TITLE XLIII.

Provisions Common to Actions and Proceedings in All Courts.

CHAPTER 885

WITNESSES AND ORAL TESTIMONY

885.01 Subpoenas, who may issue. The subpoena need not be sealed, and may be signed and issued as follows:

(1) By any judge or clerk of a court or court commissioner or municipal justice, within the territory in which such officer or the court of which he is such officer has jurisdiction, to require the attendance of witnesses and their production of lawful instruments of evidence in any action, matter or proceeding pending or to be examined into before any court, magistrate, officer, arbitrator, board, committee or other person authorized to take testimony in the state.

(2) By the attorney general or any district attorney or person acting in his stead, to require the attendance of witnesses, in behalf of the state, in any court or before any magistrate and from any part of the state.

(3) By the chairman of any committee of any county board, town board, common council or village board to investigate the affairs of the county, town, city or village, or the official conduct or affairs of any officer thereof.

(4) By any arbitrator, coroner, medical examiner of any county having a population of 500,000 or more, board, commission, commissioner, examiner, committee or other person authorized to take testimony, or by any member of a board, commission or committee which is authorized to take testimony, within their jurisdictions, to require the attendance of witnesses, and their production of documentary evidence before them, respectively, in any matter, proceeding or examination authorized by law; and likewise by the secretary of revenue and the executive secretary of the dentistry examining board and by any agent of the department of agriculture.

History: 1971 c 164.

885.02 Form of subpoena. (1) The subpoena may be in the following form:

SUBPOENA.

STATE OF WISCONSIN,

..... County.

THE STATE OF WISCONSIN, to .....:

You are hereby required to appear before ....., a municipal justice in and for said county, at his office in the town of .....(or before ....., designating the court, officer or person and place of appearance), on the ..... day of ....., at ..... o'clock in the ..... noon of said day, to give evidence in a certain cause then and there to be tried between ....., plaintiff, and ....., defendant, on the part of the .....(or to give evidence in the matter [state sufficient to identify the matter or proceeding in which the evidence is to be given] then and there to be heard, on the part of .....)

Given under my hand this ..... day of ....., 19....

.....(Give official title)

(2) For a subpoena duces tecum, the following or its equivalent may be added to the foregoing form (immediately before the attestation clause): and you are further required to bring with you the following papers and documents (describing them as accurately as possible).

885.03 Service of subpoena. Any subpoena may be served by any person by exhibiting and reading it to the witness, or by giving him a copy thereof, or by leaving such copy at his abode.

885.04 Justice subpoena, served in adjoining county. A subpoena to require attendance before a municipal justice may be served in a county adjoining that of the municipal justice, and shall oblige such attendance of any witness, so served, not residing more than 30 miles from the office of such municipal justice.

885.05 Witness' and interpreter's fees. (1) The fees of witnesses and interpreters shall be as follows:

(a) For attending before a municipal justice, or any arbitrators or any board or committee thereof of any town, city or village, for witnesses $4 for each day, for interpreters $4 per day.

(b) For attending before any other court, officer, board or committee, for witnesses $5 for each day, for interpreters $10 per half day.

(c) For traveling, at the rate of 10 cents per mile going and returning from his residence (if within the state); or, if without, from the point where he crosses the state boundary in coming to attend to the place of attendance, and returning by the usually traveled route between such points.

(2) A witness or interpreter shall be entitled to fees only for the time he shall be in actual and necessary attendance as such; and shall not be entitled to receive pay in more than one action or proceeding for the same attendance or travel on behalf of the same party. No person shall be entitled to fees as a witness or interpreter while attending court as an officer or juror; nor shall any attorney or counsel in any cause be allowed any fee as a witness or interpreter therein.

History: 1971 c. 122.

885.06 Witness' fees, prepayment. (1) Except when subpoenaed on behalf of the state or on behalf of a municipality in forfeiture actions no person shall be obliged to attend as a witness in any civil action, matter or proceeding unless his fees are paid or tendered to him for one day's attendance and for travel; provided that tender of witness fees in the form of a check drawn by the state, a political subdivision of the state, a municipal corporation of the state or a department or officer of any of them which is payable to bearer or payable to the order of the person named in such subpoena shall oblige the person named in such subpoena to attend as a witness in accordance with the lawful requirements of such subpoena.

(2) No witness on behalf of the state in any civil action, matter or proceeding, or in any criminal action or proceeding, on behalf of either party, or on behalf of a municipality in forfeiture actions shall be entitled to any fee in advance, but shall be obliged to attend upon the service of a subpoena as therein lawfully required.

885.07 State witnesses in civil actions and municipal witnesses in forfeiture actions, how paid. Every witness on behalf of the state in any civil action or proceeding may file with the clerk of the court where the same is pending his affidavit of attendance and travel, and his fees shall, upon the certificate of such clerk, countersigned by the attorney general, district attorney, or acting state's attorney, be paid out of the state treasury, and shall be charged to the legal expense appropriation to the attorney general. In forfeiture actions by municipalities the clerk shall tax witness fees; however witness fees for police officers of any such municipality when collected shall be paid by the clerk to the treasurer of the municipality.

885.08 State witnesses in criminal cases, how paid. The fees of witnesses on the part of the state in every criminal action or proceeding, and of every person who is committed to jail in default of security for his appearance as a witness, shall be paid by the county in which the action or proceeding is had. The clerk of the

court upon proof of his attendance, travel or confinement shall give each such witness or person a certificate of the number of days' attendance or confinement, the number of miles traveled, and the amount of compensation due him, which certificate shall be receipted for by such witness or person, and the county treasurer shall pay the amount thereof on surrender of the certificate.

Cross Reference: For fees of expert witnesses, see 971.16 (1).

885.09 Compensation of nonresident or poor witness. When any witness shall attend a court of record in behalf of the state, and it shall appear that he came from outside this state, or that he is poor, the court may order he be paid a specific reasonable sum for his expense and attendance, in lieu of his fees; and thereupon the clerk shall give a certificate for such sum, with a copy of such order affixed, and the same shall be paid as other court certificates are paid.

885.10 Witness for indigent defendant. Upon satisfactory proof of the inability of the defendant to procure the attendance of witnesses for his defense, the judge, court commissioner, or municipal justice, in any criminal action or proceeding to be tried or heard before him, may direct such witnesses to be subpoenaed as he shall, upon the defendant's oath or affidavit, or that of his attorney, deem proper and necessary. And witnesses so subpoenaed shall be paid their fees in the manner that witnesses for the state therein are paid.

885.11 Disobedient witness. (1) DAMAGES RECOVERABLE. If any person obliged to attend as a witness shall fail to do so without any reasonable excuse, he shall be liable to the aggrieved party for all damages occasioned by such failure, to be recovered in an action.

(2) ATTENDANCE COMPELLED. Every court, in case of unexcused failure to appear before it, may issue an attachment to bring such witness before it for the contempt, and also to testify.

(3) PUNISHMENT IN COURTS. Inexcusable failure to attend any court of record shall be a contempt of the court, punishable by a fine not exceeding $20.

(4) SAME. Unexcused failure to attend a court not of record shall be a contempt, and the witness shall be fined all the costs of his apprehension, unless he shall show reasonable cause for his failure; in which case the party procuring him to be apprehended shall pay said costs.

(5) STRIKING OUT PLEADING. If any party to an action or proceeding shall unlawfully refuse or neglect to appear or testify or depose therein (either within or without the state), the court may, also, strike out his pleading, and give judgment against him as upon default or failure of proof.

885.12 Coercing witnesses before officers and boards. If any person shall, without reasonable excuse, fail to attend as a witness, or to testify as lawfully required before any arbitrator, coroner, board, commission, commissioner, examiner, committee, or other officer or person authorized to take testimony, or to produce a book or paper which he was lawfully directed to bring, or to subscribe his deposition when correctly reduced to writing, any judge of a court of record or court commissioner in the county where the person was obliged to attend may, upon sworn proof of the facts, issue an attachment for him, and unless he shall purge the contempt and go and testify or do such other act as required by law, may commit him to close confinement in the county jail until he shall so testify or do such act, or be discharged according to law. The sheriff of the county shall execute the commitment.

885.13 Party may be witness, credibility. (1) No person shall be disqualified as a witness in any action or proceeding, civil or criminal, by reason of his interest therein; and every person shall, in every such case, be a competent witness, except as otherwise provided in this chapter. But his interest or connection may be shown to affect the credibility of the witness.

(2) In all criminal actions and proceedings the party charged shall, at his own request, but not otherwise, be a competent witness; but his refusal or omission to testify shall create no presumption against him or any other party thereto.

Closing argument by the district attorney that defendant did not deny prosecution testimony, while raising a presumption of impropriety, was not prejudicial; the supreme court independently believes beyond a reasonable doubt the remarks were harmless when viewed in the context of the entire trial, because of character of the remarks, the compelling proof of guilt, the fact the issue was raised on voir dire, and the trial court's prompt admonition and proper instruction to the jury regarding the statement. State v. Spring, 48 W (2d) 333, 179 NW (2d) 841.

Argument by the district attorney that certain evidence was uncontroverted does not amount to a comment on defendant's failure to testify. Bies v. State, 53 W (2d) 322, 193 NW (2d) 46.

885.14 Adverse examination at trial; deposition as evidence; rebuttal. (1) Any party or any person for whose immediate benefit any civil action or proceeding is prosecuted or defended, or his or its assignor, officer, agent or

employe, or the person who was such officer, agent or employe at the time of the occurrence of the facts made the subject of the examination, may be examined upon the trial as if under cross-examination, at the instance of any adverse party. Any other party adverse in interest may then re-examine such witness as to all matters tending to explain or qualify testimony given by him and if he does not intend thereafter to make the witness his witness may ask him questions proper for the purpose of impeachment.

(2) The testimony so taken on the trial or pursuant to s. 887.12 shall not conclude the party taking the same, but he shall be allowed to rebut or impeach the same.

Since 885.14, Stats. 1967, is applicable to civil and not to criminal proceedings, the trial court did not err when it refused to permit defendant to call a court-appointed expert as an adverse witness, nor to permit the recall of the witness under the guise of rebuttal solely for the purpose of establishing that he had been hired by the state and to ask how this fee was fixed. State v. Bergenthal, 47 W (2d) 668, 178 NW (2d) 16

885.15 Immunity. No person shall be excused from attending, testifying or producing books, papers, and documents before any court in a prosecution under s. 134.05 on the ground or for the reason that the testimony or evidence required of him may tend to criminate him, or to subject him to a penalty or forfeiture. But no person who testifies or produces evidence in obedience to the command of the court in such prosecution shall be liable to any suit or prosecution, civil or criminal, for or on account of any transaction, matter or thing concerning which he may so testify or produce evidence; provided, that no person shall be exempted from prosecution and punishment for perjury committed in so testifying.

885.16 Transactions with deceased or insane persons. No party or person in his own behalf or interest, and no person from, through or under whom a party derives his interest or title, shall be examined as a witness in respect to any transaction or communication by him personally with a deceased or insane person in any civil action or proceeding, in which the opposite party derives his title or sustains his liability to the cause of action from, through or under such deceased or insane person, or in any action or proceeding in which such insane person is a party prosecuting or defending by guardian, unless such opposite party shall first, in his own behalf, introduce testimony of himself or some other person concerning such transaction or communication, and then only in respect to such transaction or communication of which testimony is so given or in respect to matters to which such testimony relates. And no stockholder, officer or trustee of a corporation in its behalf or interest, and no stockholder, officer or trustee of a corporation from, through or under whom a party derives his or its interest or title, shall be so examined, except as aforesaid.

Under the dead man's statute if an objection properly made is overruled, the objecting counsel can cross-examine without risk of waiving his objection; however, if an examination exceeds the scope of the direct examination by questions "beyond the scope," and the examiner elicits the very information he sought to exclude, such examination "beyond the scope" constitutes a waiver of the objection. Estate of Molay, 46 W (2d) 450, 175 NW (2d) 254.

While the benefit of the dead man's statute is waived where the opposite party opens the door, such waiver is not effected where, as in the instant case, testimony elicited from an interested survivor established only independent facts made up of physical actions of the parties and no inquiry is made into what, if anything, actually transpired between the decedent and the interested survivor with regard to these actions. Johnson v. Mielke, 49 W (2d) 60, 181 NW (2d) 503.

A widow, sued on a note as comaker with her husband, cannot exclude testimony as to transactions with her deceased husband, no evidence of agency being presented. Keller Implement Co. v. Eiting, 52 W (2d) 460, 190 NW (2d) 508.

885.17 Transactions with deceased agent. No party, and no person from, through or under whom a party derives his interest or title, shall be examined as a witness in respect to any transaction or communication by him personally with an agent of the adverse party or an agent of the person from, through or under whom such adverse party derives his interest or title, when such agent is dead or insane, or otherwise legally incompetent as a witness unless the opposite party shall first be examined or examine some other witness in his behalf in respect to some transaction or communication between such agent and such other party or person; or unless the testimony of such agent, at any time taken, be first read or given in evidence by the opposite party; and then, in either case respectively, only in respect to such transaction or communication of which testimony is so given or to the matters to which such testimony relates.

885.18 Husband and wife. A husband or wife shall be a competent witness for or against the other in all cases, except that neither one without the consent of the other, during marriage, nor afterwards, shall be permitted to disclose a private communication, made during marriage, by one to the other, when such private communication is privileged. Such private communication shall be privileged in all except the following cases:

(1) Where both husband and wife were parties to the action;

(2) Where such private communication relates to a charge of personal violence by one upon the other;

(3) Where one has acted as the agent of the other and such private communication relates to matters within the scope of such agency;

(4) Where such private communication relates to a charge of pandering or prostitution.

(5) Where such private communication relates to the abuse of a child by the husband or wife or both.

History: 1971 c. 288

Cross Reference: As to testimony of husband and wife in action asserting illegitimacy of child born in wedlock, see 891.39.

A wife's testimony as to statements made by her husband was admissible where the statements were made in the presence of 2 witnesses. Abraham v. State, 47 W (2d) 44, 176 NW (2d) 349.

A wife can be compelled to testify as to whether or not he was working or collecting unemployment insurance, since such facts are known to 3rd persons. Kain v. State, 48 W (2d) 212, 179 NW (2d) 777.

885.19 Convict. A person who has been convicted of a criminal offense is, notwithstanding, a competent witness, but the conviction may be proved to affect his credibility, either by the record or by his own cross-examination, upon which he must answer any question relevant to that inquiry, and the party cross-examining him is not concluded by his answer.

This section applies to both civil and criminal cases. Where plaintiff is asked by his own attorney whether he has ever been convicted of crime, he can be asked on cross examination as to the number of times. Underwood v. Strasser, 48 W (2d) 568, 180 NW (2d) 631.

Where a defendant's answers on direct examination with respect to the number of his prior convictions are inaccurate or incomplete, then the correct and complete facts may be brought out on cross-examination, during which it is permissible to mention the crime by name in order to insure that the witness understands which particular conviction is being referred to. Nicholas v. State, 49 W (2d) 683, 183 NW (2d) 11.

885.20 Confessions to clergymen. A clergyman or other minister of any religion shall not be allowed to disclose a confession made to him in his professional character, in the course of discipline enjoined by the rules or practice of the religious body to which he belongs, without consent thereto by the party confessing.

885.205 Privileged communications. No dean of men, dean of women or dean of students at any institution of higher education in this state, or any school psychologist at any school in this state, shall be allowed to disclose communications made to such dean or psychologist or advice given by such dean or psychologist in the course of counseling a student, or in the course of investigating the conduct of a student enrolled at such university or school, except:

(1) This prohibition may be waived by the student.

(2) This prohibition does not include communications which such dean needs to divulge for his own protection, or the protection of those with whom he deals, or which were made to him for the express purpose of being communicated to another, or of being made public.

(3) This prohibition does not extend to a criminal case when such dean has been regularly subpoenaed to testify.

885.21 Communications to doctors. (1) No physician or surgeon shall be permitted to disclose any information he may have acquired in attending any patient in a professional character, necessary to enable him professionally to serve such patient, except only:

(a) In trials for homicide when the disclosure relates directly to the fact or immediate circumstances of the homicide,

(b) In all lunacy inquiries,

(c) In actions, civil or criminal, against the physician for malpractice,

(d) With the express consent of the patient, or in case of his death or disability, of his personal representative or other person authorized to sue for personal injury or of the beneficiary of an insurance policy on his life, health, or physical condition,

(e) In situations where a hospitalized person is adjudicated either mentally ill, mentally infirm or mentally deficient or is a voluntary mental patient in either a public or private institution and the release of medical information is necessary so that the person can qualify for either an insurance benefit or some type of federal, state or county benefit or pension for either himself or his dependents,

(f) In situations where the examination of an abused or injured child creates a reasonable ground for an opinion of the physician or surgeon that the condition was other than accidentally caused or inflicted by another.

885.22 Communications to attorneys. An attorney or counselor at law shall not be allowed to disclose a communication made by his client to him, or his advice given thereon in the course of his professional employment. This prohibition may be waived by the client, and does not include communications which the attorney needs to divulge for his own protection, or the protection of those with whom he deals, or which were made to him for the express purpose of being communicated to another, or being made public.

Communications between an attorney and a client concerning a last will and testament, the transactions which led to the execution of the will, and the circumstances surrounding the execution of the will, do not enjoy the status of privileged communications after the client's death in a suit between the testator's heirs, devisees, legatees, or other parties who claim through him. Estate of Boerner, 46 W (2d) 183, 174 NW (2d) 457

885.23 Blood tests in civil actions. Whenever it is relevant in a civil action to determine the parentage or identity of any child, person or corpse, the court, by order, shall direct any party to the action and any person involved in the controversy to submit to one or more blood tests as provided in s. 52.36. The results of said tests shall constitute conclusive evidence where exclusion is established and shall be receivable as evidence, but only in cases where a definite exclusion is established. Whenever the court orders such blood tests and one of the parties refuses to submit to such tests such fact shall be disclosed upon trial. Notwithstanding s. 52.36 (2) the court shall determine how and by whom the costs of such examination shall be paid.

885.235 Chemical tests for intoxication. (1) In any action or proceeding in which it is material to prove that a person was under the influence of an intoxicant when operating or driving a motor vehicle, or while handling a firearm, evidence of the amount of alcohol in such person's blood at the time in question as shown by chemical analysis of a sample of his breath, blood or urine is admissible on the issue of whether he was under the influence of an intoxicant if such sample was taken within 2 hours after the event to be proved. Such chemical analysis shall be given effect as follows without requiring any expert testimony as to its effect:

(a) The fact that the analysis shows that there was five-hundredths of one per cent or less by weight of alcohol in the person's blood is prima facie evidence that he was not under the influence of an intoxicant;

(b) The fact that the analysis shows that there was more than five-hundredths but less than fifteen-hundredths of one per cent by weight of alcohol in the person's blood is relevant evidence on the issue of intoxication but is not to be given any prima facie effect;

(c) The fact that the analysis shows that there was fifteen-hundredths of one per cent or more by weight of alcohol in the person's blood is prima facie evidence that he was under the influence of an intoxicant, but shall not, without corroborating physical evidence thereof, be sufficient upon which to find the person guilty of being under the influence of intoxicants.

(2) The concentration of alcohol in the blood shall be taken prima facie to be three-fourths of the concentration of alcohol in the urine.

(2a) The concentration of alcohol in 2100 cubic centimeters of deep lung or alveolar breath shall be prima facie to be equal to the concentration of alcohol in 1 cubic centimeter of blood when equilibrium has been reached.

(3) If the sample of breath, blood or urine was not taken within 2 hours after the event to be proved, evidence of the amount of alcohol in the person's blood as shown by the chemical analysis is admissible only if expert testimony establishes its probative value and may be given prima facie effect only if such effect is established by expert testimony.

(4) The provisions of this section relating to the admissibility of chemical tests for intoxication shall not be construed as limiting the introduction of any other competent evidence bearing on the question of whether or not a person was under the influence of an intoxicant.

History: 1971 c. 40

A blood sample taken under 346.71 (2) and forwarded to the department of transportation is admissible in evidence. Luedtke v. Shedivy, 51 W (2d) 110, 186 NW (2d) 220

885.24 Actions for public moneys, immunity. No witness or party in an action brought upon the bond of a public officer, or in an action by the state or any municipality to recover public money received by or deposited with the defendant, or in any action, proceeding or examination, instituted by or in behalf of the state or any municipality, involving the official conduct of any officer thereof, shall be excused from testifying on the ground that his testimony may expose him to prosecution for any crime, misdemeanor or forfeiture. But no person shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter or thing concerning which he may testify, or produce evidence, documentary or otherwise, in such action, proceeding or examination, except a prosecution for perjury committed in giving such testimony.

885.25 State actions vs. corporations. (1) No corporation shall be excused from producing books, papers, tariffs, contracts, agreements, records, files or documents, in its possession, or under its control, in obedience to the subpoena of any court or officer authorized to issue subpoenas, in any civil action which is now or hereafter may be pending, brought by the state against it to recover license fees, taxes, penalties or forfeitures, or to enforce forfeitures,

on the ground or for the reason that the testimony or evidence, documentary or otherwise, required of it, may subject it to a penalty or forfeiture, or be excused from making a true answer under oath, by and through its properly authorized officer or agent, when required by law to make such answer to any pleading in any such civil action upon any such ground or for such reason.

(2) No officer, clerk, agent, employe or servant of any corporation in any such action shall be excused from attending or testifying or from producing books, papers, tariffs, contracts, agreements, records, files or documents, in his possession or under his control, in obedience to the subpoena of any court in which any such civil action is pending or before any officer or court empowered or authorized to take deposition or testimony in any such action, in obedience to the subpoena of such officer or court, or of any officer or court empowered to issue a subpoena in that behalf, on the ground or for the reason that the testimony or evidence, documentary or otherwise, required of him, may tend to criminate him or subject him to a penalty or a forfeiture, but no such officer, clerk, agent, employe or servant shall be prosecuted, or subjected to any penalty or forfeiture, for or on account of any transaction, matter or thing concerning which he may testify or produce evidence, documentary or otherwise, before such court or officer, or any court or officer empowered to issue subpoena in that behalf, or in any such case or proceeding except a prosecution for perjury or false swearing in giving such testimony.

(3) In case of the failure or neglect of any corporation, or of any such officer, clerk, agent, employe or servant, to produce any such book, paper, tariff, contract, agreement, record, file or document, secondary evidence of the contents of any or either of the same may be given, and such secondary evidence shall be of the same force and effect as the original.

885.27 Admission by member of corporation. In actions or proceedings by or against a corporation, the admission of any member thereof who is not a party to the action or proceeding shall not be received as evidence against such corporation unless such admission was made concerning some transaction in which such member was the authorized agent of the corporation.

885.28 Statement of injured; admissibility, copies. (1) In actions for damages caused by personal injury, no statement made or writing signed by the injured person within 72 hours of the time the injury happened or accident occurred, shall be received in evidence unless such evidence would be admissible as part of the res gestae.

(2) Every person who takes a written statement from any injured person or person sustaining damage with respect to any accident or with respect to any injury to person or property, shall, at the time of taking such statement, furnish to the person making such statement, a true, correct and complete copy thereof. Any person taking or having possession of any written statement or a copy of said statement, by any injured person, or by any person claiming damage to property with respect to any accident or with respect to any injury to person or property, shall, at the request of the person who made such statement or his personal representative, furnish the person who made such statement or his personal representative, a true, honest and complete copy thereof within 20 days after written demand. No written statement by any injured person or any person sustaining damage to property shall be admissible in evidence or otherwise used or referred to in any way or manner whatsoever in any civil action relating to the subject matter thereof, if it is made to appear that a person having possession of such statement refused, upon the request of the person who made the statement or his personal representatives, to furnish such true, correct and complete copy thereof as herein required. This subsection does not apply to any statement taken by any officer having the power to make arrests.

885.29 Testimony of judge of kin to attorney. No judge of any court of record shall testify as to any matter of opinion in any action or proceeding in which any person related to such judge in the first degree shall be an attorney of record.

885.30 Capacity to testify. The court may examine a person produced as a witness to ascertain his capacity and whether he understands the nature and obligations of an oath.

885.31 Testimony of deceased or absent witness. The testimony of a deceased witness, or a witness absent from the state, taken in any action or proceeding (except in a default action or proceeding where service of process was obtained by publication), shall be admissible in evidence in any retrial, or in any other action or proceeding where the party against whom it is offered shall have had an opportunity to cross-examine said witness, and where the issue upon which it is offered is substantially the same as the one upon which it was taken.

885.365 Recorded telephone conversation. (1) Evidence obtained as the result of the use of voice recording equipment for recording of telephone conversations, by way of interception of a communication or in any other manner, shall be totally inadmissible in the courts of this state in civil actions, except as provided in ss. 968.28 to 968.33.

(2) Subsection (1) shall not apply where:

(a) Such recording is made in a manner other than by interception and the person whose conversation is being recorded is informed at that time that the conversation is being recorded and that any evidence thereby obtained may be used in a court of law; or such recording is made through a recorder connector provided by the telephone public utility in accordance with its tariffs and which automatically produces a distinctive recorder tone that is repeated at intervals of approximately 15 seconds;

(b) The recording is made by a telephone public utility as defined in s. 196.01 or its officers or employes for the purpose of or incident to the construction, maintenance, conduct or operation of the services and facilities of such public utilities, or to the normal use by such public utilities of the services and facilities furnished to the public by such public utility; or

(c) The recording is made by a fire department or law enforcement agency to determine violations of, and in the enforcement of, s. 941.13 (1).

History: 1971 c. 40 s. 93.