

1977 Assembly Bill 216

Date published: November 29, 1977

## CHAPTER 176, Laws of 1977

AN ACT to amend 893.21 (2), 895.01 (1) and 895.02; and to create 893.19 (10) and 895.50 of the statutes, relating to limitation of commencement of action, cause of action for right of privacy, damages and survival of actions.

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

SECTION 1. 893.19 (10) of the statutes is created to read:

893.19 (10) An action under s. 968.31.

SECTION 2. 893.21 (2) of the statutes is amended to read:

893.21 (2) An action to recover damages for libel, slander, assault, battery, invasion of privacy or false imprisonment.

SECTION 3. 895.01 (1) of the statutes is amended to read:

895.01 (1) In addition to the causes of action which survive at common law the following shall also survive: Causes of action for the recovery of personal property or the unlawful withholding or conversion ~~thereof of personal property~~, for the recovery of the possession of real estate and for the unlawful withholding of the possession ~~thereof of real estate~~, for assault and battery, false imprisonment, invasion of privacy, violation of s. 968.31 (2) (d) or other damage to the person, for all damage done to the property rights or interests of another, for goods taken and carried away, for damages done to real or personal estate, equitable actions to set aside conveyances of real estate, to compel a reconveyance ~~thereof of real estate~~, or to quiet the title ~~thereto to real estate~~, and for a specific performance of contracts relating to real estate. Causes of action for wrongful death shall survive the death of the wrongdoer whether or not the death of the wrongdoer occurred before or after the death of the injured person.

SECTION 4. 895.02 of the statutes is amended to read:

**895.02 Measure of damages against executor.** When any action mentioned in s. 895.01 (1) shall be prosecuted to judgment against the executor or administrator the plaintiff shall be entitled to recover only for the value of the goods taken including any unjust enrichment of the defendant, or for the damages actually sustained, without any vindictive or exemplary damages or damages for alleged outrage to the feelings of the injured party.

SECTION 5. 895.50 of the statutes is created to read:

**895.50 Right of privacy.** (1) The right of privacy is recognized in this state. One whose privacy is unreasonably invaded is entitled to the following relief:

(a) Equitable relief to prevent and restrain such invasion, excluding prior restraint against constitutionally protected communication privately and through the public media;

(b) Compensatory damages based either on plaintiff's loss or defendant's unjust enrichment; and

(c) A reasonable amount for attorney fees.

(2) In this section, "invasion of privacy" means any of the following:

(a) Intrusion upon the privacy of another of a nature highly offensive to a reasonable person, in a place that a reasonable person would consider private or in a manner which is actionable for trespass.

(b) The use, for advertising purposes or for purposes of trade, of the name, portrait or picture of any living person, without having first obtained the written consent of the person or, if the person is a minor, of his or her parent or guardian.

(c) Publicity given to a matter concerning the private life of another, of a kind highly offensive to a reasonable person, if the defendant has acted either unreasonably or recklessly as to whether there was a legitimate public interest in the matter involved, or with actual knowledge that none existed. It is not an invasion of privacy to communicate any information available to the public as a matter of public record.

(3) The right of privacy recognized in this section shall be interpreted in accordance with the developing common law of privacy, including defenses of absolute and qualified privilege, with due regard for maintaining freedom of communication, privately and through the public media.

(4) Compensatory damages are not limited to damages for pecuniary loss, but shall not be presumed in the absence of proof.

(6) (a) If judgment is entered in favor of the defendant in an action for invasion of privacy, the court shall determine if the action was frivolous. If the court determines that the action was frivolous, it shall award the defendant reasonable fees and costs relating to the defense of the action.

(b) In order to find an action for invasion of privacy to be frivolous under par. (a), the court must find either of the following:

1. The action was commenced in bad faith or for harassment purposes.
2. The action was devoid of arguable basis in law or equity.

(7) No action for invasion of privacy may be maintained under this section if the claim is based on an act which is permissible under ss. 968.27 to 968.33.