CHAPTER 891

PRESUMPTIONS

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891.03 Lists of state lands. All statements or lists of lands which shall have been certified by the president of the United States, or by any other officer of the government thereof, as conveyed to the state under or by any act of congress, being produced by the proper custodians thereof, shall be received in all cases as presumptive evidence that the title of the lands therein described became thereby vested in the state.

891.04 Certificate as to public lands. The certificate of the executive secretary appointed under s. 24.55 under the official seal, that any specified piece or tract of land belongs to or is mortgaged to the state, or that the state has any interest, legal or equitable, in that land shall be presumptive evidence of the facts so stated. The certificate of the secretary of natural resources under the official seal of the department that authority has been given to any person, naming the person, to seize timber or other materials specified in ch. 26 shall be presumptive evidence of the fact so stated.

History: 1971 c. 164; 1979 c. 34 s. 2102 (32) (a); 1979 c. 176; 1993 a. 16.

891.05 Land patents by state officers. Every patent which shall have been executed and delivered by the commissioners of school and university lands or by the commissioners of public lands, purporting to convey any land, and every deed or patent which shall have been executed and delivered by the governor, purporting to convey any lands granted to the state by the United States, shall be received as presumptive evidence of the facts therein stated and that the grantee named therein became vested thereby at the date thereof with an absolute title in fee to the lands therein described.

891.06 Deed on judicial sale. Every conveyance of land or any estate or interest therein executed by any sheriff, referee, receiver or other person, in pursuance of a sale made by virtue of any judgment, order, license or execution of any court of record in this state, and which shall have been recorded in the proper county, as well as such record, shall be received, as presumptive evidence of the facts therein stated and that the title, estate or interest in the land therein described, which such conveyance purports to convey, of every person whom it purports to affect passed to and vested in the grantee therein at the date thereof or at such previous date as such conveyance purports to fix for that purpose.

891.07 Certificate of judicial sale. Every certificate of sale of land or any estate or interest therein executed by any sheriff, referee, receiver or other person, in pursuance of a sale made by virtue of any judgment, order, license or execution of any court of record in this state, and the record thereof, shall be received as presumptive evidence of the facts therein stated.

891.08 Records showing revenue stamps. Whenever the record, in the office of a register of deeds, of any conveyance or of any instrument whatever, upon which revenue stamps may have been at any time required to be affixed by any act of congress, shall show such stamps or any of them, more or less, to have been affixed, it shall be presumptive evidence that such conveyance or instrument had properly affixed to it the number and denomination of stamps required by law.

891.09 Record of births, stillbirths, fetal deaths, deaths and marriages. (1) RECORDS AS EVIDENCE. The record of any marriage, birth, stillbirth, fetal death or death kept in the office of any register of deeds or local health officer of a local health department, as defined in s. 250.01 (4) (a) 2. or 3. or (b), or in the state bureau of vital statistics shall be received as presumptive evidence of the marriage, birth, stillbirth, fetal death or death so recorded.

(2) CHURCH AND DOCTOR'S RECORDS. Any church, parish or baptismal record, and any record of a physician or a person authorized to solemnize marriages, in which record are preserved the facts relating to any birth, stillbirth, fetal death, marriage or death, including the names of the persons, dates, places and other material facts, may be admitted as prima facie evidence of any fact aforesaid. But such record must be produced by its proper custodian and be supported by the custodian's oath that it is such a record as it purports to be and is genuine to the best of the custodian's knowledge and belief.

(3) CERTIFICATES OF FOREIGN BIRTHS, ETC. Official certificates of births, marriages or deaths, issued in foreign countries in which such births, marriages or deaths have occurred, purporting to be founded on books of record, properly authenticated, shall be received as presumptive evidence of the facts in such certificates stated.

History: Sup. Ct. Order, 59 Wis. 2d R6 (1973); 1993 a. 27, 486.

891.10 Village records. The papers, documents and orders relating to the organization and incorporation or the alteration of the boundaries of any village, being recorded in the office of the proper register of deeds pursuant to law, and such record and also the record thereof in the office of the village clerk shall be received as presumptive evidence of the facts therein stated.

891.11 County records as to taxation. (1) All books and files in the office of any county treasurer or county clerk, all assessments and tax rolls and certificates, all notices required to be published or posted by the county treasurer or county clerk, and the proofs of publication or posting filed in the office of either, pursuant to any law relating to the assessment or collection of taxes or to lands included in a tax certificate under s. 74.57, shall be received as presumptive evidence of the facts therein stated.

(2) A transcript of so much of said books, files and records, as relates to the assessment or sale for taxes of any parcel of land in any specified year or years shall be received in evidence with the same effect as the originals and as presumptive evidence of the facts stated in such certificate, when certified in substantially the following form:

I hereby certify that the annexed and foregoing is a true and correct transcript of all books, records, papers, files and proceedings of every name and nature on file or of record in my office relating in any wise to the assessment of taxes upon or to the sale for taxes of the following described lands .... situated in the county of ...., state of Wisconsin, for the year (or years) A.D. ...., and of the whole thereof. In testimony whereof I have hereunto set my hand this .... day of ...., A.D. .....

County Clerk (or Treasurer) of .... County.

History: 1987 a. 378.

891.12 Land office receipt. The receiver's receipt or certificate of purchase of public lands, signed by the receiver, and the official certificate of any register or receiver of the entry or purchase of any land or the location of any land by any land warrant shall be received, when held by the original claimant, or the original claimant's heirs or assigns, as presumptive evidence that the title to the lands therein described passed to and is vested in the person therein named, or the named person's heirs or assigns, except when, at the time of such entry or purchase, the land was owned or occupied by any person as mineral ground on which discoveries of mineral ores had been made.

History: 1993 a. 486.

891.14 State land office certification of title. A certificate of the executive secretary of the board of commissioners of public lands, or any one of the commissioners of the public lands shall be received as presumptive evidence of the facts stated, and that the person named became vested at the date stated with an absolute title in fee to the lands described when it is substantially in the following form:

Office of the Commissioners of the Public Lands, Madison, Wis., ..., A.D. .....

I hereby certify that from the books, files and records of the office of the commissioners of public lands it appears that on the .... day of ...., A.D. ...., the following described real estate, situate in the state of Wisconsin, ... was duly transferred by the United States to the state of Wisconsin, and that on the .... day of ...., A.D. ...., the above described real estate was duly transferred by the state of Wisconsin to .....

In witness whereof, I have hereunto set my hand and affixed the official seal of the commissioners of the public lands this .... day of ...., A.D. .....

....

History: 1971 c. 164; 1975 c. 41 s. 51; 1993 a. 16.

891.16 Certificate of land transfers. A certificate by the secretary of state, under the great or lesser seal, to any facts which appear from the books, files and records in the secretary of state's office or the office of the commissioners of public lands in regard to the grant, conveyance or transfer of any land by the United States to the territory or state of Wisconsin, and also in regard to the sale, conveyance or transfer of any such land by said territory or state shall be received as presumptive evidence of the facts so certified.

History: 1993 a. 486.

891.17 Certificate of adjutant general. A certificate by the adjutant general to any facts which appear from the books, files and records in the adjutant general's office shall be received as presumptive evidence of the facts so certified.

History: 1993 a. 486.

891.18 Affidavits of service. Whenever any notice or other writing is by law authorized or required to be served the affidavit of the person serving it, setting forth the facts necessary to show that it was duly served, shall be presumptive proof that such notice or writing was duly served. But this section shall not apply to any service where another way of proving such service is expressly prescribed by law.

When the affidavit of service did not identify the person served as one specified in s. 801.11 (5) (a), no presumption of due service was raised. Danielson v. Brody Seating Co. 71 Wis. 2d 424, 238 N.W.2d 531 (1976).

891.20 Articles of incorporation, presumptions. Except as provided in s. 180.0203 (2), any charter or patent of incorporation which shall have been issued by the governor, secretary of state or department of financial institutions, or by any combination, to any corporation under any law of the state; any certificate of organization or association of any corporation or joint stock company; the articles of organization of a limited liability company; the articles of association or organization of any corporation, or a certified copy thereof, which shall have been filed or recorded in the office of the secretary of state or with the department of financial institutions, or recorded in the office of any register of deeds or filed or recorded in the office of any clerk of the circuit court under any law of the state; any certificate or resolution for the purpose of amendment, and every amendment in any form, of the charter, patent, certificate or articles of association or organization or of the name, corporate powers or purposes of any corporation or limited liability company, filed or recorded in any of the departments or offices and a certified copy of any such document so filed or recorded shall be received as conclusive evidence of the existence of the corporation, limited liability company or joint stock company mentioned therein, or of the due amendment of the charter, patent, certificate or articles of association or organization thereof in all cases where such facts are only collaterally involved; and as presumptive evidence thereof and of the facts therein stated in all other cases.

History: 1993 a. 112, 301, 491; 1995 a. 27, 400.

891.21 Affidavit of notice of corporate meeting. Whenever any corporation or limited liability company notice is given, posted or served, an affidavit of the person who gave, posted or served the same, specifying the manner and time of doing so, annexed to a copy of such notice, may be filed with the clerk or secretary of the corporation or limited liability company, and when so filed, the original or certified copies thereof, shall be presumptive evidence in all cases of the facts contained in such affidavit.

History: 1993 a. 112.

891.22 Certificate of insurance assessment. Whenever an action is brought by any mutual insurance company to collect any assessment, the certificate of the secretary of said company, specifying such assessment, the amount due said company by means thereof, and that notice thereof was given the person liable therefor, shall be received as presumptive evidence of the facts so certified.

891.23 Copies of insurance books. (1) Copies of the entries in the books of any life or mutual benefit insurance corporation or association engaged in doing business on the level pre-

mium or assessment plan, together with statements verified by the custodian of the books, showing the number of members insured in or belonging to the corporation or association, and the number of members in each class or grade thereof, and the aggregate amount that would be due from them upon a single assessment, and that the copies are true and are taken from the regular books of the corporation or association used and kept for the transaction of its business, and that the books are now in his or her custody or under his or her control, shall be received in all proceedings as prima facie evidence of the entries or statements.

(2) No officer of any corporation or association described in sub. (1) may be compelled to produce any books or records of the corporation or association, except by special order of the court or officer before whom the action or proceeding is pending. Verified copies and statements shall be furnished to the attorney who reasonably requires them, at least 6 days before the time set for the trial or hearing of the action or proceeding, and the books and records shall be subject to the inspection of any interested party or his or her attorney to the extent prescribed by the court or officer.

History: 1977 c. 449; 1999 a. 85.

891.24 Evidence from financial institution books. Whenever any bank, credit union, savings bank or savings and loan association or any of its officers are subpoenaed to produce its books containing a specified account or other specified entries, the bank, credit union, savings bank or savings and loan association may, if it so elects, produce a copy of the specified account or other entries, verified under oath by one of its officers, stating that the books called for are the ordinary books of the bank, credit union, savings bank or savings and loan association used in the transaction of its business, that the entries copied were made therein at the dates thereof and in the usual course of business, that there are no interlineations or erasures in or among the items copied, that the books are in the custody or control of the bank, credit union, savings bank or savings and loan association, and that the officer has carefully compared the copy with the books and found it to be a correct copy of the specified account or entries. Such verified copy shall be prima facie evidence of such entries, and, when presented, no officer of the financial institution may be compelled to produce the books demanded or attend the trial or hearing, unless specially ordered so to do by the court or officer before whom it is pending; provided, that such books shall be open to the inspection of all parties to the action or proceeding.

History: 1979 c. 88; 1991 a. 221.

Affidavits verifying nontestimonial bank records in compliance with this section are also nontestimonial and their admission does not violate the confrontation clause. The affidavits fulfill a statutory procedure for verifying nontestimonial bank records and do not supply substantive evidence of guilt. State v. Doss, 2008 WI 93, 312 Wis. 2d 570, 754 N.W.2d 150, 06−2254.

The language requiring bank books to be made open to the inspection of parties does not require prior notice of their use at trial to be given. It requires that the books be open to the inspection of all parties to the action or proceeding. State v. Doss, 2008 WI 93, 312 Wis. 2d 570, 754 N.W.2d 150, 06−2254.

891.25 Presumptions as to signatures. When any written instrument constitutes the subject of the action or proceeding or when the signing of such instrument is put in issue and the instrument purports to have been signed, the instrument itself is proof that it was signed until denied by the oath or affidavit of the person by whom it purports to have been signed or by a pleading. This section does not extend to an instrument purporting to have been signed by a person who died before proof is required.

History: Sup. Ct. Order, 67 Wis. 2d 585, 769 (1975).

891.27 Effect of seal. A seal upon an executory instrument shall be received as only presumptive evidence of a sufficient consideration.

891.28 Area of towns and counties. Whenever the total area of towns or counties shall be in question, townships not returned as fractional by the surveys under which the public lands were sold by the United States, shall be held to be 6 miles square; and townships returned as fractional shall be held to contain the areas shown by such surveys or the plats thereof.

891.29 Allegations of partnership. Whenever in any action or proceeding a party shall allege in pleadings that named persons were partners at any particular time, or that as such partners they used any particular partnership name or style under which business was done, such averments shall be taken to be true unless expressly denied by the affidavit of the opposite party or someone in the opposite party's behalf or by the opposite party's pleading, within the usual time of pleading.

History: Sup. Ct. Order, 67 Wis. 2d 585, 769 (1975); 1975 c. 218; 1993 a. 490.

891.30 Joint liability. In actions or proceedings upon written contracts alleged to have been executed by the defendants, proof of the joint liability of the defendants shall not be required to entitle the plaintiff to judgment unless such execution is denied by an answer.

History: Sup. Ct. Order, 67 Wis. 2d 585, 769 (1975).

891.31 Corporate existence. In an action or proceeding by or against any corporation or limited liability company, it shall not be necessary to prove the existence of such corporation or limited liability company unless its existence is specially denied by an answer.

History: Sup. Ct. Order, 67 Wis. 2d 585, 769 (1975); 1993 a. 112.

891.32 Allegation as to representative capacity. Whenever a plaintiff sues as a personal representative, guardian, or trustee and alleges in the complaint appointment to that position and, if the appointment was made in another state or a foreign country, the filing or recording of the authenticated copy of the appointment as required by the laws of this state, those allegations shall be taken as true unless specifically denied in the defendant's answer.

History: Sup. Ct. Order, 67 Wis. 2d 585, 769 (1975); 1975 c. 218; 2001 a. 102.

891.33 Proof of malice in slander and libel. If the defendant in any action for slander or libel shall set up in the defendant's answer that the words spoken or published were true, such answer shall not be proof of the malice alleged in the complaint.

History: 1993 a. 486.

891.34 Presumption as to citizenship. Whenever in any proceeding to test the qualifications of any person to hold office the question of the citizenship of said person is raised, the burden of proof as to such citizenship shall be upon the person whose qualifications are contested.

891.345 Establishment of citizenship. Upon petition and proper showing made, that naturalization papers, or written records thereof, have been lost or destroyed, the circuit court of the county in which the petitioner resides may make an order that the petitioner is a citizen of the United States. Any such order or certified copy thereof shall be prima facie evidence of such citizenship.

891.35 Execution of official bond. In every action upon any official bond the original bond or a certified copy thereof shall be presumptive evidence of the due execution thereof by the officer and the officer's sureties.

History: 1993 a. 486.

891.36 Evidence of title to realty. In all criminal proceedings in which it is necessary for the state to prove that any person owns or has an interest in any real estate, a conveyance to such person of such real estate or an interest therein, so executed and acknowledged or proved as to be entitled to record, or the record of such conveyance or a certified copy of such record or such proof of possession as would entitle a plaintiff to recover in an action for trespass shall be received as presumptive evidence that such person owned or had an interest in the real estate in question.

891.37 Presumption as to officer's return. The return of a sheriff or constable to any writ shall be presumptive evidence

that such return is correct and that the service has been rendered or disbursement made.

891.38 Officer's certificate as evidence. The certificate of the sheriff or other proper officer endorsed upon the summons, stating the time when he or she received the same for service, shall be presumptive evidence that he or she did receive the summons for service on the day in such certificate named.

History: 1993 a. 486.

891.39 Presumption as to whether a child is marital or nonmarital; self−crimination; birth certificates. (1) (a) Whenever it is established in an action or proceeding that a child was born to a woman while she was the lawful wife of a specified man, any party asserting in such action or proceeding that the husband was not the father of the child shall have the burden of proving that assertion by a clear and satisfactory preponderance of the evidence. In all such actions or proceedings the husband and the wife are competent to testify as witnesses to the facts. The court or judge in such cases shall appoint a guardian ad litem to appear for and represent the child whose paternity is questioned. Results of a genetic test, as defined in s. 767.001 (1m), showing that a man other than the husband is not excluded as the father of the child and that the statistical probability of the man's parentage is 99.0% or higher constitute a clear and satisfactory preponderance of the evidence of the assertion under this paragraph, even if the husband is unavailable to submit to genetic tests, as defined in s. 767.001 (1m).

(b) In actions affecting the family, in which the question of paternity is raised, and in paternity proceedings, the court, upon being satisfied that the parties to the action are unable to adequately compensate any such guardian ad litem for the guardian ad litem's services and expenses, shall then make an order specifying the guardian ad litem's compensation and expenses, which compensation and expenses shall be paid as provided in s. 967.06. If the court orders a county to pay the compensation of the guardian ad litem, the amount ordered may not exceed the compensation paid to private attorneys under s. 977.08 (4m) (b).

(2) (a) The mother of the child shall not be excused or privileged from testifying fully in any action or proceeding mentioned in sub. (1) in which the determination of whether the child is a marital or nonmarital child is involved or in issue, when ordered to testify by a court of record or any judge thereof; but she shall not be prosecuted or subjected to any penalty or forfeiture for or on account of testifying or producing evidence, except for perjury committed in giving the testimony.

(b) The immunity provided under par. (a) is subject to the restrictions under s. 972.085.

(3) If any court under this section adjudges a child to be a nonmarital child, the clerk of court shall report the facts to the state registrar, who shall issue a new birth certificate showing the correct facts as found by the court, and shall dispose of the original, with the court's report attached under s. 69.15 (3). If the husband is a party to the action and the court makes a finding as to whether or not the husband is the father of the child, such finding shall be conclusive in all other courts of this state.

History: 1971 c. 298; 1979 c. 196; 1979 c. 352 s. 39; 1983 a. 447; 1985 a. 315; 1989 a. 122; 1993 a. 16, 486; 1995 a. 27, 225; 1997 a. 191.

The requirement of appointing a guardian ad litem under ss. 767.045 (1) [now s. 767.407 (1)] and 891.39 (1) (a) is discussed. Johnson v. Johnson, 157 Wis. 2d 490, 460 N.W.2d 166 (Ct. App. 1990).

The court's power to appropriate compensation for court−appointed counsel is necessary for the effective operation of the judicial system. In ordering compensation for court−ordered attorneys, a court should abide by the s. 977.08 (4m) rate when it can retain qualified and effective counsel at that rate, but should order compensation at the rate under SCR 81.01 or 81.02, or a higher rate, when necessary to secure effective counsel. Friedrich v. Dane County Circuit Court, 192 Wis. 2d 1, 531 N.W.2d 32 (1995).

891.395 Presumption as to time of conception. In any paternity proceeding, in the absence of a valid birth certificate indicating the birth weight, the mother shall be competent to testify as to the birth weight of the child whose paternity is at issue, and where the child whose paternity is at issue weighed 5 1/2 pounds or more at the time of its birth, the testimony of the mother as to the weight shall be presumptive evidence that the child was a full term child, unless competent evidence to the contrary is presented to the court. The conception of the child shall be presumed to have occurred within a span of time extending from 240 days to 300 days before the date of its birth, unless competent evidence to the contrary is presented to the court.

History: 1979 c. 352.

When competent medical testimony limited the conceptive period to 2 weeks, testimony of sexual relations outside that period was inadmissible unless offered by the mother. State ex rel. J. A. S. v. M. E. S. 142 Wis. 2d 300, 418 N.W.2d 32 (Ct. App. 1987).

A fact finder can find a date of conception other than the date asserted either by the mother or the putative father. In re Paternity of A. M. C. 144 Wis. 2d 621, 424 N.W.2d 707 (1988).

891.40 Artificial insemination. (1) If, under the supervision of a licensed physician and with the consent of her husband, a wife is inseminated artificially with semen donated by a man not her husband, the husband of the mother at the time of the conception of the child shall be the natural father of a child conceived. The husband's consent must be in writing and signed by him and his wife. The physician shall certify their signatures and the date of the insemination, and shall file the husband's consent with the department of health services, where it shall be kept confidential and in a sealed file except as provided in s. 46.03 (7) (bm). However, the physician's failure to file the consent form does not affect the legal status of father and child. All papers and records pertaining to the insemination, whether part of the permanent record of a court or of a file held by the supervising physician or elsewhere, may be inspected only upon an order of the court for good cause shown.

(2) The donor of semen provided to a licensed physician for use in artificial insemination of a woman other than the donor's wife is not the natural father of a child conceived, bears no liability for the support of the child and has no parental rights with regard to the child.

History: 1979 c. 352; 1983 a. 447; 1995 a. 27 s. 9126 (19); 2007 a. 20 s. 9121 (6) (a).

Enforcement of surrogacy agreements promotes stability and permanence in family relationships because it allows the intended parents to plan for the arrival of their child, reinforces the expectations of all parties to the agreement, and reduces contentious litigation. The surrogacy agreement in this case was enforceable except for the portions of the agreement requiring a voluntary termination of parental rights (TPR). The TPR provisions did not comply with the procedural safeguards set forth in s. 48.41 for a voluntary TPR because the biological mother would not consent to the TPR and there was no legal basis for involuntary termination. The TPR provisions were severable. Rosecky v. Schissel, 2013 WI 66, ___ Wis. 2d ___, ___ N.W.2d ___, 11−2166.

Wisconsin's Undeveloped Surrogacy Law. Walsh. Wis. Law. March 2012.

891.405 Presumption of paternity based on acknowledgment. A man is presumed to be the natural father of a child if he and the mother have acknowledged paternity under s. 69.15 (3) (b) 1. or 3. and no other man is presumed to be the father under s. 891.41 (1).

History: 1989 a. 212; 1993 a. 213; 1997 a. 191.

891.41 Presumption of paternity based on marriage of the parties. (1) A man is presumed to be the natural father of a child if any of the following applies:

(a) He and the child's natural mother are or have been married to each other and the child is conceived or born after marriage and before the granting of a decree of legal separation, annulment or divorce between the parties.

(b) He and the child's natural mother were married to each other after the child was born but he and the child's natural mother had a relationship with one another during the period of time within which the child was conceived and no other man has been adjudicated to be the father or presumed to be the father of the child under par. (a).

(2) In a legal action or proceeding, a presumption under sub. (1) is rebutted by results of a genetic test, as defined in s. 767.001 (1m), that show that a man other than the man presumed to be the father under sub. (1) is not excluded as the father of the child and

that the statistical probability of the man's parentage is 99.0% or higher, even if the man presumed to be the father under sub. (1) is unavailable to submit to genetic tests, as defined in s. 767.001 (1m).

History: 1979 c. 352; 1983 a. 447; 1985 a. 315 s. 22; 1987 a. 413; 1989 a. 212; 1997 a. 191.

In order for a putative biological father to have the necessary foundation for a constitutionally protected liberty interest in his putative paternity, he would have to have taken affirmative steps to assume his parental responsibilities for the child. Randy A. J. v. Norma I. J. 2004 WI 41, 270 Wis. 2d 384, 677 N.W.2d 630, 02−0469.

A genetic test showing another man to be the natural father rebuts the presumption under s. 767.48 (1m) [now s. 767.84 (1m)] and sub. (1) that the spouse of the child's mother is the father, but equitable estoppel may be employed to preclude rebutting the presumption. The issue is whether the actions and inactions of the parties advocating the rebuttal of the marital presumption were so unfair as to preclude them from overcoming the public's interest in the marital presumption based on the results of genetic tests. Randy A. J. v. Norma I. J. 2004 WI 41, 270 Wis. 2d 384, 677 N.W.2d 630, 02−0469.

The presumption that the mother's husband is the child's father does not violate a putative father's due process rights. Michael H. v. Gerald D. 491 U.S. 110, 105 L. Ed. 2d 91 (1989).

If a child is conceived subsequent to the entry of a decree of legal separation, there is no presumption of paternity. Schoenfeld v. Apfel, 237 F.3d 788 (2001).

891.43 Relief from destruction of public records. **(1)** RERECORDING INSTRUMENTS. If the records of any county are destroyed, any instrument in writing or certified copy of such instrument which affects title to land in that county and which has been recorded may be rerecorded. Upon rerecording, the register of deeds shall record the certificate of the previous record, and the date of filing for record appearing in the original certificate shall be the date of the record. Copies of any record of such instrument, certified by the register of deeds, shall be received in evidence and have the same effect as certified copies of the original record.

(3) COURT RECORDS. If, in any court of record in this or any other state or of the United States, there is any instrument in writing, or certified copy of such instrument, which affects title to land in any county of this state where the records have been destroyed, a copy of the instrument certified by the clerk of such court of record may be made and recorded in the county where the records have been destroyed. Upon recording the certified copy the register of deeds shall record all attached certificates, and if any certificates show the previous recording of the instrument in the county where the records have been destroyed, the date of filing appearing in the certificate shall be taken as the date of the record. Copies of any record, certified by the register of deeds, shall be received in evidence and have the same effect as certified copies of the original record.

(4) RECORDS OF LOST PLATS OR MAPS. (a) If the public record of any plat or map has been injured, lost or destroyed, the clerk of the circuit court shall, upon notification by the register of deeds of the injury, loss or destruction of the records, publish a class 3 notice under ch. 985 setting forth the facts of the injury, loss or destruction, together with a notice addressed to all whom it may concern that the circuit court will, at a specified time not less than 4 weeks from the first publication of the notice, proceed to take testimony for the purpose of reproducing and reestablishing the record of maps or plats it finds to be injured, lost or destroyed. All persons interested may appear and be heard.

(b) If the court is satisfied that any public record of maps or plats has been injured, lost or destroyed, an order to that effect shall be entered and the court shall take testimony for the purpose of reproducing and reestablishing the record. Orders and judgments shall be made as to each map or plat separately. The clerk shall cause all maps or plats adjudged to be correct copies of the records lost, injured or destroyed to be filed and recorded in the office of the register of deeds, with an attached certified copy of the order or judgment. The record shall be taken in all courts as a prima facie correct reproduction of the original record. All costs and expenses incurred in the proceedings shall be taxed as costs against the county in which the proceedings are held.

(5) CHAINS OF TITLE. If the record or any part of the records of any county are destroyed, so that a connected chain of title cannot be shown, certified copies of all deeds, patents, certificates, plats and legal subdivisions of land in the county, in the custody or control of any officer of this state or of the United States, may be recorded in the register of deed's office of the county, and the record shall have the same effect as the record of the originals of such instruments.

(7) ABSTRACTS OF TITLE. If the records of any county are injured, lost or destroyed by fire, the judge of the circuit court of the county shall examine the state of the records, and if the court finds that any abstracts, copies, minutes or extracts exist after such injury, loss or destruction, and that the abstracts, copies, minutes or extracts were made before such injury, loss or destruction by any person in the ordinary course of business, and that they contain a material and substantial part of the records, the court shall certify the facts in regard to such abstracts of titles as found. If the abstracts, copies, minutes and extracts tend to show a connected chain of title to the land in the county, the court shall file an opinion with the clerk of the circuit court and the abstracts, copies, minutes and extracts, or certified copies, shall be admissible as prima facie evidence in all the courts of this state. The owner or keeper of the abstracts shall furnish to all parties so requesting certified copies of the abstracts.

(8) REESTABLISHMENT OF TITLE. (a) If the records of any county are injured, lost or destroyed, any court in the county with equity jurisdiction may inquire, upon notice to the parties interested, into the condition of any interest in any land in the county, and make all necessary orders and judgments to determine title.

(b) Any person claiming an interest in land in the county at the time of the injury, loss or destruction of the records may maintain an action for a declaration of interest in real property under ch. 841. The complaint under s. 841.02 shall be published by the clerk of the court in which the complaint is filed as a class 3 notice under ch. 985.

(12) RECORD OF NEW INSTRUMENTS. If any instrument in writing affecting title to land in any county is filed for record so short a time before the injury, loss or destruction of the records that no proof of it remains either on the records or among the abstracts, copies, minutes or extracts under sub. (7), it shall be the duty of the person having filed the instrument, within one year after the injury, loss or destruction, to rerecord the instrument, or, if that cannot be done, he or she may file a complaint to establish title under sub. (8) (b).

(14) EVIDENCE TO SHOW TITLE. In all cases under this section, and in all proceedings concerning any interest in land, when any party to the proceeding testifies that the original of any deed, conveyance or other written or recorded evidence relating to the title to the land has been lost or destroyed, or it is not in the power of the party wishing to use it on trial to produce it, and the record has been injured, lost or destroyed, the court shall receive any evidence that may establish the execution or contents of the deed, conveyance, record or other written evidence lost or destroyed, including any abstract of title made in the ordinary course of business before the injury, loss or destruction, showing the title or any part of title to the land.

(15) RECORD OF DEED IN CHAIN OF TITLE. If the records of any county have been injured, lost or destroyed so that a connected chain of title to any land cannot be shown, any person who can produce deeds showing a chain running back for 10 years or more may make an affidavit before the circuit court of the county to the effect that he or she is the person named as grantee in the last conveyance in the chain of title and that his or her immediate grantor has been in continual possession of the premises, which the affidavit shall completely describe, for not less than 10 years and he or she may record the affidavit and the deeds showing the chain of title in the office of the register of deeds. The deeds and affidavit or the record shall then be prima facie evidence that the affiant holds title to the land described in the deed or affidavit. For the purposes of constituting the possession required under this subsection, s. 893.26 (4) shall apply.

History: 1927 c. 523 s. 115; 1965 c. 66; 1979 c. 90; 1981 c. 391 s. 210.

Legislative Council Note, 1979: In chapter 523, laws of 1927, the legislature withdrew s. 891.43 from the statutes. Section 891.43 is amended to reflect current

statutory drafting practices, without any intention of making substantive changes in the law. In section 26 of this act, it is declared that s. 891.43 shall be printed in future editions of the statutes. [Bill 458−A]

891.44 Presumption of lack of contributory negligence for infant minor. It shall be conclusively presumed that an infant minor who has not reached the age of 7 shall be incapable of being guilty of contributory negligence or of any negligence whatsoever.

A refusal to instruct under s. 891.44 was not error when no issue of the plaintiff's negligence was presented by the pleadings or by evidence. Wagner v. American Family Mutual Insurance Co. 65 Wis. 2d 243, 222 N.W.2d 652 (1974).

891.45 Presumption of employment−connected disease; heart or respiratory impairment or disease. (1) In this section:

(a) "County fire fighter" means any person employed by a county whose duties primarily include active fire suppression or prevention.

(b) "Municipal fire fighter" includes any person designated as primarily a fire fighter under s. 60.553 (2), 61.66 (2), or 62.13 (2e) (b) and any person under s. 60.553, 61.66, or 62.13 (2e) whose duties as a fire fighter during the 5−year qualifying period took up at least two−thirds of his or her working hours.

(c) "State fire fighter" means any person employed by the state whose duties primarily include active fire suppression or prevention and who is a protective occupation participant, as defined in s. 40.02 (48).

(2) Except as provided in s. 891.453, in any proceeding involving the application by a state, county, or municipal fire fighter or his or her beneficiary for disability or death benefits under s. 40.65 (2) or any pension or retirement system applicable to fire fighters, where at the time of death or filing of application for disability benefits the deceased or disabled fire fighter had served a total of 5 years as a state, county, or municipal fire fighter and a qualifying medical examination given prior to the time of his or her becoming a state, county, or municipal fire fighter showed no evidence of heart or respiratory impairment or disease, and where the disability or death is found to be caused by heart or respiratory impairment or disease, such finding shall be presumptive evidence that such impairment or disease was caused by such employment.

History: 1977 c. 83; 1981 c. 278 s. 6; 1983 a. 191 s. 6; 1987 a. 399; 1987 a. 403 s. 256; 1997 a. 173; 2001 a. 16; 2009 a. 284; 2011 a. 32.

891.453 Presumption of employment−connected disease; infectious disease. (1) In this section:

(a) "Correctional officer" means any person employed by the state or by a county or a municipality as a guard or officer whose principal duties are the supervision and discipline of inmates.

(b) "Emergency medical service provider" means a person employed by the state or by a county or municipality and who is an emergency medical technician under s. 256.01 (5) or a first responder under s. 256.01 (9).

(c) "Fire fighter" means a state, county, or municipal fire fighter who is covered under s. 891.45 and any person under s. 60.553, 61.66, or 62.13 (2e) whose duties as a fire fighter took up at least two−thirds of his or her working hours.

(d) "Law enforcement officer" means any person employed by the state or by a county or a municipality for the purpose of detecting and preventing crime and enforcing laws or ordinances, who is authorized to make arrests for violations of the laws or ordinances which he or she is employed to enforce. "Law enforcement officer" includes a person under s. 60.553, 61.66, or 62.13 (2e) whose duties as a police officer took up at least two−thirds of his or her working hours.

(2) (a) In this subsection, "infectious disease" includes the human immunodeficiency virus, acquired immunodeficiency syndrome, tuberculosis, hepatitis A, hepatitis B, hepatitis C, hepatitis D, diphtheria, meningococcal meningitis, methicillin−resistant staphylococcus aureus, and severe acute respiratory syndrome.

(b) In any proceeding involving the application by a correctional officer, an emergency medical service provider, a fire fighter, or a law enforcement officer or his or her beneficiary for disability or death benefits under s. 40.65 (2) or any pension or retirement system applicable to correctional officers, emergency medical service providers, fire fighters, or law enforcement officers, if a qualifying medical examination given prior to the time of his or her becoming a correctional officer, an emergency medical service provider, a fire fighter, or a law enforcement officer showed no evidence of an infectious disease, and if the disability or death is found to be caused by an infectious disease, the finding shall be presumptive evidence that the infectious disease was caused by the employment.

History: 2009 a. 284; 2011 a. 32.

891.455 Presumption of employment−connected disease; cancer. (1) In this section, "state, county, or municipal fire fighter" means a fire fighter who is covered under s. 891.45 and any person under s. 60.553, 61.66, or 62.13 (2e) whose duties as a fire fighter during the 10−year qualifying period specified in sub. (2) took up at least two−thirds of his or her working hours.

(2) In any proceeding involving an application by a state, county, or municipal fire fighter or his or her beneficiary for disability or death benefits under s. 40.65 (2) or any pension or retirement system applicable to fire fighters, where at the time of death or filing of application for disability benefits the deceased or disabled fire fighter had served a total of 10 years as a state, county, or municipal fire fighter and a qualifying medical examination given prior to the time of his or her becoming a state, county, or municipal fire fighter showed no evidence of cancer, and where the disability or death is found to be caused by cancer, such finding shall be presumptive evidence that the cancer was caused by such employment.

(3) The presumption under sub. (2) shall only apply to cancers affecting the skin, breasts, central nervous system or lymphatic, digestive, hematological, urinary, skeletal, oral or reproductive systems.

(4) The presumption under sub. (2) for cancers caused by smoking or tobacco product use shall not apply to any municipal fire fighter who smokes cigarettes, as defined in s. 139.30 (1m), or who uses a tobacco product, as defined in s. 139.75 (12), after January 1, 2001.

History: 1997 a. 173; 1999 a. 9; 2001 a. 16; 2005 a. 25; 2011 a. 32.

891.46 Mailed service. Unless otherwise specifically provided by statute or rule adopted under s. 751.12, summonses, citations, notices, motions and other papers required or authorized to be served by mail in judicial or administrative proceedings are presumed to be served when deposited in the U.S. mail with properly affixed evidence of prepaid postage.

History: Sup. Ct. Order, No. 95−10, 195 Wis. 2d xv (1996).

Judicial Council Note, 1995: The purpose of this statute is to overrule the statement in *Boeck v. State Highway Commission*, 36 Wis. 2d 440, 444, 153 N.W.2d 610, 612 (1967), that "as a general rule in the absence of the statutory provision, ... service of notice would not become effective until the party received it." The creation of this rule does not affect the presumptions and shifting of burdens of mailing articulated in *State ex rel. Flores v. State*, 183 Wis. 2d 587, 516 N.W.2d 362 (1994).