



State of Wisconsin  
2021 - 2022 LEGISLATURE

LRB-5559/1  
SWB&JAM:cdc

## 2021 ASSEMBLY BILL 885

January 21, 2022 - Introduced by Representatives MOSES, MURPHY, HORLACHER, KNODL and SORTWELL, cosponsored by Senators ROTH, JAGLER and NASS. Referred to Committee on Colleges and Universities.

1     **AN ACT to create** 893.828 of the statutes; **relating to:** eliminating immunity for  
2             public campus administrators from liability for violations of individual  
3             expressive rights under the declaration of rights in the Wisconsin Constitution.

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### *Analysis by the Legislative Reference Bureau*

This bill eliminates immunity for certain campus administrators from liability for violations of certain individual expressive rights. The bill defines a “campus administrator” as a University of Wisconsin System or technical college district board employee who is an academic staff member in an academic administrator, administrative director, or administrative officer position or a position with similar duties of authority to determine policy or administer violations. Under the bill, a person may bring a claim against a campus administrator if that administrator subjects a person or causes a person to be subjected to the deprivation of any individual expressive rights secured under article I of the Wisconsin Constitution on a University of Wisconsin System or technical college system campus. The bill provides that none of the following applies or may be used as a defense to claims made under the bill: 1) statutory immunity; 2) statutory limitations on damages; 3) any claim that the rights, privileges, or immunities secured by article I of the Wisconsin Constitution or the U.S. Constitution were not clearly established at the time of the conduct; or 4) any claim that the campus administrator acted in good faith or believed his or her conduct to be lawful at the time the conduct was committed, or that the campus administrator did not intend to cause a deprivation of the rights, privileges, or immunities secured by article I of the Wisconsin Constitution or the U.S. Constitution.

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The bill allows for the recovery of reasonable attorney fees and costs by a prevailing plaintiff and, if a plaintiff's claims are found to be frivolous, a defendant may also be awarded reasonable costs and attorney fees. Under the bill, actions against a college administrator must be commenced within two years after the cause of action accrues.

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

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

1           **SECTION 1.** 893.828 of the statutes is created to read:

2           **893.828 Violations of state constitutional expressive rights.** (1) In this  
3 section, "campus administrator" means a University of Wisconsin System or  
4 technical college district board employee who is an academic staff member in an  
5 academic administrator, administrative director, or administrative officer position  
6 or a position with similar duties of authority to determine policy or administer  
7 violations.

8           (2) A campus administrator who, under color of law, subjects or causes to be  
9 subjected, including failing to intervene, any other person to the deprivation of any  
10 individual expressive rights secured by the declaration of rights under article I of the  
11 Wisconsin Constitution on a University of Wisconsin System or technical college  
12 system campus, specifically rights under article I, section 1, 3, or 4, is liable to the  
13 injured party for legal or equitable relief or any other appropriate relief.

14           (3) For claims brought under this section, none of the following may be applied  
15 or used as a defense to liability:

16           (a) Statutory immunity granted under s. 893.80 (4).

17           (b) Any statutory limitations on damages, including those under ss. 893.80 (3)  
18 and 893.82.

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1 (c) Any claim that the rights, privileges, or immunities secured by article I of  
2 the Wisconsin Constitution or the U.S. Constitution were not clearly established at  
3 the time of their deprivation by the defendant.

4 (d) Any claim that the defendant acted in good faith or believed his or her  
5 conduct to be lawful at the time when the conduct was committed, or that the  
6 defendant did not intend to cause a deprivation of the rights, privileges, or  
7 immunities secured by article I of the Wisconsin Constitution or the U.S.  
8 Constitution.

9 (4) In any action brought under this section, notwithstanding s. 814.04 (1), a  
10 court shall award reasonable attorney fees and costs to a prevailing plaintiff. In  
11 actions for injunctive relief, a court shall deem a plaintiff to have prevailed if the  
12 plaintiff's suit was a substantial factor or significant catalyst in obtaining the results  
13 sought by the litigation. When a judgment is entered in favor of a defendant, the  
14 court may, notwithstanding s. 814.04 (1), award reasonable costs and attorney fees  
15 to the defendant for defending any claims the court finds frivolous.

16 (5) A civil action brought under this section must be commenced within 2 years  
17 after the cause of action accrues.

18 (END)