this subsection, the amount recoverable by any person for any damages, injuries or death in any action founded on tort against any volunteer fire company organized under ch. 181 or 213, political corporation, governmental subdivision or agency thereof and against their officers, officials, agents or employes for acts done in their official capacity or in the course of their agency or employment, whether proceeded against jointly or severally, shall not exceed $50,000. The amount recoverable under this subsection shall not exceed $25,000 in any such action against a volunteer fire company organized under ch. 181 or 213 or its officers, officials, agents or employes. If a volunteer fire company organized under ch. 181 or 213 is part of a combined fire department, the $25,000 limit still applies to actions against the volunteer fire company or its officers, officials, agents or employes. No punitive damages may be allowed or recoverable in any such action under this subsection.

(4) No suit may be brought against any volunteer fire company organized under ch. 213, political corporation, governmental subdivision or any agency thereof for the intentional torts of its officers, officials, agents or employes nor may any suit be brought against such corporation, subdivision or agency or volunteer fire company or against its officers, officials, agents or employes for acts done in the exercise of legislative, quasi−legislative, judicial or quasi−judicial functions.

(5) Except as provided in this subsection, the provisions and limitations of this section shall be exclusive and shall apply to all claims against a volunteer fire company organized under ch. 213, political corporation, governmental subdivision or agency or against any officer, official, agent or employe thereof for acts done in an official capacity or the course of his or her agency or employment. When rights or remedies are provided by any other statute against any political corporation, governmental subdivision or agency or any officer, official, agent or employe thereof for injury, damage or death, such statute shall apply and the limitations in sub. (3) shall be inapplicable.

(6) A 1st class city, its officers, officials, agents or employes shall not be liable for any claim for damages to person or property arising out of any act or omission in providing or failing to provide police services upon the interstate freeway system or in or upon any grounds, building or other improvement owned by a county and designated for stadium or airport purposes and appurtenant uses.

(7) No suit may be brought against any city, town or village or any governmental subdivision or agency thereof or against any officer, official, agent or employe of any of those entities who, in good faith, acts or fails to act to provide a notice to a property owner that a public nuisance under s. 823.113 (1) or (1m) (b) exists.

(8) This section does not apply to actions commenced under s. 19.37 or 19.97.

History: Sup. Ct. Order, 67 W (2d) 585, 784 (1975); 1975 c. 218; 1977 c. 285, 447; 1979 c. 34; 1979 c. 323 s. 29; Stats. 1979 s. 893.80; 1981 c. 63; 1985 a. 340; 1987 a. 377; 1993 a. 139; 1995 a. 6, 158, 267.

Judicial Council Committee's Note, 1979: Previous s. 895.43 is renumbered for more logical placement in restructured ch. 893. [Bill 326−A]

A husband's action for loss of consortium is separate, has its own $25,000 limitation and is not to be reduced by his wife's negligence. Schwartz v. Milwaukee, 54 W (2d) 286, 195 NW (2d) 480.

Sub. (3) [(4)] establishes municipal immunity against actions for intentional torts of its employes, and assault and battery constitutes an intentional tort. Sub. (3) [(4)] also precludes suit against municipality for alleged failure of police and fire commission to act in removing officer, since this is a quasi−judicial function. Salerno v. Racine, 62 W (2d) 243, 214 NW (2d) 446.

Where the policy contained no language precluding the insurer from raising the limited liability defense, the $25,000 limitation was not waived. Sambs v. Brookfield, 66 W (2d) 296, 224 NW (2d) 582.

Plaintiff's complaint alleging that 2 police officers who forcibly entered his home and physically abused him were negligent inter alia in failing to identify themselves and in using excessive force, in reality alleged causes of action in trespass and assault and battery—intentional torts for which the municipality was immune from direct action under (3) [(4)], hence, the trial court should have granted defendant's demurrer to the complaint. Baranowski v. Milwaukee, 70 W (2d) 684, 235 NW (2d) 279.

Compliance with statute is a condition in fact requisite to liability, but is not a condition required for stating a cause of action. Rabe v. Outagamie County, 72 W (2d) 492, 241 NW (2d) 428.

Requirements that claim be first presented to school district and disallowed and that suit be commenced within 6 months of disallowance do not deny equal protection. Binder v. Madison, 72 W (2d) 613, 241 NW (2d) 613.

Any duty owed by a municipality to the general public is also owed to individual members of the public. Inspection of buildings for safety and fire prevention purposes under 101.14 does not involve a quasi−judicial function within meaning of 895.43 (3) [(4)]. Coffey v. Milwaukee, 74 W (2d) 526, 247 NW (2d) 132.

Under (1), plaintiff has burden of proving the giving of notice, or actual notice and nonexistence of prejudice, but need not allege same in complaint. City is required to plead lack of compliance with statute as defense. See note to 81.15, citing Weiss v. Milwaukee, 79 W (2d) 213, 255 NW (2d) 496.

Doctrine of municipal tort immunity applied to relieve political subdivisions from liability for negligence where automobile collision occurred due to use of sewer by truck. Allstate Ins. v. Metro. Sewerage Comm. 80 W (2d) 10, 258 NW (2d) 148.

Park manager of state owned recreational area who knew that publicly used trail was inches away from 90−foot gorge and that terrain was dangerous, is liable for injuries to plaintiffs who fell into gorge, for breach of ministerial duty in failing to either place warning signs or advise superiors of condition. Cords v. Anderson, 80 W (2d) 525, 259 NW (2d) 672.

Breach of ministerial duty was inferred by complaint's allegations that defendant state employes, who set up detour route on which plaintiff was injured, failed to follow national traffic standards, place appropriate signs, and safely construct temporary road. Pavlik v. Kinsey, 81 W (2d) 42, 259 NW (2d) 709.

Insurance policy was construed to waive recovery limitations under ss. 81.15 and 895.43, 1971 stats. Stanhope v. Brown County, 90 W (2d) 823, 280 NW (2d) 711 (1979).

See note to 111.31, citing Kurtz v. City of Waukesha, 91 W (2d) 103, 280 NW (2d) 757 (1979).

"Quasi−judicial" or "quasi−legislative" acts are synonymous with "discretionary" acts. Scarpaci v. Milwaukee County, 96 W (2d) 663, 292 NW (2d) 816 (1980).

Recovery limitations under 81.15 and 895.43 (2), 1965 stats., are constitutional. Sambs v. City of Brookfield, 97 W (2d) 356, 293 NW (2d) 504 (1980).

City was liable for negligent acts of employes even though employes were immune from liability. Maynard v. City of Madison, 101 W (2d) 273, 304 NW (2d) 163 (Ct. App. 1981).

This section cannot limit damage award under 42 USC 1983. Court erred in reducing attorney's fees award. Thompson v. Village of Hales Corners, 115 W (2d) 289, 340 NW (2d) 704 (1983).

Sheriff's dispatcher breached ministerial duty by failing to have fallen tree removed from road. Domino v. Walworth County, 118 W (2d) 488, 347 NW (2d) 917 (Ct. App. 1984).

Service of notice of claim on agency of county met jurisdictional prerequisite of (1) (b). Finken v. Milwaukee County, 120 W (2d) 69, 353 NW (2d) 827 (Ct. App. 1984).

Claim for specific amount of money damages satisfied (1) (b) requirement of "itemized statement of relief sought". Figgs v. City of Milwaukee, 121 W (2d) 44, 357 NW (2d) 548 (1984).

Although decision to release patient from mental health complex was quasi−judicial and hence protected under (4), medical examination and diagnosis which formed basis for decision to release was not immune. Gordon v. Milwaukee County, 125 W (2d) 62, 370 NW (2d) 803 (Ct. App. 1985).

Where claim was not disallowed in writing and claimant did not wait 120 days after presentation before filing lawsuit, statute of limitation was not tolled. Schwetz v. Employers Ins. of Wausau, 126 W (2d) 32, 374 NW (2d) 241 (Ct. App. 1985).

Neither statutory nor traditional common law immunity protects public body from properly pleaded private nuisance claim. Hillcrest Golf v. Altoona, 135 W (2d) 431, 400 NW (2d) 493 (Ct. App. 1986).

Injured party and subrogee may not recover separately up to liability limit under (3). Wilmot v. Racine County, 136 W (2d) 57, 400 NW (2d) 917 (1987).

Recovery limitations applicable to insured municipality likewise applied to insurer, notwithstanding higher policy limits and s. 632.24. Gonzalez v. City of Franklin, 137 W (2d) 109, 403 NW (2d) 747 (1987).

Where 3 municipalities formed one volunteer fire department under ch. 60, liability under (3) was limited to $50,000, not 3 times that amount. Selzler v. Dresser, etc., Fire Dept. 141 W (2d) 465, 415 NW (2d) 546 (Ct. App. 1987).

Parole officer didn't breach ministerial duty by allowing parolee to drive. C. L. v. Olson, 143 W (2d) 701, 422 NW (2d) 614 (1988).

Each of three children damaged by county's negligence in treatment of mother was entitled to recover $50,000 maximum pursuant to (3). Boles v. Milwaukee, 150 W (2d) 801, 443 NW (2d) 679 (Ct. App. 1989).

Sub. (4) immunity provision does not apply to breach of contract suits. Energy Complexes v. Eau Claire County, 152 W (2d) 453, 449 NW (2d) 35 (1989).

Where claim is filed and affected body does not serve notice of disallowance, 6 month limitation period in (1) (b) is not triggered. Lindstrom v. Christianson, 161 W (2d) 635, 469 NW (2d) 189 (Ct. App. 1991).

Discretionary act immunity under s. 893.80 is inapplicable to s. 345.05 claims. Frostman v. State Farm Mut. Ins. Co. 171 W (2d) 138, 491 NW (2d) 100 (Ct. App. 1992).

A letter to an attorney referring to the denial of a client's claim does not trigger the six month statute of limitations under sub. (1) (b). Humphrey v. Elk Creek Lake Protection, 172 W (2d) 397, 493 NW (2d) 270 (Ct. App. 1992).

Once the 120 day period under sub. (1) (b) has run, a municipality may not revive the six−month period of limitation by giving notice of disallowance. Blackbourn v. Onalaska School Dist. 174 W (2d) 496, 497 NW (2d) 460 (Ct. App. 1993).

Sub. (4) immunity does not extend to medical decisions of governmental medical personnel. Linville v. City of Janesville, 174 W (2d) 571, 497 NW (2d) 465 (Ct. App. 1993).

A paramedic has a ministerial duty to attempt a rescue at a life threatening situation and thus there is no immunity under sub. (4). Linville v. City of Janesville, 174 W (2d) 571, 497 NW (2d) 465 (Ct. App. 1993).

Sub. (4) affords a governmental body immunity for its intentional torts; the intentional torts of a city cannot occur except through the acts of an official or agent of the city. Old Tuckaway Assoc. v. City of Greenfield, 180 W (2d) 254, 509 NW (2d) 323 (Ct. App. 1993).

Inequitable or fraudulent conduct need not be established to estop a party from asserting the failure to comply with the notice of claim requirements of this section. An employe's reliance on a school district employe's instruction to deal directly with the school's insurer was sufficient to estop the school from asserting a failure to comply with sub. (1) (b) as a defense. Fritsch v. St. Croix Central School District, 183 W (2d) 336, 515 NW (2d) 328 (Ct. App. 1994).

This section applies to all causes of action, including actions for equitable relief, not just to actions in tort or those for money damages. The state must comply with the sub. (1) notice requirements. Sub. (5) does not say that when a claim is based on another statute, sub. (1) does not apply. Substantial compliance with sub. (1) discussed. DNR v. City of Waukesha, 184 W (2d) 178, 515 NW (2d) 888 (1994).

An officer who decides to engage in pursuit is afforded immunity from liability for the decision, but may be subject to liability under s. 346.03 (5) for operating a motor vehicle negligently during the chase. A city which has adopted a policy which complies with s. 346.03 (6) is immune from liability for injuries resulting from a high speed chase. Estate of Cavanaugh v. Andrade, 191 W (2d) 244, 528 NW (2d) 492 (Ct. App. 1995).

Sub. (1) has 2 components: notice of injury and notice of claim. Both must be satisfied before an action is commenced. The notice of claim must state a specific dollar amount. Vanstone v. Town of Delafield, 191 W (2d) 587, 530 NW (2d) 16 (Ct. App. 1995).

An independent contractor is not an agent under sub. (3) and not protected by the liability limits under this section. Kettner v. Wausau Insurance Cos. 191 W (2d) 724, 530 NW (2d) 399 (Ct. App. 1995).

Intentional tort immunity granted to municipalities by sub. (4) does not extend to the municipality's representatives. Envirologix v. City of Waukesha, 192 W (2d) 277, 531 NW (2d) 357 (Ct. App. 1995).

Where action was mandatory under city ordinance, but permissive under state statute, the action was mandatory and therefore ministerial and not subject to immunity under sub. (4). Turner v. City of Milwaukee, 193 W (2d) 412, 535 NW (2d) 15 (Ct. App. 1995).

Statement by police that an action will be taken does not render that action ministerial. Failure to carry out that action does not remove the immunity granted by this section. Barillari v. City of Milwaukee, 194 W (2d) 247, 533 NW (2d) 759 (1995).

The county had an absolute duty not to represent in an offer to purchase that it had no notice that a property it was selling was free of toxic materials unless it was true. An appraisal indicating contamination contained in the county's files was actual notice to the county. Under these circumstances there is no immunity under sub. (4). Major v. Milwaukee County, 196 W (2d) 939, 539 NW (2d) 472 (Ct. App. 1995).

The damage limitation under sub. (3) may be waived if not raised as an affirmative defense. Anderson v. City of Milwaukee, 199 W (2d) 479, 544 NW (2d) 630 (Ct. App. 1995).

Once the city exercised its discretion in deciding to construct a walkway, it had a ministerial duty to construct it in compliance with the safe−place statute and was not immune from liability under sub. (4). Anderson v. City of Milwaukee, 199 W (2d) 479, 544 NW (2d) 630 (Ct. App. 1995).

Actions brought under the open meetings and open records laws are exempt from the notice provisions of sub. (1). Auchinleck v. Town of LaGrange, 200 W (2d) 585, 547 NW (2d) 587 (1996).

There is no discretion as to maintaining a sewer system so as not to cause injury to residents. Thus a municipality's operation and maintenance of a sewer system do not fall within the immunity provisions of this section. Menick v. City of Menasha, 200 W (2d) 737, 547 NW (2d) 778 (Ct. App. 1996).

Filing suit prior to expiration of 120−day period or denial of claim is not truly commenced and does not toll the statute of limitations when filed. Colby v. Columbia County, 202 W (2d) 342, 550 NW (2d) 124 (1996).

The interplay between s. 893.23 and s. 893.80 creates a statute of limitations equal to 3 years and 120 days when filing a claim under s. 893.80. Colby v. Columbia County, 202 W (2d) 342, 550 NW (2d) 124 (1996).

Liability of vocational, technical and adult education districts and of their officers and employes discussed. 77 Atty. Gen. 145.

Monroe v. Pape, 367 US 167 (1961) is overruled insofar as it holds that local governments are wholly immune from suit under 42 USC 1983. Monell v. New York City Dept. of Social Services, 436 US 658 (1978).

Defendant public official has burden to plead "good faith" as affirmative defense in 42 USC 1983 case. Gomez v. Toledo, 446 US 635 (1980).

See note to art. VII, sec. 3, citing Supreme Court of VA. v. Consumers Union, 446 US 719 (1980).

Municipality is immune from punitive damages under 42 USC 1983. Newport v. Fact Concerts, Inc. 453 US 247 (1981).

City ordinance regulating cable television was not exempt from antitrust scrutiny under *Parker doctrine.* Community Communications Co. v. Boulder, 455 US 40 (1982).

This section is pre−empted in federal 42 USC 1983 actions and may not be applied; it conflicts with purpose and effects of federal civil rights actions. Felder v. Casey, 487 US 131 (1988).

Sub. (4) bars direct suits against municipalities for the torts of their employes, it does not preclude suing the officer directly and using 895.46 to indirectly recover from the municipality. Graham v. Sauk Prairie Police Com'n. 915 F (2d) 1085 (1990).

Once deputy assumed a duty to protect person subsequently murdered in room adjacent to where deputy was present, his obligation was no longer discretionary and he was no longer entitled to immunity under (4) for decisions made at the murder site. Losinski v. County of Trempealeau, 946 F (2d) 544 (1991).

Immunity of elected officials under (4) is not defeated by possibility that the official's acts were malicious. Farr v. Gruber, 950 F (2d) 399 (1991).

State may not be sued by citizen under wrongful death statute. Pinon v. State of Wisconsin, 368 F Supp. 608.

Civil rights actions against municipalities discussed. Starstead v. City of Superior, 533 F Supp. 1365 (1982).

County was not vicariously liable for sheriff's alleged use of excessive force where complaint alleged intentional tort. Voie v. Flood, 589 F Supp. 746 (1984).

The discretionary function exception to government tort liability. 61 MLR 163.

Several police supervisor immunities from state court suit may be doomed. Fine, 1977 WBB 9.

Municipal liability: The failure to provide adequate police protection — the special duty doctrine should be discarded. 1984 WLR 499.

Wisconsin recovery limit for victims of municipal torts: A conflict of public interests. 1986 WLR 155.

893.82 Claims against state employes; notice of claim; limitation of damages. (1) The purposes of this section are to:

(a) Provide the attorney general with adequate time to investigate claims which might result in judgments to be paid by the state.

(b) Provide the attorney general with an opportunity to effect a compromise without a civil action or civil proceeding.

(c) Place a limit on the amounts recoverable in civil actions or civil proceedings against any state officer, employe or agent.

(2) In this section:

(a) "Civil action or civil proceeding" includes a civil action or civil proceeding commenced or continued by counterclaim, cross claim or 3rd−party complaint.

(b) "Claimant" means the person or entity sustaining the damage or injury or his or her agent, attorney or personal representative.

(c) "Damage" or "injury" means any damage or injury of any nature which is caused or allegedly caused by the event. "Damage" or "injury" includes, but is not limited to, any physical or mental damage or injury or financial damage or injury resulting from claims for contribution or indemnification.

(d) "State officer, employe or agent" includes any of the following persons:

1. An officer, employe or agent of any nonprofit corporation operating a museum under a lease agreement with the state historical society.

1m. A volunteer health care provider who provides services under s. 146.89, for the provision of those services.

1r. A physician under s. 252.04 (9) (b).

2. A member of a local emergency planning committee appointed by a county board under s. 59.54 (8) (a).

3. A member of the board of governors created under s. 619.04 (3), a member of a committee or subcommittee of that board of governors, a member of the patients compensation fund peer review council created under s. 655.275 (2) and a person consulting with that council under s. 655.275 (5) (b).

(2m) No claimant may bring an action against a state officer, employe or agent unless the claimant complies strictly with the requirements of this section.

(3) Except as provided in sub. (5m), no civil action or civil proceeding may be brought against any state officer, employe or agent for or on account of any act growing out of or committed in the course of the discharge of the officer's, employe's or agent's duties, and no civil action or civil proceeding may be brought against any nonprofit corporation operating a museum under a lease agreement with the state historical society, unless within 120 days of the event causing the injury, damage or death giving rise to the civil action or civil proceeding, the claimant in the action or proceeding serves upon the attorney general written notice of a claim stating the time, date, location and the circumstances of the event giving rise to the claim for the injury, damage or death and the names of persons involved, including the name of the state officer, employe or agent involved. A specific denial by the attorney general is not a condition precedent to bringing the civil action or civil proceeding.

(4) (a) Except as provided in par. (b), if the civil action or proceeding under sub. (3) is based on contribution or indemnification, the event under sub. (3) is the underlying cause of action, not the cause of action for contribution or indemnification, and, except as provided in sub. (5m), the 120−day limitation applies to that event.

(b) 1. If the claimant under par. (a) establishes that he or she had no actual or constructive knowledge of the underlying cause of action at the time of the event under sub. (3), except as provided in sub. (5m), the 120−day limitation under sub. (3) applies to the earlier of the following:

a. The date the cause of action for contribution or indemnification accrues.

b. The date the claimant acquired actual or constructive knowledge of the underlying cause of action.

2. The claimant has the burden of proving he or she had no actual knowledge of the underlying cause of action under this paragraph.

(5) The notice under sub. (3) shall be sworn to by the claimant and shall be served upon the attorney general at his or her office in the capitol by certified mail. Notice shall be considered to be given upon mailing for the purpose of computing the time of giving notice.

(5m) With regard to a claim to recover damages for medical malpractice, the time periods under subs. (3) and (4) shall be 180 days after discovery of the injury or the date on which, in the exercise of reasonable diligence, the injury should have been discovered, rather than 120 days after the event causing the injury.

(6) The amount recoverable by any person or entity for any damages, injuries or death in any civil action or civil proceeding against a state officer, employe or agent, or against a nonprofit corporation operating a museum under a lease agreement with the state historical society, including any such action or proceeding based on contribution or indemnification, shall not exceed $250,000. No punitive damages may be allowed or recoverable in any such action.

(7) With respect to a state officer, employe or agent described in sub. (2) (d) 3., this section applies to an event causing the injury, damage or death giving rise to an action against the state officer, employe or agent, which occurs before, on or after April 25, 1990.

(8) This section does not apply to actions commenced under s. 19.37 or 19.97.

History: 1973 c. 333; 1977 c. 29; 1979 c. 221; 1979 c. 323 s. 30; 1979 c. 355; Stats. 1979 s. 893.82; 1983 a. 27; 1985 a. 66, 340; 1987 a. 342; 1987 a. 403 s. 256; 1989 a. 187, 206, 359; 1991 a. 39, 269; 1993 a. 27, 28; 1995 a. 158, 201.

Judicial Council Committee's Note, 1979: This section is previous s. 895.45 renumbered for more logical placement in restructured ch. 893. The previous 90−day time period in which to file written notice of a claim against an employe of the state of Wisconsin has been increased to 120 days to make the time period consistent with the period for filing notice of claims with other governmental bodies allowed in s. 893.80. (See note following s. 893.80). [Bill 326−A]

Court had no jurisdiction over state employes alleged to have intentionally damaged plaintiff where complaint failed to comply with notice of claim statute. Elm Park Iowa, Inc. v. Denniston, 92 W (2d) 723, 286 NW (2d) 5 (Ct. App. 1979).

Notice provisions of this section do not apply to third−party complaints for contribution. Coulson v. Larsen, 94 W (2d) 56, 287 NW (2d) 754 (1980).

Non−compliance with notice of injury statute barred suit even though defendant failed to raise issue in responsive pleading. Mannino v. Davenport, 99 W (2d) 602, 299 NW (2d) 823 (1981).

Plaintiff was required to serve notice on attorney general as condition precedent to bringing claim. Doe v. Ellis, 103 W (2d) 581, 309 NW (2d) 375 (Ct. App. 1981).

Court properly granted defendant's motion to dismiss since notice of claim of injury was not served upon attorney general within 120 day limit. Ibrahim v. Samore, 118 W (2d) 720, 348 NW (2d) 554 (1984).

Substantial compliance with requirements for content of notice under (3) is sufficient to meet legislative intent. Daily v. Wis. University, Whitewater, 145 W (2d) 756, 429 NW (2d) 83 (Ct. App. 1988).

Sub. (3) does not create an exception for a plaintiff who is unaware that a defendant is a state employee. Renner vs. Madison General Hospital, 151 W (2d) 885, 447 NW (2d) 97 (Ct. App. 1989).

Under administrative−services−only state group insurance contract, insurer is agent of state, and plaintiff must comply with notice provisions under this section to maintain action. Smith v. Wisconsin Physicians Services, 152 W (2d) 25, 447 NW (2d) 371 (Ct. App. 1989).

Possible finding that state employe was acting as apparent agent of non−state hospital does not permit maintenance of suit against state employe absent compliance with notice requirements. Kashishian v. Port, 167 W (2d) 24, 481 NW (2d) 227 (1992).

Actual notice and lack of prejudice to the state are not exceptions to 120 day notice requirement. Carlson v. Pepin County 167 W (2d) 345, 481 NW (2d) 498 (Ct. App. 1992).

Certified mail requirement under (5) is subject to strict construction. Kelley v. Reyes, 168 W (2d) 743, 484 NW (2d) 388 (Ct. App. 1992).

Records relating to pending claims need not be disclosed under 19.35; records of non−pending claims must be disclosed unless an in camera inspection reveals attorney client privilege would be violated. George v. Record Custodian, 169 W (2d) 573, 485 NW (2d) 460 (Ct. App. 1992).

Sub. (3) does not apply to claims for injunctive and declaratory relief. Lewis v. Sullivan, 188 W (2d) 157, 524 NW (2d) 630 (1994).

Sub. (5) requires a notice of claim to be sworn to and to include evidence to show that an oath or affirmation occurred. Kellner v. Christian, 197 W (2d) 183, 539 NW (2d) 685 (1994).

The discovery rule does not apply to sub. (3). The failure to apply the discovery rule to sub. (3) is not unconstitutional. Oney v. Schrauth, 197 W (2d) 891, 541 NW (2d) 229 (Ct. App. 1995).

SUBCHAPTER IX

STATUTES OF LIMITATION; ACTIONS BY THE STATE, STATUTORY LIABILITY AND MISCELLANEOUS ACTIONS

893.85 Action concerning old−age assistance lien. (1) An action to collect an old−age assistance lien filed under s. 49.26, 1971 stats., prior to August 5, 1973, must be commenced within 10 years after the date of filing of the required certificate under s. 49.26 (4), 1971 stats.

(2) No claim under s. 49.25, 1971 stats., may be presented more than 10 years after the date of the most recent old−age assistance payment covered by the claim.

History: 1977 c. 385; 1979 c. 323.

Judicial Council Committee's Note, 1979: This section is previous s. 893.181 renumbered for more logical placement in restructured ch. 893. [Bill 326−A]

893.86 Action concerning recovery of legal fees paid for indigents. An action under s. 757.66 to recover an amount paid by a county for legal representation of an indigent defendant shall be commenced within 10 years after the recording of the claim required under s. 757.66 or be barred.

History: 1979 c. 323; 1993 a. 301.

893.87 General limitation of action in favor of the state. Any action in favor of the state, if no other limitation is prescribed in this chapter, shall be commenced within 10 years after the cause of action accrues or be barred. No cause of action in favor of the state for relief on the ground of fraud shall be deemed to have accrued until discovery on the part of the state of the facts constituting the fraud.

History: 1979 c. 323.

Judicial Council Committee's Note, 1979: This section is previous s. 893.18 (6) renumbered for more logical placement in restructured ch. 893. [Bill 326−A]

See note to 893.43, citing State v. Holland Plastics Co. 111 W (2d) 497, 331 NW (2d) 320 (1983).

893.88 Paternity actions. Notwithstanding s. 990.06, an action for the establishment of the paternity of a child shall be commenced within 19 years of the date of the birth of the child or be barred.

History: 1971 c. 21; 1979 c. 323, 352; 1979 c. 355 s. 225, 231; 1979 c. 357; Stats. 1979 s. 893.88; 1983 a. 447.

See note to Art. I, sec. 9, citing In re Paternity of R. W. L. 116 W (2d) 150, 341 NW (2d) 682 (1984).

This section did not revive time−barred paternity action. In re Paternity of D. L. T., 137 W (2d) 57, 403 NW (2d) 434 (1987).

Constitutionality of this section upheld. Paternity of James A. O. 182 W (2d) 166, 513 NW (2d) 410 (Ct. App. 1994).

Retroactively applied 6−year statute of limitations violates equal protection. Clark v. Jeter, 486 US 456 (1988).

893.89 Action for injury resulting from improvements to real property. (1) In this section, "exposure period" means the 10 years immediately following the date of substantial completion of the improvement to real property.

(2) Except as provided in sub. (3), no cause of action may accrue and no action may be commenced, including an action for contribution or indemnity, against the owner or occupier of the property or against any person involved in the improvement to real property after the end of the exposure period, to recover damages for any injury to property, for any injury to the person, or for wrongful death, arising out of any deficiency or defect in the design, land surveying, planning, supervision or observation of construction of, the construction of, or the furnishing of materials for, the improvement to real property. This subsection does not affect the rights of any person injured as the result of any defect in any material used in an improvement to real property to commence an action for damages against the manufacturer or producer of the material.

(3) (a) Except as provided in pars. (b) and (c), if a person sustains damages as the result of a deficiency or defect in an improvement to real property, and the statute of limitations applicable to the damages bars commencement of the cause of action before the end of the exposure period, the statute of limitations applicable to the damages applies.

(b) If, as the result of a deficiency or defect in an improvement to real property, a person sustains damages during the period beginning on the first day of the 8th year and ending on the last day of the 10th year after the substantial completion of the improvement to real property, the time for commencing the action for the damages is extended for 3 years after the date on which the damages occurred.

(c) An action for contribution is not barred due to the accrual of the cause of action for contribution beyond the end of the exposure period if the underlying action that the contribution action is based on is extended under par. (b).

(4) This section does not apply to any of the following:

(a) A person who commits fraud, concealment or misrepresentation related to a deficiency or defect in the improvement to real property.

(b) A person who expressly warrants or guarantees the improvement to real property, for the period of that warranty or guarantee.

(c) An owner or occupier of real property for damages resulting from negligence in the maintenance, operation or inspection of an improvement to real property.

(d) Damages that were sustained before April 29, 1994.

(5) Except as provided in sub. (4), this section applies to improvements to real property substantially completed before, on or after April 29, 1994.

(6) This section does not affect the rights of any person under ch. 102.

History: 1975 c. 335; 1979 c. 323; 1993 a. 309, 311.

893.90 Bond; campaign financing; lobbying. (1) An action by the state or any of its departments or agencies or by any county, town, village, city, school district, technical college district or other municipal unit to recover any sum of money by reason of the breach of an official bond or the breach of a bond of any nature, whether required by law or not, given by a public officer or any agent or employe of a governmental unit shall be commenced within 3 years after the governmental unit receives knowledge of the fact that a default has occurred in some of the conditions of the bond and that it was damaged because of the default or be barred.

(2) Any civil action arising under ch. 11, subch. III of ch. 13 or subch. II of ch. 19 shall be commenced within 3 years after the cause of action accrues or be barred.

History: 1979 c. 323; 1981 c. 335; 1993 a. 399.

Judicial Council Committee's Note, 1979: This section is previous ss. 893.20 and 893.205 (3) renumbered for more logical placement in restructured ch. 893. [Bill 326−A]

893.91 Action for expenses related to a forest fire. An action by a state or town under s. 26.14 (9) (b) to recover expenses incurred in the suppression of a forest fire shall be commenced within 2 years of the setting of the fire or be barred.

History: 1979 c. 323.

Judicial Council Committee's Note, 1979: This section has been created to place into ch. 893 the statute of limitation for an action to recover expenses related to fighting a forest fire. See the note following s. 26.14 (9) (b). [Bill 326−A]

893.92 Action for contribution. An action for contribution based on tort, if the right of contribution does not arise out of a prior judgment allocating the comparative negligence between the parties, shall be commenced within one year after the cause of action accrues or be barred.

History: 1979 c. 323.

Judicial Council Committee's Note, 1979: This section is previous s. 893.22 (4) renumbered for more logical placement in restructured ch. 893. [Bill 326−A]

893.925 Action for certain damages related to mining. **(1)** A claim against the mining damage appropriation under s. 107.31 to recover damages for mining−related injuries shall be brought within 3 years of the date on which the death occurs or the injury was or should have been known.

(2) (a) An action to recover damages for mining−related injuries under s. 107.32 shall be brought within 3 years of the date on which the death or injury occurs unless the department of commerce gives written notice within the time specified in this subsection that a claim has been filed with it under sub. (1), in which case an action based on the claim may be brought against the person to whom the notice is given within one year after the final resolution, including any appeal, of the claim or within the time specified in this subsection, whichever is longer.

(b) In this subsection "date of injury" means the date on which the evidence of injury, resulting from the act upon which the action is based, is sufficient to alert the injured party to the possibility of the injury. The injury need not be of such magnitude as to identify the causal factor.

History: 1979 c. 353 s. 7; Stats. 1979 s. 893.207; 1979 c. 355 s. 227; Stats. 1979 s. 893.925; 1995 a. 27 ss. 7214, 9116 (5).

893.93 Miscellaneous actions. **(1)** The following actions shall be commenced within 6 years after the cause of action accrues or be barred:

(a) An action upon a liability created by statute when a different limitation is not prescribed by law.

(b) An action for relief on the ground of fraud. The cause of action in such case is not deemed to have accrued until the discovery, by the aggrieved party, of the facts constituting the fraud.

(c) An action upon a claim, whether arising on contract or otherwise, against a decedent or against a decedent's estate, unless probate of the estate in this state is commenced within 6 years after the decedent's death.

(d) An action under s. 968.31.

(e) An action under s. 895.77.

(2) The following actions shall be commenced within 2 years after the cause of action accrues or be barred:

(a) An action by a private party upon a statute penalty, or forfeiture when the action is given to the party prosecuting therefor and the state, except when the statute imposing it provides a different limitation.

(b) An action to recover a forfeiture or penalty imposed by any bylaw, ordinance or regulation of any town, county, city or village or of any corporation or limited liability company organized under the laws of this state, when no other limitation is prescribed by law.

(3) The following actions shall be commenced within one year after the cause of action accrues or be barred:

(a) An action against a sheriff or other officer for the escape of a prisoner arrested or imprisoned on civil process.

(b) An action under ch. 135.

(4) An action by a drainage board for damages under s. 88.92 (2) shall be commenced within 3 years after the drainage board discovers the fact, or with the exercise of reasonable diligence should have discovered the fact of the damage, whichever comes first, or be barred.

History: 1979 c. 323; 1993 a. 98, 112, 456.

Judicial Council Committee's Note, 1979: This section has been created to place in one location within restructured ch. 893 various miscellaneous statutes of limitation for easier reference and use. Sub. (1) (a) is previous s. 893.19 (4). Sub. (1) (b) is previous s. 893.19 (7). Sub. (1) (c) is previous s. 893.19 (9). Sub. (1) (d) is previous s. 893.19 (10). Sub. (2) (a) is previous s. 893.21 (1) with a comma placed after the word "penalty" in order to have the section accurately reflect the decision in Grengs v. 20th Century Fox Film Corporation, 232 F. 2d 325 (1956). Sub. (2) (b) is previous s. 893.21 (4). Sub. (3) (a) is previous s. 893.22 (1). Sub. (3) (b) is previous s. 893.22 (3). [Bill 326−A]

If the complaint does not allege the requisite elements for a cause of action based on fraud, s. 893.19 (7), 1969 stats. [now s. 893.93 (1) (b)] does not apply. Estate of Demos, 50 W (2d) 262, 184 NW (2d) 117.

Complaint alleging employment discrimination on the basis of sex and seeking back pay damages is an action upon a liability created by statute, and in the absence of any other applicable limitation, the 6−year limitation of s. 893.19 (4), 1969 stats. [now s. 893.93 (1) (a)] applies. Yanta v. Montgomery Ward & Co., Inc. 66 W (2d) 53, 224 NW (2d) 389.

Where unreasonable delay in bringing suit prejudices defendant because of death of key witness, laches will bar suit even if 893.19 (7), 1973 stats. [now 893.93 (1) (b)] statute of limitations does not. Schafer v. Wegner, 78 W (2d) 127, 254 NW (2d) 193.

Limitation period under (1) (b) was tolled when victim had "sufficient knowledge to make a reasonable person aware of the need for diligent investigation". Stockman v. La Croix, 790 F (2d) 584 (1986).

A cause of action under sub. (1) (b) accrues on the discovery of the fraud. Discovery occurs when the party has knowledge which would cause a reasonable person to make sufficient inquiry to discover the fraud. Owen v. Wangerin, 985 F (2d) 312 (1993).

See note to 551.59, citing Kramer v. Loewi & Co., Inc. 357 F Supp. 83.

Section s. 893.21 (1) [now s. 893.93 (2) (a)] was not controlling of action by EEOC charging discrimination in employment where statute limited only acts brought by a "private party" and the EEOC is a federal agency enforcing public policy. Equal Employment Opportunity Comm. v. Laacke & Joys Co. 375 F Supp. 852.

Section 893.19 (4), 1977 stats. [now s. 893.93 (1) (a)] governs civil rights actions. Minor v. Lakeview Hospital, 421 F Supp. 485.

Section 893.19 (4), 1977 stats. [now s. 893.93 (1) (a)] governed action under federal law against oil refiner for compensatory damages for alleged overcharges. Section 893.21 (1), 1977 stats. [now s. 893.93 (2) (a)] governed action for treble damages. U. S. Oil Co., Inc. v. Koch Refining Co. 497 F Supp. 1125 (1980).

Defendant in civil rights action was estopped from pleading statute of limitations where its own fraudulent conduct prevented plaintiff from timely filing suit. Bell v. City of Milwaukee, 498 F Supp. 1339 (1980).

893.94 Organized crime control; civil remedies. Any civil action arising under ss. 946.80 to 946.88 is subject to the limitations under s. 946.88 (1).

History: 1981 c. 280; 1989 a. 121.

893.95 Unclaimed property; civil remedies. Any civil action to enforce ch. 177 is subject to the limitations under s. 177.29 (2).

History: 1983 a. 408.

893.96 Family leave and medical leave; civil remedies. Any civil action arising under s. 103.10 (13) (a) is subject to the limitations of s. 103.10 (13) (b).

History: 1987 a. 287.

893.97 Business closing notification. An action arising under s. 109.07 (3) is subject to the limitations under s. 109.07 (4) (d).

History: 1989 a. 44.

NOTE: Statutes not contained in this chapter which relate to or impose time restrictions on asserting a claim or a cause of action include, but are not limited to, the following:

NOTE: Notice of injury, filing, disallowance or commencement of action time limits imposed by statutes governing claims against government entities, include, but are not limited to, the following:

Reference also should be made to the index.