

1 **AN ACT** *to repeal* 893.81 of the statutes; **relating to:** liability of counties and cities
 2 for mob damage.

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

3 **SECTION 1.** 893.81 of the statutes is repealed.

NOTE: Repeals a provision providing that counties and cities are strictly liable for injury to person or property caused by a mob or riot within their respective jurisdiction, subject to contributory negligence principles. An insurer who pays for riot or mob damage has no subrogation claim under this section against a county or city. See, generally, *Interstate Fire and Casualty Company v. Milwaukee*, 45 Wis. 2d 331, 173 N.W. 2d 187 (1970); and *American Insurance Company v. Milwaukee*, 51 Wis. 2d 346, 187 N.W. 2d 142 (1971). There is no corresponding liability on the part of villages for mob or riot damage. (However, under the liability and immunity principles under s. 893.80, stats., the village would be liable for a negligent ministerial act on its part in connection with a mob or riot.)

The origin of s. 893.81, stats., can be traced to ch. 21, laws of 1863. While the original law differed from the current statute in several respects, e.g., it only applied to property damage, not personal injury, from its inception it extended liability only to counties and cities. It does not appear that villages have ever been made liable under the provision.

Because there appears to be no current policy rationale for treating cities and villages differently under this statute and because common law municipal government immunity was abrogated by the supreme court in 1962 and municipal liability was then comprehensively addressed by the legislature in 1963, making s. 893.81 arguably anachronistic, the provision is repealed.

COMMENT: Note that by repealing the statute, the liability of counties under the provision is also eliminated. The committee may wish to consider whether that is beyond the scope of the committee’s directive. (Note, too, that simply eliminating cities and not counties from the coverage of s. 893.81 would make counties liable for mob or riot damage that occurs in cities.)