CHAPTER 895

DAMAGES, LIABILITY, AND MISCELLANEOUS PROVISIONS REGARDING ACTIONS IN COURTS

SUBCHAPTER I

DAMAGES, RECOVERY, AND MISCELLANEOUS PROVISIONS REGARDING ACTIONS IN COURTS

895.01 What actions survive; actions not to abate. **(1)** (am) In addition to the causes of action that survive at common law, all of the following also survive:

1. Causes of action to determine paternity.

2. Causes of action for the recovery of personal property or the unlawful withholding or conversion of personal property.

3. Causes of action for the recovery of the possession of real estate and for the unlawful withholding of the possession of real estate.

4. Causes of action for assault and battery.

5. Causes of action for false imprisonment.

6. Causes of action for invasion of privacy.

7. Causes of action for a violation of s. 968.31 (2m) or other damage to the person.

8. Causes of action for all damage done to the property rights or interests of another.

9. Causes of action for goods taken and carried away.

10. Causes of action for damages done to real or personal estate.

11. Equitable actions to set aside conveyances of real estate.

12. Equitable actions to compel a reconveyance of real estate.

13. Equitable actions to quiet the title to real estate.

14. Equitable actions for specific performance of contracts relating to real estate.

(bm) 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.

(2) An action does not abate by the occurrence of any event if the cause of action survives or continues.

History: Sup. Ct. Order, 67 Wis. 2d 585, 760 (1975), 771; 1977 c. 176; 1987 a. 399; 1993 a. 481; 1999 a. 85; 2007 a. 101.

Punitive damages incident to damages for the pain and suffering of a decedent may be awarded to the estate. Wangen v. Ford Motor Co., 97 Wis. 2d 260, 294 N.W.2d 437 (1980).

A paternity action may not be brought against a deceased putative father. N.L.B. v. G.B., 140 Wis. 2d 400, 411 N.W.2d 144 (Ct. App. 1987).

A claim for loss of enjoyment of life caused by professional negligence of mental health professionals survived the death of the alleged victim. Sawyer v. Midelfort, 227 Wis. 2d 124, 595 N.W.2d 423 (1999), 97–1969.

A survival claim accrues when, with reasonable diligence, the decedent should have discovered the claim, but no later than the date of death. Estate of Merrill v. Jerrick, 231 Wis. 2d 546, 605 N.W.2d 645 (Ct. App. 1999), 99–0787.

Parents of minor children have separate claims for pre–death and post–death loss of society and companionship, and damages are not capped by the wrongful–death limit. Estate of Hegarty v. Beauchaine, 2006 WI App 248, 297 Wis. 2d 70, 727 N.W.2d 857, 04–3252.

Under sub. (1) (o) [now sub. (1) (bm)] and s. 895.04 (2), a wrongful death claim does not survive the death of the claimant. Lornson v. Siddiqui, 2007 WI 92, 302 Wis. 2d 519, 735 N.W.2d 55, 05–2315.

Survival claims accrue on the date the injury is discovered or with reasonable diligence should be discovered by either the decedent or an appropriate third party, often the decedent's personal representative, whichever occurs first. Christ v. Exxon Mobil Corp., 2015 WI 58, 362 Wis. 2d 668, 866 N.W.2d 602, 12–1493.

Actions under ss. 551.41 and 551.59 survive the death of the wrongdoer. Continental Assurance Co. v. American Bankshares Corp., 483 F. Supp. 175 (1980).

895.02 Measure of damages against personal representative. When any action described in s. 895.01 (1) shall be prosecuted to judgment against the personal representative, 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.

History: Sup. Ct. Order, 67 Wis. 2d 585, 784 (1975); 1977 c. 176; 2001 a. 102.

895.03 Recovery for death by wrongful act. Whenever the death of a person shall be caused by a wrongful act, neglect or default and the act, neglect or default is such as would, if death had not ensued, have entitled the party injured to maintain an action and recover damages in respect thereof, then and in every such case the person who would have been liable, if death had not ensued, shall be liable to an action for damages notwithstanding the death of the person injured; provided, that such action shall be brought for a death caused in this state.

A complaint alleging that the defendant shot the plaintiff's husband and that the shooting was wrongful was sufficient to state a cause of action. Kelly v. Mohrhusen, 50 Wis. 2d 337, 184 N.W.2d 149 (1971).

It is sufficient if the death was caused by a wrongful act, neglect, or default in this state. It is not necessary that the death occur in the state. The statute includes cases dealing with breach of warranty arising out of contract. Schnabl v. Ford Motor Co., 54 Wis. 2d 345, 195 N.W.2d 602 (1972).

A decedent must have had an actionable claim for damages at the time of death for a wrongful death cause of action to exist. If the statute of limitations would have barred the decedent from bringing a medical malpractice action, had the decedent lived, a wrongful death action based on the alleged malpractice is also barred. Miller v. Luther, 170 Wis. 2d 429, 489 N.W.2d 651 (Ct. App. 1992).

This section does not provide when a claim for damages due to wrongful death accrues, or when it must be brought, or when it will be lost. A derivative claim for damages due to wrongful death is controlled by the specific statute of limitations for medical malpractice, s. 893.55, rather than the general wrongful death statute of limitations, s. 893.54, and accrues on the same date as the medical negligence action on which it is based—the date of injury, not the date of death. Estate of Genrich v. OHIC Insurance Co., 2009 WI 67, 318 Wis. 2d 553, 769 N.W.2d 481, 07–0541.

This section says nothing about who can bring a wrongful death claim, or who the defendants can be. The statute only permits the representative of a deceased to maintain an action the deceased could have maintained had the deceased lived. It did not prevent the father of a fetus killed in a car accident from suing the insurer of the fetus's mother. Tesar v. Anderson, 2010 WI App 116, 329 Wis. 2d 240, 789 N.W.2d 351, 09–1993.

The cause of action authorized under this section applies only to deaths caused in Wisconsin. However, Wisconsin courts must allow plaintiffs to sue under another interested state's law when no Wisconsin law provides for the action and Wisconsin has no public policy against recovery. When there is no cause of action under this section and another state's wrongful death statute applies, the terms and limitations in s. 895.04 do not apply. Waranka v. Wadena Insurance Co., 2014 WI 28, 353 Wis. 2d 619, 847 N.W.2d 324, 12–0320.

The discovery rule continues to apply to wrongful death claims in the only way in which it reasonably can: by permitting those claims to accrue on the date the injury is discovered or with reasonable diligence should be discovered by the wrongful death beneficiary, whichever occurs first. Christ v. Exxon Mobil Corp., 2015 WI 58, 362 Wis. 2d 668, 866 N.W.2d 602, 12–1493.

895.031 Recovery from estate of wrongdoer. If the death of a person is caused by a wrongful act or omission committed in this state that, if death had not ensued, would have entitled the injured party to maintain an action and recover damages and the wrongdoer dies prior to the time of the death of the injured person, the wrongdoer shall be liable for damages notwithstanding either death. Any right of action against a deceased wrongdoer under this section shall be enforced by bringing an action against the deceased wrongdoer's personal representative.

History: 1993 a. 486; 2001 a. 102.

895.035 Parental liability for acts of minor child. **(1)** (a) In this section:

1. "Custody" means either legal custody of a child under a court order under s. 767.225 or 767.41, custody of a child under a stipulation under s. 767.34 or actual physical custody of a child. "Custody" does not include legal custody, as defined under s. 48.02 (12), by an agency or a person other than a child's birth or adoptive parent.

2. "Governing body of a private school" has the meaning given in s. 115.001 (3d).

(b) In determining which parent has custody of a child for purposes of this section, the court shall consider which parent had responsibility for caring for and supervising the child at the time the act that caused the injury, damage or loss occurred.

(2) (a) The parent or parents with custody of a minor child, in any circumstances where he, she, or they may not be liable under the common law, are liable for damages to property, for the cost of repairing or replacing property or removing the marking, drawing, writing, or etching from property regarding a violation under s. 943.017, for the value of unrecovered stolen property, or for personal injury attributable to a willful, malicious, or wanton act of the child.

(b) 1. The parent or parents with custody of their minor child are jointly and severally liable with the child for the damages imposed under s. 943.51 for their child's violation of s. 943.50.

2. If a parent is jointly and severally liable under this paragraph and has physical placement of the child, the parent's liability is limited to that percentage representing the time that the child actually spends with that parent.

3. Notwithstanding sub. (1), a parent does not have custody of a child for purposes of this paragraph if at the time of the violation the child has been freed from the care, custody, and control of the parent through marriage or emancipation or if at the time of the violation the parent does not reasonably have the ability to exercise supervision and control of the child because the child is uncontrollable or because another person has interfered with that parent's exercise of supervision and control.

(2g) The parent or parents with custody of a minor child are liable for the cost of the repair or replacement of, or the removal of the etching, marking, drawing or writing from, property damaged as the result of a violation of an ordinance that prohibits intentional etching or marking, drawing or writing with paint, ink or other substance on the physical property of another without the other's consent.

(2m) (a) If a juvenile or a parent with custody of a juvenile fails to pay restitution under s. 938.245, 938.32, 938.34 (5), 938.343 (4), 938.345 or 938.45 (1r) (a) as ordered by a court assigned to exercise jurisdiction under chs. 48 and 938, a court of criminal jurisdiction or a municipal court or as agreed to in a deferred prosecution agreement or if it appears likely that the juvenile or parent will not pay restitution as ordered or agreed to, the victim, the victim's insurer, the representative of the public interest under s. 938.09 or the agency, as defined in s. 938.38 (1) (a), supervising the juvenile may petition the court assigned to exercise jurisdiction under chs. 48 and 938 to order that the amount of restitution unpaid by the juvenile or parent be entered and docketed as a judgment against the juvenile and the parent with custody of the juvenile and in favor of the victim or the victim's insurer, or both. A petition under this paragraph may be filed after the expiration of the deferred prosecution agreement, consent decree, dispositional order or sentence under which the restitution is payable, but no later than one year after the expiration of the deferred prosecution agreement, consent decree, dispositional order or sentence or any extension of the consent decree, dispositional order or sentence. A judgment rendered under this paragraph does not bar the victim or the victim's insurer, or both, from commencing another action seeking compensation from the juvenile or the parent, or both, if the amount of restitution ordered under this paragraph is less than the total amount of damages claimed by the victim or the victim's insurer.

(b) If a juvenile or a parent with custody of a juvenile fails to pay a forfeiture as ordered by a court assigned to exercise jurisdiction under chs. 48 and 938, a court of criminal jurisdiction or a municipal court, if a juvenile or a parent with custody of a juvenile fails to pay costs as ordered by the court assigned to exercise jurisdiction under chs. 48 and 938 or a municipal court, if a juvenile fails to pay a surcharge as ordered by a court assigned to exercise jurisdiction under chs. 48 and 938 or a court of criminal jurisdiction or if it appears likely that the juvenile or the parent will not pay the forfeiture or surcharge as ordered, the representative of the public interest under s. 938.09, the agency, as defined in s. 938.38 (1) (a), supervising the juvenile or the law enforcement agency that issued the citation to the juvenile may petition the court assigned to exercise jurisdiction under chs. 48 and 938 to order that the amount of the forfeiture, surcharge or costs unpaid by the juvenile or parent be entered and docketed as a judgment against the juvenile and the parent with custody of the juvenile and in favor of the county or appropriate municipality. A petition under this paragraph may be filed after the expiration of the dispositional order or sentence under which the forfeiture, surcharge or costs is payable, but no later than one year after the expiration of the dispositional order or sentence or any extension of the dispositional order or sentence.

(bm) 1. Before issuing an order under par. (a) or (b), the court assigned to exercise jurisdiction under chs. 48 and 938 shall give the juvenile and the parent notice of the intent to issue the order and an opportunity to be heard regarding the order. The court shall give the juvenile and the parent an opportunity to present evidence as to the amount of the restitution, forfeiture or surcharge unpaid, but not as to the amount of the restitution, forfeiture or surcharge originally ordered. The court shall also give the juvenile and the parent an opportunity to present evidence as to the reason for the failure to pay the restitution, forfeiture or surcharge and the ability of the juvenile or the parent to pay the restitution, forfeiture or surcharge. In considering the ability of the juvenile or the parent to pay the restitution, forfeiture or surcharge, the court may consider the assets, as well as the income, of the juvenile or the parent and may consider the future ability of the juvenile or parent to pay the restitution, forfeiture or surcharge within the time specified in s. 893.40.

2. In proceedings under this subsection, the court assigned to exercise jurisdiction under chs. 48 and 938 may take judicial notice of any deferred prosecution agreement, consent decree, dispositional order, sentence, extension of a consent decree, dispositional order or sentence or any other finding or order in the records of the juvenile maintained by that court or the municipal court.

3. In proceedings under this subsection, the juvenile and the parent may retain counsel of their own choosing at their own expense, but a juvenile or a parent has no right to be represented by appointed counsel in a proceeding under this subsection.

(c) The court assigned to exercise jurisdiction under chs. 48 and 938 may order that the juvenile perform community service work for a public agency or nonprofit charitable organization that is designated by the court in lieu of making restitution or paying the forfeiture or surcharge. If the parent agrees to perform community service work in lieu of making restitution or paying the forfeiture or surcharge, the court may order that the parent perform community service work for a public agency or a nonprofit charitable organization that is designated by the court. Community service work may be in lieu of restitution only if also agreed to by the public agency or nonprofit charitable organization and by the person to whom restitution is owed. The court may utilize any available resources, including any community service work program, in ordering the juvenile or parent to perform community service work. The number of hours of community service work required may not exceed the number determined by dividing the amount owed on the restitution, forfeiture, or surcharge by the minimum wage established under s. 104.035 (1). The court shall ensure that the juvenile or parent is provided with a written statement of the terms of the community service order and that the community service order is monitored.

(3) An adjudication under s. 938.183 or 938.34 that the juvenile violated a civil law or ordinance, is delinquent or is in need of protection and services under s. 938.13 (12), based on proof that the juvenile committed the act, subject to its admissibility under s. 904.10, shall, in an action under sub. (1), stop a juvenile's parent or parents from denying that the juvenile committed the act that resulted in the injury, damage or loss.

(4) Except for recovery under sub. (4a) or for retail theft under s. 943.51, the maximum recovery under this section from any parent or parents may not exceed $5,000 for damages resulting from any one act of a juvenile in addition to taxable costs and disbursements and reasonable attorney fees, as determined by the court. If 2 or more juveniles in the custody of the same parent or parents commit the same act the total recovery under this section may not exceed $5,000, in addition to taxable costs and disbursements. The maximum recovery from any parent or parents for retail theft by their minor child is established under s. 943.51.

(4a) (a) The maximum recovery under this section by a school board or a governing body of a private school from any parent or parents with custody of a minor child may not exceed $20,000 for damages resulting from any one act of the minor child in addition to taxable costs and disbursements and reasonable attorney fees, as determined by the court, for damages caused to

the school board or the governing body of a private school by any of the following actions of the minor child:

1. An act or threat that endangers the property, health or safety of persons at the school or under the supervision of a school authority or that damages the property of a school board or the governing body of a private school and that results in a substantial disruption of a school day or a school activity.

2. An act resulting in a violation of s. 943.01, 943.02, 943.03, 943.05, 943.06 or 947.015.

(b) In addition to other recoverable damages, damages under par. (a) may include the cost to the school board or the governing body of a private school in loss of instructional time directly resulting from the action of the minor child under par. (a).

(c) If 2 or more minor children in the custody of the same parent or parents are involved in the same action under par. (a), the total recovery may not exceed $20,000, in addition to taxable costs, disbursements and reasonable attorney fees, as determined by the court.

(d) If an insurance policy does not explicitly provide coverage for actions under par. (a), the issuer of that policy is not liable for the damages resulting from those actions.

(5) This section does not limit the amount of damages recoverable by an action against a child or children except that any amount so recovered shall be reduced and apportioned by the amount received from the parent or parents under this section.

(6) Any recovery of restitution under this section shall be reduced by the amount recovered as restitution for the same act under s. 938.245, 938.32, 938.34 (5), 938.343 (4) or 938.45 (1r) (a). Any recovery of a forfeiture under this section shall be reduced by the amount recovered as a forfeiture for the same act under s. 938.34 (8), 938.343 (2) or 938.45 (1r) (b). Any recovery of a surcharge under this section shall be reduced by the amount recovered as a surcharge under s. 938.34 (8d).

(7) This section does not affect or limit any liability of a parent under s. 167.10 (7) or 343.15 (2).

History: 1985 a. 311; 1987 a. 27; 1993 a. 71; 1995 a. 24, 77, 262, 352; 1997 a. 27, 35, 205, 239, 252; 1999 a. 9, 32; 2003 a. 138; 2005 a. 443 s. 265; 2013 a. 237; 2015 a. 55.

This section imposes absolute liability on parents once all elements have been established. Accordingly, the defense of contributory negligence is unavailable to parents. First Bank Southeast, N.A. v. Bentkowski, 138 Wis. 2d 283, 405 N.W.2d 764 (Ct. App. 1987).

An "act" under sub. (4) is a complete course of conduct. What distinguishes a single act from multiple acts is whether: 1) a sufficient period of time separates the conduct; 2) the conduct occurred at separate locations; and 3) there is a distinct difference in the nature of the conduct. In cases of improper sexual contact, the jury need not make an individual damage determination for each act. N.E.M. v. Strigel, 208 Wis. 2d 1, 559 N.W.2d 256 (1997), 95–0755.

Under s. 938.34 (5) (a), assessing the damages to the victim is the first step in the court's determination of restitution, and determining the amount the juvenile is capable of paying is the second. Whichever amount is lower is the maximum amount that the court may order as restitution. Under sub. (2m) (a), courts are without authority to order that the "total damage" figure be converted to a civil judgment. Sub. (2m) (a) allows only for the conversion of restitution. State v. Anthony D., 2006 WI App 218, 296 Wis. 2d 771, 723 N.W.2d 775, 05–2644.

Torts: The Constitutional Validity of Parental Liability Statutes. O'Connor. 55 MLR 584 (1972).

NOTE: See also the notes to s. 343.15, for parental responsibility for minor drivers.

895.037 Abortions on or for a minor without parental consent or judicial waiver.

(1) DEFINITIONS. In this section:

(a) "Abortion" has the meaning given in s. 48.375 (2) (a).

(c) "Emancipated minor" has the meaning given in s. 48.375 (2) (e).

(2) PENALTIES. (a) Any person who, in violation of s. 48.375 (4), intentionally performs or induces an abortion on or for a minor whom the person knows or has reason to know is not an emancipated minor may be required to forfeit not more than $10,000.

(b) Any person who intentionally violates s. 48.375 (7) (e) or 809.105 (12) may be required to forfeit not more than $10,000.

(3) CIVIL REMEDIES. (a) A person who intentionally violates s. 48.375 (4) is liable to the minor on or for whom the abortion was performed or induced and to the minor's parent, guardian and legal custodian for damages arising out of the performance or inducement of the abortion including, but not limited to, damages for personal injury and emotional and psychological distress.

(b) If a person who has been awarded damages under par. (a) proves by clear and convincing evidence that the violation of s. 48.375 (4) was willful, wanton or reckless, that person shall also be entitled to punitive damages.

(c) A conviction under sub. (2) (a) is not a condition precedent to bringing an action, obtaining a judgment or collecting that judgment under this subsection.

(d) A person who recovers damages under par. (a) or (b) may also recover reasonable attorney fees incurred in connection with the action, notwithstanding s. 814.04 (1).

(e) A contract is not a defense to an action under this subsection.

(f) Nothing in this subsection limits the common law rights of parents, guardians, legal custodians and minors.

(4) CONFIDENTIALITY. The identity of a minor who is the subject of an action under this section and the identity of the minor's parents, guardian and legal custodian shall be kept confidential and may not be disclosed, except to the court, the parties, their counsel, witnesses and other persons approved by the court. All papers filed in and all records of a court relating to an action under this section shall identify the minor as "Jane Doe" and shall identify her parents, guardian and legal custodian by initials only. All hearings relating to an action under this section shall be held in chambers unless the minor demands a hearing in open court and her parents, guardian or legal custodian do not object. If a public hearing is not held, only the parties, their counsel, witnesses and other persons requested by the court, or requested by a party and approved by the court, may be present.

History: 1991 a. 263.

The constitution does not confer a right to abortion. Therefore, a rational–basis review is the appropriate standard for a constitutional challenge to abortion laws. A law regulating abortion, like other health and welfare laws, is entitled to a strong presumption of validity. It must be sustained if there is a rational basis on which the legislature could have thought that it would serve legitimate state interests. Dobbs v. Jackson Women's Health Organization, 597 U.S. ___, 142 S. Ct. 2228, 213 L. Ed. 2d 545 (2022).

895.038 Partial–birth abortions; liability.

(1) In this section:

(a) "Child" has the meaning given in s. 940.16 (1) (a).

(b) "Partial–birth abortion" has the meaning given in s. 940.16 (1) (b).

(2) (a) Except as provided in par. (b), any of the following persons has a claim for appropriate relief against a person who performs a partial–birth abortion:

1. If the person on whom a partial–birth abortion was performed was a minor, the parent of the minor.

2. The father of the child aborted by the partial–birth abortion.

(b) A person specified in par. (a) 1. or 2. does not have a claim under par. (a) if any of the following apply:

1. The person consented to performance of the partial–birth abortion.

2. The pregnancy of the woman on whom the partial–birth abortion was performed was the result of a sexual assault in violation of s. 940.225, 944.06, 948.02, 948.025, 948.06, 948.085, or 948.09 that was committed by the person.

(3) The relief available under sub. (2) shall include all of the following:

(a) If the abortion was performed in violation of s. 940.16, damages arising out of the performance of the partial–birth abortion, including damages for personal injury and emotional and psychological distress.

(b) Exemplary damages equal to 3 times the cost of the partial–birth abortion.

(4) Subsection (2) applies even if the mother of the child aborted by the partial−birth abortion consented to the performance of the partial−birth abortion.

History: 1997 a. 219; 2005 a. 277.

A Nebraska statute that provided that no partial birth abortion can be performed unless it is necessary to save the life of the mother whose life is endangered by a physical disorder, physical illness, or physical injury is unconstitutional. Stenberg v. Carhart, 530 U.S. 914, 120 S. Ct. 2597, 147 L. Ed. 2d 743 (2000).

The federal Partial−Birth Abortion Ban Act of 2003 is distinguishable from *Stenberg*, 530 U.S. 914 (2000), and is constitutional. Gonzales v. Carhart, 550 U.S. 124, 127 S. Ct. 1610, 167 L. Ed. 2d 480 (2007).

Enforcement of s. 940.16 is enjoined under *Stenberg*, 530 U.S. 914 (2000). Hope Clinic v. Ryan, 249 F.3d 603 (2001).

895.04 Plaintiff in wrongful death action. (1) An action for wrongful death may be brought by the personal representative of the deceased person or by the person to whom the amount recovered belongs.

(2) If the deceased leaves surviving a spouse or domestic partner under ch. 770 and minor children under 18 years of age with whose support the deceased was legally charged, the court before whom the action is pending, or if no action is pending, any court of record, in recognition of the duty and responsibility of a parent to support minor children, shall determine the amount, if any, to be set aside for the protection of such children after considering the age of such children, the amount involved, the capacity and integrity of the surviving spouse or surviving domestic partner, and any other facts or information it may have or receive, and such amount may be impressed by creation of an appropriate lien in favor of such children or otherwise protected as circumstances may warrant, but such amount shall not be in excess of 50 percent of the net amount received after deduction of costs of collection. If there are no such surviving minor children, the amount recovered shall belong and be paid to the spouse or domestic partner of the deceased; if no spouse or domestic partner survives, to the deceased's lineal heirs as determined by s. 852.01; if no lineal heirs survive, to the deceased's brothers and sisters. If any such relative dies before judgment in the action, the relative next in order shall be entitled to recover for the wrongful death. A surviving nonresident alien spouse or a nonresident alien domestic partner under ch. 770 and minor children shall be entitled to the benefits of this section. In cases subject to s. 102.29 this subsection shall apply only to the surviving spouse's or surviving domestic partner's interest in the amount recovered. If the amount allocated to any child under this subsection is less than $10,000, s. 807.10 may be applied. Every settlement in wrongful death cases in which the deceased leaves minor children under 18 years of age shall be void unless approved by a court of record authorized to act hereunder.

(3) If separate actions are brought for the same wrongful death, they shall be consolidated on motion of any party. Unless such consolidation is so effected that a single judgment may be entered protecting all defendants and so that satisfaction of such judgment shall extinguish all liability for the wrongful death, no action shall be permitted to proceed except that of the personal representative.

(4) Judgment for damages for pecuniary injury from wrongful death may be awarded to any person entitled to bring a wrongful death action. Additional damages not to exceed $500,000 per occurrence in the case of a deceased minor, or $350,000 per occurrence in the case of a deceased adult, for loss of society and companionship may be awarded to the spouse, children or parents of the deceased, or to the siblings of the deceased, if the siblings were minors at the time of the death.

(5) If the personal representative brings the action, the personal representative may also recover the reasonable cost of medical expenses, funeral expenses, including the reasonable cost of a cemetery lot and care of the lot, grave marker or other burial monument, coffin, cremation urn, urn vault, outer burial container, or other article intended for the burial of the dead. If a relative brings the action, the relative may recover those expenses on behalf of himself or herself or of any person who has paid or assumed liability for those expenses.

(6) Where the wrongful death of a person creates a cause of action in favor of the decedent's estate and also a cause of action in favor of a spouse, domestic partner under ch. 770, or relatives as provided in this section, such spouse, domestic partner, or relatives may waive and satisfy the estate's cause of action in connection with or as part of a settlement and discharge of the cause of action of the spouse, domestic partner, or relatives.

(7) Damages found by a jury in excess of the maximum amount specified in sub. (4) shall be reduced by the court to such maximum. The aggregate of the damages covered by subs. (4) and (5) shall be diminished under s. 895.045 if the deceased or person entitled to recover is found negligent.

History: 1971 c. 59; Sup. Ct. Order, 67 Wis. 2d 585, 784 (1975); 1975 c. 94 s. 91 (3); 1975 c. 166, 199, 287, 421, 422; 1979 c. 166; 1983 a. 315; 1985 a. 130; 1989 a. 307; 1991 a. 308; 1997 a. 89, 290; 2009 a. 28, 276; 2015 a. 237.

Statutory increases in damage limitations recoverable in wrongful death actions constitute changes in substantive rights and not mere remedial changes. Bradley v. Knutson, 62 Wis. 2d 432, 215 N.W.2d 369 (1974).

A parent may maintain an action for loss of aid, comfort, society, and companionship of an injured minor child on the condition that the parent's cause of action is combined with that of the child for the child's personal injuries. Shockley v. Prier, 66 Wis. 2d 394, 225 N.W.2d 495 (1975).

In an action for wrongful death by two children of the deceased, the plaintiffs' failure to join three other siblings who would otherwise have been indispensable parties was not fatal to the court's subject matter jurisdiction because affidavits submitted to the trial court indicated that the three siblings were unavailable. Kochel v. Hartford Accident & Indemnity Co., 66 Wis. 2d 405, 225 N.W.2d 604 (1975).

A judgment under sub. (2) means a final, not interlocutory, judgment. Collins v. Gee, 82 Wis. 2d 376, 263 N.W.2d 158 (1978).

The trial court in a wrongful death action should inform the jury of statutory limitations on recovery, if any. Peot v. Ferraro, 83 Wis. 2d 727, 266 N.W.2d 586 (1978).

A posthumous illegitimate child may not maintain an action for the wrongful death of the putative father. Robinson v. Kolstad, 84 Wis. 2d 579, 267 N.W.2d 886 (1978).

This section does not require that proceeds be equally divided between parents. Keithley v. Keithley, 95 Wis. 2d 136, 289 N.W.2d 368 (Ct. App. 1980).

Punitive damages are not recoverable incident to damages for wrongful death. Wangen v. Ford Motor Co., 97 Wis. 2d 260, 294 N.W.2d 437 (1980).

This section does not permit an estate to recover, on its own behalf, damages for the decedent's pecuniary loss. Weiss v. Regent Properties, Ltd., 118 Wis. 2d 225, 346 N.W.2d 766 (1984).

Recovery under sub. (7) is barred by s. 895.045 if a decedent's negligence is greater than any individual tortfeasor's. Delvaux v. Vanden Langenberg, 130 Wis. 2d 464, 387 N.W.2d 751 (1986).

A spouse's claim under sub. (4) for loss of society and companionship is additional to a common law claim for loss of consortium prior to the death of the deceased. Kottka v. PPG Industries, Inc., 130 Wis. 2d 499, 388 N.W.2d 160 (1986).

A person who "feloniously and intentionally" kills the person's spouse is not a surviving spouse for purposes of sub. (2) and is treated as having predeceased the decedent. Steinbarth v. Johannes, 144 Wis. 2d 159, 423 N.W.2d 540 (1988).

"Pecuniary injury" under sub. (4) includes the loss of any benefit, including social security disability benefits, that a plaintiff would have received from the decedent. Estate of Holt v. State Farm Fire & Casualty Co., 151 Wis. 2d 455, 444 N.W.2d 453 (Ct. App. 1989).

This section is inapplicable in medical malpractice actions. There is no cause of action in an adult child for the loss of society and companionship of a parent. Dziadosz v. Zirneski, 177 Wis. 2d 59, 501 N.W.2d 828 (Ct. App. 1993).

The damage limitation under sub. (4) is inapplicable to medical malpractice actions in which death results. Sub. (2) does not prevent a minor from bringing an action for a loss of companionship when malpractice causes a parent's death, including when the decedent is survived by a spouse. Jelinek v. St. Paul Fire & Casualty Insurance Co., 182 Wis. 2d 1, 512 N.W.2d 764 (1994).

Although only one parent was the named insured under an uninsured motorist insurance policy paying benefits for the wrongful death of the parents' child, this section required payment of the proceeds to both parents. Bruflat v. Prudential Property & Casualty Insurance Co., 2000 WI App 69, 233 Wis. 2d 523, 608 N.W.2d 371, 99−2049.

Retroactive increases in the statutory damage limits were unconstitutional. Neiman v. American National Property & Casualty Co., 2000 WI 83, 236 Wis. 2d 411, 613 N.W.2d 160, 99−2554. See also Schultz v. Natwick, 2002 WI 125, 257 Wis. 2d 19, 653 N.W.2d 266, 00−0361.

Sub. (4) does not: 1) nullify the state constitutional right to have a jury assess damages under article I, section 5, of the Wisconsin Constitution; 2) violate separation of powers principles by blurring the boundaries between judicial and legislative branches; 3) violate constitutional equal protection guarantees; and 4) violate substantive due process. Maurin v. Hall, 2004 WI 100, 274 Wis. 2d 28, 682 N.W.2d 866, 00−0072.

Partially overruled on other grounds. Bartholomew v. Wisconsin Patients Compensation Fund, 2006 WI 91, 293 Wis. 2d 38, 717 N.W.2d 216, 04−2592.

The rule that one who claims subrogation rights, whether under the aegis of either legal or conventional subrogation, is barred from any recovery unless the insured is made whole is applicable in wrongful death actions. Wrongful death plaintiffs are entitled to be made whole for their losses, but not more than whole. To the extent that wrongful death plaintiffs receive a portion of damages for expenses they have not incurred after having been made whole, they have been unjustly enriched. Petta v. ABC Insurance Co., 2005 WI 18, 278 Wis. 2d 251, 692 N.W.2d 639, 03−0610.

The jury award of noneconomic damages for pre−death claims, namely the claim for the decedent's pre−death pain and suffering, and the jury award for pre−death loss of society and companionship are governed by the cap set forth in the medical malpractice statutes, s. 893.55, and not the wrongful death statute, this section. Bartholo-

mew v. Wisconsin Patients Compensation Fund, 2006 WI 91, 293 Wis. 2d 38, 717 N.W.2d 216, 04–2592.

Parents of minor children have separate claims for pre–death and post–death loss of society and companionship, and damages are not capped by the wrongful–death limit. Estate of Hegarty v. Beauchaine, 2006 WI App 248, 297 Wis. 2d 70, 727 N.W.2d 857, 04–3252.

Under sub. (2) and s. 895.01 (1) (o), a wrongful death claim does not survive the death of the claimant. In a non–medical malpractice wrongful death case, under sub. (2), a new cause of action is available to the next claimant in the statutory hierarchy. In a medical malpractice wrongful death case, eligible claimants under s. 655.007 are not subject to a statutory hierarchy like claimants under sub. (2). However, in a medical malpractice wrongful death case, adult children of the deceased are not listed as eligible claimants and are therefore not eligible because of the exclusivity of s. 655.007, as interpreted in *Czapinski*, 2000 WI 80. Lornson v. Siddiqui, 2007 WI 92, 302 Wis. 2d 519, 735 N.W.2d 55, 05–2315.

Because the legislature modified "children" with "minor" in a different subsection of this section, the only reasonable interpretation of the legislature's unmodified use of the word "children" in sub. (4) is that the term includes both adult and minor children. Pierce v. American Family Mutual Insurance Co., 2007 WI App 152, 303 Wis. 2d 726, 736 N.W.2d 247, 06–1773.

This section does not provide for the recovery of lost inheritance by a party on behalf of a class of heirs. Despite the use of the plural "lineal heirs," the statute clearly contemplates that each relative will, in turn, have the right to bring an action for wrongful death. The use of the plural "heirs" encompasses exactly the situation when two or more heirs in the same tier of succession in the statutory hierarchy bring a wrongful death action together. Estate of Lamers v. American Hardware Mutual Ins. Co., 2008 WI App 165, 314 Wis. 2d 731, 761 N.W.2d 38, 07–2793.

A surviving spouse cannot disclaim a wrongful death claim under s. 854.13 so as to pass ownership of that claim to the deceased's lineal heirs. Bowen v. American Family Insurance Co., 2012 WI App 29, 340 Wis. 2d 232, 811 N.W.2d 887, 11–0185.

Sub. (4) does not expand the class of claimants who may recover loss of society and companionship damages beyond those who may recover for wrongful death under subs. (1) and (2). Sub. (4) limits the availability of loss of society and companionship damages to certain persons within the class of claimants entitled to bring wrongful death actions. Bowen v. American Family Insurance Co., 2012 WI App 29, 340 Wis. 2d 232, 811 N.W.2d 887, 11–0185.

The cause of action authorized under s. 895.03 applies only to deaths caused in Wisconsin. However, Wisconsin courts must allow plaintiffs to sue under another interested state's law when no Wisconsin law provides for the action and Wisconsin has no public policy against recovery. When there is no cause of action under s. 895.03 and another state's wrongful death statute applies, the terms and limitations in this section do not apply. Waranka v. Wadena Insurance Co., 2014 WI 28, 353 Wis. 2d 619, 847 N.W.2d 324, 12–0320.

"Surviving spouse" in sub. (2) does not always simply mean any living spouse of the deceased. A careful reading of sub. (2) makes it clear that the trial court, in an attempt to protect the children, must work from the amount recovered by the spouse who is charged with the support of the minor children. In order to avoid an absurd, unreasonable result contrary to the legislative purposes of the wrongful death statutes, under the unique facts of this case, sub. (2) and s. 895.03 are construed to allow the minor children to recover even though the deceased's spouse in the instant case is alive and does not recover any damages for the deceased husband's wrongful death. Force v. American Family Mutual Insurance Co., 2014 WI 82, 356 Wis. 2d 582, 850 N.W.2d 866, 12–2402.

The discovery rule continues to apply to wrongful death claims in the only way in which it reasonably can: by permitting those claims to accrue on the date the injury is discovered or with reasonable diligence should be discovered by the wrongful death beneficiary, whichever occurs first. Christ v. Exxon Mobil Corp., 2015 WI 58, 362 Wis. 2d 668, 866 N.W.2d 602, 12–1493.

There may not be separate recovery for both an estate and its beneficiaries. Bell v. City of Milwaukee, 746 F.2d 1205 (1984).

Cause of Action by Parents Sustained for Loss of Society and Companionship of Child Tortiously Injured. Gonring. 1976 WLR 641.

Expanding and Limiting Damages for Pecuniary Injury Due to Wrongful Death. Schoone. WBB Aug. 1972.

895.043 Punitive damages. (1) DEFINITIONS. In this section:

(a) "Defendant" means the party against whom punitive damages are sought.

(b) "Double damages" means those court awards made under a statute providing for twice, 2 times or double the amount of damages suffered by the injured party.

(c) "Plaintiff" means the party seeking to recover punitive damages.

(d) "Treble damages" means those court awards made under a statute providing for 3 times or treble the amount of damages suffered by the injured party.

(2) SCOPE. This section does not apply to awards of double damages or treble damages, or to the award of exemplary damages under ss. 46.90 (9) (a) and (b), 51.30 (9), 51.61 (7), 55.043 (9m) (a) and (b), 103.96 (2), 134.93 (5), 146.84 (1) (b) and (bm), 153.76, 252.14 (4), 252.15 (8) (a), 610.70 (7) (b), 943.245 (2) and (3) and 943.51 (2) and (3).

(3) STANDARD OF CONDUCT. The plaintiff may receive punitive damages if evidence is submitted showing that the defendant acted maliciously toward the plaintiff or in an intentional disregard of the rights of the plaintiff.

(4) PROCEDURE. If the plaintiff establishes a prima facie case for the allowance of punitive damages:

(a) The plaintiff may introduce evidence of the wealth of a defendant; and

(b) The judge shall submit to the jury a special verdict as to punitive damages or, if the case is tried to the court, the judge shall issue a special verdict as to punitive damages.

(5) APPLICATION OF JOINT AND SEVERAL LIABILITY. The rule of joint and several liability does not apply to punitive damages.

(6) LIMITATION ON DAMAGES. Punitive damages received by the plaintiff may not exceed twice the amount of any compensatory damages recovered by the plaintiff or $200,000, whichever is greater. This subsection does not apply to a plaintiff seeking punitive damages from a defendant whose actions under sub. (3) included the operation of a vehicle, including a motor vehicle as defined under s. 340.01 (35), an off–highway motorcycle, as defined in s. 23.335 (1) (q), a snowmobile as defined under s. 340.01 (58a), an all–terrain vehicle as defined under s. 340.01 (2g), a utility terrain vehicle as defined under s. 23.33 (1) (ng), and a boat as defined under s. 30.50 (2), while under the influence of an intoxicant to a degree that rendered the defendant incapable of safe operation of the vehicle. In this subsection, "intoxicant" has the meaning given in s. 30.50 (4e).

History: 1995 a. 17; 1997 a. 71; 1999 a. 79; 2005 a. 155 s. 71; Stats. 2005 s. 895.043; 2005 a. 388 s. 216; 2009 a. 274; 2011 a. 2, 208; 2013 a. 166 s. 77; 2015 a. 170.

Punitive damages may be awarded in products liability cases. Judicial controls over punitive damage awards are established. Wangen v. Ford Motor Co., 97 Wis. 2d 260, 294 N.W.2d 437 (1980).

Discussing guidelines for submission of punitive damages issues to the jury in a products liability case. Walter v. Cessna Aircraft Co., 121 Wis. 2d 221, 358 N.W.2d 816 (Ct. App. 1984).

In awarding punitive damages, the factors to be considered are: 1) the grievousness of the wrongdoer's acts; 2) the degree of malicious intent; 3) the potential damage that might have been caused by the acts; and 4) the defendant's ability to pay. An award is excessive if it inflicts a punishment or burden that is disproportionate to the wrongdoing. That a judge provided a means for the defendant to avoid paying the punitive damages awarded did not render the award invalid. Gianoli v. Pfleiderer, 209 Wis. 2d 509, 563 N.W.2d 562 (Ct. App. 1997), 95–2867.

NOTE: The above cases were decided prior to the adoption of s. 895.85 [now this section].

Nominal damages may support a punitive damage award in an action for intentional trespass. A grossly excessive punishment violates due process. Whether punitive damages violate due process depends on: 1) the reprehensibility of the conduct; 2) the disparity between the harm suffered and the punitive damages awarded; and 3) the difference between the award and other civil or criminal penalties authorized or imposed. Jacque v. Steenberg Homes, Inc., 209 Wis. 2d 605, 563 N.W.2d 154 (1997), 95–1028.

A circuit court entering default judgment on a punitive damages claim must make inquiry beyond the complaint to determine the merits of the claim and the amount to be awarded. Apex Electronics Corp. v. Gee, 217 Wis. 2d 378, 577 N.W.2d 23 (1998), 97–0353.

The requirement under sub. (3) that the defendant act "in an intentional disregard of the rights of the plaintiff" necessitates that the defendant act with a purpose to disregard the plaintiff's rights or be aware that the defendant's conduct is substantially certain to result in the plaintiff's rights being disregarded. The act or course of conduct must be deliberate and must actually disregard the rights of the plaintiff, whether it be a right to safety, health, or life, a property right, or some other right. There is no requirement of intent to injure or cause harm. Wischer v. Mitsubishi Heavy Industries America, Inc., 2005 WI 26, 279 Wis. 2d 4, 694 N.W.2d 320, 01–0724.

A defendant's conduct giving rise to punitive damages need not be directed at the specific plaintiff seeking punitive damages in order to recover under the statute. Wischer v. Mitsubishi Heavy Industries America, Inc., 2005 WI 26, 279 Wis. 2d 4, 694 N.W.2d 320, 01–0724.

Sub. (3) requires evidence of either malicious conduct or intentional disregard of the rights of the plaintiff, not both. Henrikson v. Strapon, 2008 WI App 145, 314 Wis. 2d 225, 758 N.W.2d 205, 07–2621.

Sub. (3) sets the bar for the kind of evidence required to support a punitive damage award and does not expand the category of cases in which punitive damages may be awarded. In cases in which punitive damages are barred in the first instance, the standard for conduct under sub. (3) does not come into play. Groshek v. Trewin, 2010 WI 51, 325 Wis. 2d 250, 784 N.W.2d 163, 08–0787.

Courts apply a six–factor test to determine whether a punitive damages award is excessive: 1) the grievousness of the acts; 2) the degree of malicious intent; 3) whether the award bears a reasonable relationship to the award of compensatory damages; 4) the potential damage that might have been caused by the acts; 5) the ratio of the award to civil or criminal penalties that could be imposed for comparable misconduct; and 6) the wealth of the wrongdoer. Courts are called upon to analyze only those factors that are most relevant to the case. The most important indicium of the reasonableness of a punitive damages award is the degree of reprehensibility of the defendant's conduct. Kimble v. Land Concepts, Inc., 2014 WI 21, 353 Wis. 2d 377, 845 N.W.2d 395, 11–1514.

Punitive damages are not available as a remedy in a breach of contract action. A jury's award of punitive damages must be based upon a finding of tort liability. The punitive damages awarded in this case were not based on tort liability, but rather on breach of contract and for the quasi−contractual unjust enrichment claim, neither of which supported an award for punitive damages. Mohns Inc. v. BMO Harris Bank National Ass'n, 2021 WI 8, 395 Wis. 2d 421, 954 N.W.2d 339, 18−0071.

The due process clause does not permit a jury to base an award of punitive damages in part upon its desire to punish the defendant for harming persons who are not before the court. However, evidence of actual harm to nonparties can help to show that the conduct that harmed the plaintiff also posed a substantial risk to the general public, and so was particularly reprehensible. The due process clause requires state courts to provide assurance that juries are seeking simply to determine reprehensibility and not also to punish for harm caused to strangers. Philip Morris USA v. Williams, 549 U.S. 346, 127 S. Ct. 1057, 166 L. Ed. 2d 940 (2007).

Punitive damages are recoverable under Wisconsin law regardless of whether damages are based on gain to the defendant—restitutionary damages—or loss to the plaintiff—compensatory damages. Wisconsin law allows awards of punitive damages when compensatory damages are imposed, and Wisconsin defines compensatory damages to include compensation, indemnity, and restitution. Epic Systems Corp. v. Tata Consultancy Services Ltd., 980 F.3d 1117 (2020).

A punitive damages award requires a new trial only when: 1) the claims of liability supporting punitive damages are based on different underlying conduct by the defendant; and 2) one of those claims, and therefore the conduct underlying that claim, is found to be unsupported as a matter of law. Epic Systems Corp. v. Tata Consultancy Services Ltd., 980 F.3d 1117 (2020).

When assessing punitive damages, constitutional limitations come into play only after the assessment has been tested against statutory and common law principles. The due process clause of the 14th amendment to the U.S. Constitution imposes constitutional limitations on punitive damages. Punitive damages may be imposed to further a state's legitimate interests in imposing punishment for and deterring illegal conduct, but punitive damages violate due process when the award is grossly excessive in relation to these interests. Epic Systems Corp. v. Tata Consultancy Services Ltd., 980 F.3d 1117 (2020).

In determining the reprehensibility of the defendant's conduct, the court considers five factors: 1) whether the harm caused was physical as opposed to economic; 2) whether the tortious conduct evinced an indifference to or a reckless disregard of the health or safety of others; 3) whether the target of the conduct had financial vulnerability; 4) whether the conduct involved repeated actions or was an isolated incident; and 5) whether the harm was the result of intentional malice, trickery, or deceit or mere accident. If none of these factors weigh in favor of the plaintiff, the award is suspect. Even if one factor weighs in the plaintiff's favor, that may not be enough to sustain the punitive award. Finally, since a plaintiff is presumed to be made whole by the compensatory award, punitive damages should be awarded only if the defendant's conduct is so reprehensible as to warrant the imposition of further sanctions to achieve punishment or deterrence. Epic Systems Corp. v. Tata Consultancy Services Ltd., 980 F.3d 1117 (2020).

The availability of punitive damages depends on the character of the particular conduct committed rather than on the theory of liability propounded by the plaintiff. The recovery of punitive damages requires that something must be shown over and above the mere breach of duty for which compensatory damages can be given. Unified Catholic Schools of Beaver Dam Educational Ass'n v. Universal Card Services Corp., 34 F. Supp. 2d 714 (1999).

The Future of Punitive Damages. SPECIAL ISSUE: 1998 WLR No. 1.

895.044 Damages for maintaining certain claims and counterclaims. (1) A party or a party's attorney may be liable for costs and fees under this section for commencing, using, or continuing an action, special proceeding, counterclaim, defense, cross complaint, or appeal to which any of the following applies:

(a) The action, special proceeding, counterclaim, defense, cross complaint, or appeal was commenced, used, or continued in bad faith, solely for purposes of harassing or maliciously injuring another.

(b) The party or the party's attorney knew, or should have known, that the action, special proceeding, counterclaim, defense, cross complaint, or appeal was without any reasonable basis in law or equity and could not be supported by a good faith argument for an extension, modification, or reversal of existing law.

(2) Upon either party's motion made at any time during the proceeding or upon judgment, if a court finds, upon clear and convincing evidence, that sub. (1) (a) or (b) applies to an action or special proceeding commenced or continued by a plaintiff or a counterclaim, defense, or cross complaint commenced, used, or continued by a defendant, the court:

(a) May, if the party served with the motion withdraws, or appropriately corrects, the action, special proceeding, counterclaim, defense, or cross complaint within 21 days after service of the motion, or within such other period as the court may prescribe, award to the party making the motion, as damages, the actual costs incurred by the party as a result of the action, special proceeding, counterclaim, defense, or cross complaint, including the actual reasonable attorney fees the party incurred, including fees incurred in any dispute over the application of this section. In determining whether to award, and the appropriate amount of, damages under this paragraph, the court shall take into consideration the timely withdrawal or correction made by the party served with the motion.

(b) Shall, if a withdrawal or correction under par. (a) is not timely made, award to the party making the motion, as damages, the actual costs incurred by the party as a result of the action, special proceeding, counterclaim, defense, or cross complaint, including the actual reasonable attorney fees the party incurred, including fees incurred in any dispute over the application of this section.

(3) If a party makes a motion under sub. (2), a copy of that motion and a notice of the date of the hearing on that motion shall be served on any party who is not represented by counsel only by personal service or by sending the motion to the party by registered mail.

(4) If an award under this section is affirmed upon appeal, the appellate court shall, upon completion of the appeal, remand the action to the trial court to award damages to compensate the successful party for the actual reasonable attorney fees the party incurred in the appeal.

(5) If the appellate court finds that sub. (1) (a) or (b) applies to an appeal, the appellate court shall, upon completion of the appeal, remand the action to the trial court to award damages to compensate the successful party for all the actual reasonable attorney fees the party incurred in the appeal. An appeal is subject to this subsection in its entirety if any element necessary to succeed on the appeal is supported solely by an argument that is described under sub. (1) (a) or (b).

(6) The costs and fees awarded under subs. (2), (4), and (5) may be assessed fully against the party bringing the action, special proceeding, cross complaint, defense, counterclaim, or appeal or the attorney representing the party, or both, jointly and severally, or may be assessed so that the party and the attorney each pay a portion of the costs and fees.

(7) This section does not apply to criminal actions or civil forfeiture actions. Subsection (5) does not apply to appeals under s. 809.107, 809.30, or 974.05 or to appeals of criminal or civil forfeiture actions.

History: 2011 a. 2.

Sub. (1), by using language that is identical to the language of s. 809.25 (3) (c), did not fundamentally alter what it means for an appeal to be frivolous. Thompson v. Ouellette, 2023 WI App 7, 406 Wis. 2d 99, 986 N.W.2d 338, 21−1087.

Discussing the interplay between sub. (5) and s. 809.25 (3), two parallel statutes that do not cross reference each other and that both purport to govern how appellate courts should direct the payment of attorney fees for frivolous appeals. Thompson v. Ouellette, 2023 WI App 7, 406 Wis. 2d 99, 986 N.W.2d 338, 21−1087.

Sub. (5) retains the longstanding rule that sanctions for a frivolous appeal will not be awarded unless the entire appeal is frivolous. However, sub. (5) modifies what it means for an appeal to be entirely frivolous by abrogating the specific articulation and application of that standard found in *Baumeister*, 2004 WI 148. One situation in which an appeal is frivolous in its entirety is when an element, issue, or argument "necessary to succeed on appeal" is supported solely by frivolous arguments. An element, issue, or argument is necessary to succeed on appeal if the appellant cannot secure a reversal, a remand, or another form of relief without prevailing on that element, issue, or argument. Thompson v. Ouellette, 2023 WI App 7, 406 Wis. 2d 99, 986 N.W.2d 338, 21−1087.

895.045 Contributory negligence. (1) COMPARATIVE NEGLIGENCE. Contributory negligence does not bar recovery in an action by any person or the person's legal representative to recover damages for negligence resulting in death or in injury to person or property, if that negligence was not greater than the negligence of the person against whom recovery is sought, but any damages allowed shall be diminished in the proportion to the amount of negligence attributed to the person recovering. The negligence of the plaintiff shall be measured separately against the negligence of each person found to be causally negligent. The liability of each person found to be causally negligent whose percentage of causal negligence is less than 51 percent is limited to the percentage of the total causal negligence attributed to that person. A person found to be causally negligent whose percentage of causal negligence is 51 percent or more shall be jointly and severally liable for the damages allowed.

(2) CONCERTED ACTION. Notwithstanding sub. (1), if 2 or more parties act in accordance with a common scheme or plan, those

parties are jointly and severally liable for all damages resulting from that action, except as provided in s. 895.043 (5).

(3) PRODUCT LIABILITY. (a) In an action by any person to recover damages for injuries caused by a defective product based on a claim of strict liability, the fact finder shall first determine if the injured party has the right to recover damages. To do so, the fact finder shall determine what percentage of the total causal responsibility for the injury resulted from the contributory negligence of the injured person, what percentage resulted from the defective condition of the product, and what percentage resulted from the contributory negligence of any other person.

(b) If the injured party's percentage of total causal responsibility for the injury is greater than the percentage resulting from the defective condition of the product, the injured party may not, based on the defect in the product, recover damages from the manufacturer, distributor, seller, or any other person responsible for placing the product in the stream of commerce.

(c) If the injured party's percentage of total causal responsibility for the injury is equal to or less than the percentage resulting from the defective condition of the product, the injured party may recover but the damages recovered by the injured party shall be diminished by the percentage attributed to that injured party.

(d) If multiple defendants are alleged to be responsible for the defective condition of the product, and the injured party is not barred from recovery under par. (b), the fact finder shall determine the percentage of causal responsibility of each product defendant for the defective condition of the product. The judge shall then multiply that percentage of causal responsibility of each product defendant for the defective condition of the product by the percentage of causal responsibility for the injury to the person attributed to the defective product. The result of that multiplication is the individual product defendant's percentage of responsibility for the damages to the injured party. A product defendant whose responsibility for the damages to the injured party is 51 percent or more of the total responsibility for the damages to the injured party is jointly and severally liable for all of the damages to the injured party. The responsibility of a product defendant whose responsibility for the damages to the injured party is less than 51 percent of the total responsibility for the damages to the injured party is limited to that product defendant's percentage of responsibility for the damages to the injured party.

(e) If the injured party is not barred from recovery under par. (b), the fact that the injured party's causal responsibility for the injury is greater than an individual product defendant's responsibility for the damages to the injured party does not bar the injured party from recovering from that individual product defendant.

(f) This subsection does not apply to actions based on negligence or a breach of warranty.

History: 1971 c. 47; 1993 a. 486; 1995 a. 17; 2005 a. 155; 2011 a. 2.

Cross−reference: See s. 891.44 for the conclusive presumption that a child under seven years old cannot be guilty of contributory negligence.

Ordinary negligence can be compared with negligence founded upon the safe−place statute, and, in making the comparison, a violation of the statute is not to be considered necessarily as contributing more than the common−law contributory negligence. It is not prejudicial error to not call attention to the different standards of care in a safe−place case when appropriate jury instructions are used. Lovesee v. Allied Development Corp., 45 Wis. 2d 340, 173 N.W.2d 196 (1970).

Adopting the doctrine of pure comparative negligence is a legislative matter. Vincent v. Pabst Brewing Co., 47 Wis. 2d 120, 177 N.W.2d 513 (1970).

There is no distinction between active and passive negligence as to responsibility for injury or full indemnity to a tortfeasor whose negligence was passive. Pachowitz v. Milwaukee & Suburban Transport Corp., 56 Wis. 2d 383, 202 N.W.2d 268 (1972).

For the purpose of applying the comparative negligence statute, both the causes of action for medical expenses and loss of consortium are derivative. The causal negligence of the injured spouse bars or limits the recovery of the claiming spouse pursuant to the terms of the statute. White v. Lunder, 66 Wis. 2d 563, 225 N.W.2d 442 (1975).

The contributory negligence of the plaintiff−spectator in viewing an auto race was not greater than defendants' negligence as a matter of law when the plaintiff did not realize that watching from a curve would be more dangerous than sitting in the grandstand, was not aware that tires would fly into the spectator area, there was no warning of potential dangers, and the plaintiff was watching the race closely immediately prior to the accident. Kaiser v. Cook, 67 Wis. 2d 460, 227 N.W.2d 50 (1975).

The trial court's denial of a motion by two employee−defendants to direct the jury to consider the employer's negligence in its special verdict, even though the employer's liability extended only to workers compensation, was an error. Connar v. West Shore Equipment of Milwaukee, Inc., 68 Wis. 2d 42, 227 N.W.2d 660 (1975).

The trial court's instruction to the jury not to compute all of the damages the plaintiff suffered, but only that portion caused by the defendant's negligence, was erroneous. This section requires the jury to find 100 percent of the plaintiff's damages, which are then reduced by the amount of contributory negligence. Nimmer v. Purtell, 69 Wis. 2d 21, 230 N.W.2d 258 (1975).

Conduct constituting implied or tacit assumption of risk is not a bar to an action for negligence. Polsky v. Levine, 73 Wis. 2d 547, 243 N.W.2d 503 (1976).

A minor injured during employment cannot be charged with contributory negligence when the employment is in violation of child labor laws. Tisdale v. Hasslinger, 79 Wis. 2d 194, 255 N.W.2d 314 (1977).

When the court granted judgment notwithstanding the verdict regarding two of several defendants found causally negligent, and the percentage of negligence reallocated affected damages but not liability, the plaintiffs should have been given the option of a proportional reduction of the judgment or a new trial. Chart v. General Motors Corp., 80 Wis. 2d 91, 258 N.W.2d 680 (1977).

If a court can find as a matter of law that a party is causally negligent, contrary to the jury's answer, and the jury attributes some degree of comparative negligence to that party, the court should change the causal negligence answer and permit the jury's comparison to stand. Ollinger v. Grall, 80 Wis. 2d 213, 258 N.W.2d 693 (1977).

When blowing snow obstructed a driver's vision, but the driver did not reduce speed, and a parked truck on the highway "loomed up" out of the snow, the driver was causally negligent as matter of law. Nelson v. Travelers Insurance Co., 80 Wis. 2d 272, 259 N.W.2d 48 (1977).

The "emergency doctrine" relieves a person for liability for the person's actions when that person is faced with a sudden emergency the person did not create. The "rescue rule" applies even though the action of the rescuer is deliberate and taken after some planning and consideration. Rescuers will not be absolved of all negligence if their actions are unreasonable under the circumstances. Cords v. Anderson, 80 Wis. 2d 525, 259 N.W.2d 672 (1977).

The negligence of a tortfeasor dismissed from a lawsuit on summary judgment as being less or equally negligent as the plaintiff can be considered by the jury in apportioning the total causal negligence of the remaining parties. Gross v. Midwest Speedways, Inc., 81 Wis. 2d 129, 260 N.W.2d 36 (1977).

Negligence per se arising out of a breach of a safety statute may be compared with common law negligence. Locicero v. Interpace Corp., 83 Wis. 2d 876, 266 N.W.2d 423 (1978).

Contributory negligence, if proved, is a defense in a strict liability case. Austin v. Ford Motor Co., 86 Wis. 2d 628, 273 N.W.2d 233 (1979).

In a safe place case, comparative negligence instructions need not direct the jury to consider the defendant's higher duty of care. Brons v. Bischoff, 89 Wis. 2d 80, 277 N.W.2d 854 (1979).

A motorist injured while fleeing the police was, as matter of law, more negligent than the pursuing officer. Brunette v. Employers Mutual Liability Insurance Co. of Wisconsin, 107 Wis. 2d 361, 320 N.W.2d 43 (Ct. App. 1982).

Failure to give the jury an emergency instruction was reversible error, despite the plaintiff's violation of several safety statutes. Discussing when an emergency instruction is appropriate. Westfall v. Kottke, 110 Wis. 2d 86, 328 N.W.2d 481 (1983).

Distinguishing "seat belt negligence" and "passive negligence," recommending jury instructions regarding seat belts, and adopting a method for apportioning damages in seat belt negligence cases. Foley v. City of West Allis, 113 Wis. 2d 475, 335 N.W.2d 824 (1983).

A bus driver who told an 11−year−old that he could not ride the school bus the next day, but did not inform either the school or the child's parents, was properly found 93 percent liable for injuries sustained by the boy while riding his bicycle to school the next day. Toeller v. Mutual Service Casualty Insurance Co., 115 Wis. 2d 631, 340 N.W.2d 923 (Ct. App. 1983).

Recovery under s. 895.04 (7) is barred by this section if a decedent's negligence is greater than any individual tortfeasor's. Delvaux v. Vanden Langenberg, 130 Wis. 2d 464, 387 N.W.2d 751 (1986).

A negligent tortfeasor has the right to indemnity from an intentional joint tortfeasor. A *Pierringer*, 21 Wis. 2d 182 (1963), release of the intentional tortfeasor absolved the negligent tortfeasor. Fleming v. Threshermen's Mutual Insurance Co., 131 Wis. 2d 123, 388 N.W.2d 908 (1986).

Punitive damages may not be recovered when actual damages are unavailable due to this section. Tucker v. Marcus, 142 Wis. 2d 425, 418 N.W.2d 818 (1988).

This section is inapplicable to the equitable resolution of a subrogation dispute. Ives v. Coopertools, 197 Wis. 2d 937, 541 N.W.2d 247 (Ct. App. 1995).

The 1995 amendment of sub. (1) does not apply to strict product liability actions. Fuchsgruber v. Custom Accessories, Inc., 2001 WI 81, 244 Wis. 2d 758, 628 N.W.2d 833, 98−2419.

Retroactive application of the 1995 amendment of this section was unconstitutional. Matthies v. Positive Safety Manufacturing Co., 2001 WI 82, 244 Wis. 2d 720, 628 N.W.2d 842, 99−0431.

Only a tortfeasor found to be 51 percent or more causally negligent may be jointly and severally liable for a plaintiff's total damages. That a plaintiff has no negligence does not alter that rule. Thomas v. Bickler, 2002 WI App 268, 258 Wis. 2d 304, 654 N.W.2d 248, 01−2006.

The due process clause of the 14th amendment to the U.S. Constitution prohibits a state from imposing a grossly excessive punishment on a tortfeasor. The degree of reprehensibility of the conduct, the disparity between the harm or potential harm suffered by the plaintiff and the punitive damage award, and the difference between the remedy and other civil penalties imposed in comparable cases are factors to be considered. The most important factor is the degree of reprehensibility. Strenke v. Hogner, 2005 WI App 194, 287 Wis. 2d 135, 704 N.W.2d 309, 03−2527.

When a trial court finds that a small claims plaintiff's actual damages exceed the statutory award limit of $5,000, the court should apply any reduction for comparative negligence to the damages found before applying the statutory limit. Bryhan v. Pink, 2006 WI App 111, 294 Wis. 2d 347, 718 N.W.2d 112, 05−1030.

Sub. (2) is a codification of the common−law rule on concerted−action liability and not a new cause of action. Concerted−action liability attaches when two or more persons commit a tortious act in concert. Even if an agreement exists, if that agreement does not directly relate to the tortious conduct that caused the injury, the agreement

is insufficient to satisfy the agreement required for concerted action. A plan among three people to purchase alcohol for an underage drinker who later caused injury driving while intoxicated did not constitute a concerted action when the common plan to purchase alcohol was not also a common scheme or plan to engage in the act of driving that caused the injury. Richards v. Badger Mutual Insurance Co., 2006 WI App 255, 297 Wis. 2d 699, 727 N.W.2d 69, 05−2796.

Sub. (2) applies only after a judge or jury has determined, under applicable substantive law, that more than one tortfeasor is liable in some measure to the plaintiff. Sub. (2) plays no role in determining whether a given defendant may be held liable to the plaintiff. Danks v. Stock Building Supply, Inc., 2007 WI App 8, 298 Wis. 2d 348, 727 N.W.2d 846, 05−2679.

Sub. (2) is the codification of the common law concerted action theory of liability. There are three factual predicates necessary to proving concerted action: 1) there must be an explicit or tacit agreement among the parties to act in accordance with a mutually agreed upon scheme or plan; parallel action, without more, is insufficient to show a common scheme or plan; 2) there must be mutual acts committed in furtherance of that common scheme or plan that are tortious acts; and 3) the tortious acts that are undertaken to accomplish the common scheme or plan must be the acts that result in damages. Richards v. Badger Mutual Insurance Co., 2008 WI 52, 309 Wis. 2d 541, 749 N.W.2d 581, 05−2796.

When the plaintiff's negligence was greater than any injurer's, neither the plaintiff nor the plaintiff's spouse could recover. Spearing v. National Iron Co., 770 F.2d 87 (1985).

Proportioning Comparative Negligence—Problems of Theory and Special Verdict Formulation. Aiken. 53 MLR 293 (1970).

From Defect to Cause to Comparative Fault—Rethinking Some Product Liability Concepts. Twerski. 60 MLR 297 (1977).

The Problem of the Insolvent Contributor. Myse. 60 MLR 891 (1977).

Punitive Damage Recovery in Products Liability Cases. Ghiardi & Kircher. 65 MLR 1 (1981).

The Concepts of "Defective Condition" and "Unreasonably Dangerous" in Products Liability Law. Swartz. 66 MLR 280 (1983).

Seat Belt Negligence: The Ambivalent Wisconsin Rules. McChrystal. 68 MLR 539 (1985).

Second Collision Law—Wisconsin. Ghiardi. 69 MLR 1 (1985).

Strict Products Liability in Wisconsin. Severson. 1977 WLR 227.

Comparative Negligence in Wisconsin. Horowitz. WBB Jan. 1981.

Plaintiff's failure to wear a safety belt. Towers. WBB July 1985.

Wisconsin's Modified, Modified Comparative Negligence Law. Kircher. Wis. Law. Feb. 1996.

Enforceable Exculpatory Agreements. Pendleton. Wis. Law. Nov. 1997.

Wisconsin's Comparative Negligence Statute: Applying It to Products Liability Cases Brought Under a Strict Liability Theory. Pless. Wis. Law. Aug. 1998.

895.046 Remedies against manufacturers, distributors, sellers, and promoters of products. (1g) LEGISLATIVE FINDINGS AND INTENT. The legislature finds that it is in the public interest to clarify product liability law, generally, and the application of the risk contribution theory of liability first announced by the Wisconsin Supreme Court in *Collins v. Eli Lilly Company*, 116 Wis. 2d 166 (1984), specifically, in order to return tort law to its historical, common law roots. This return both protects the rights of citizens to pursue legitimate and timely claims of injury resulting from defective products, and assures that businesses may conduct activities in this state without fear of being sued for indefinite claims of harm from products which businesses may never have manufactured, distributed, sold, or promoted, or which were made and sold decades ago. The legislature finds that the application of risk contribution to former white lead carbonate manufacturers in *Thomas v. Mallett*, 285 Wis. 2d 236 (2005), was an improperly expansive application of the risk contribution theory of liability announced in *Collins*, and that application raised substantial questions of deprivation of due process, equal protection, and right to jury trial under the federal and Wisconsin constitutions. The legislature finds that this section protects the right to a remedy found in article I, section 9, of the Wisconsin Constitution, by preserving the narrow and limited application of the risk contribution theory of liability announced in *Collins*.

(1r) DEFINITIONS. In this section:

(a) "Claimant" means a person seeking damages or other relief for injury or harm to a person or property caused by or arising from a product, or a person on whose behalf a claim for such damages or other relief is asserted.

(b) "Relevant production period" means the time period during which the specific product that allegedly caused a claimant's injury or harm was manufactured, distributed, sold, or promoted.

(2) APPLICABILITY. This section applies to all actions in law or equity, whenever filed or accrued, in which a claimant alleges that the manufacturer, distributor, seller, or promoter of a product is liable for an injury or harm to a person or property, including actions based on allegations that the design, manufacture, distribution, sale, or promotion of, or instructions or warnings about, a product caused or contributed to a personal injury or harm to a person or property, a private nuisance, or a public nuisance, and to all related or independent claims, including unjust enrichment, restitution, or indemnification.

(3) REMEDY WITH SPECIFIC PRODUCT IDENTIFICATION. Except as provided in sub. (4), the manufacturer, distributor, seller, or promoter of a product may be held liable in an action under sub. (2) only if the claimant proves, in addition to any other elements required to prove his or her claim, that the manufacturer, distributor, seller, or promoter of a product manufactured, distributed, sold, or promoted the specific product alleged to have caused the claimant's injury or harm.

(4) REMEDY WITHOUT SPECIFIC PRODUCT IDENTIFICATION. Subject to sub. (5), if a claimant cannot meet the burden of proof under sub. (3), the manufacturer, distributor, seller, or promoter of a product may be held liable for an action under sub. (2) only if all of the following apply:

(a) The claimant proves all of the following:

1. That no other lawful process exists for the claimant to seek any redress from any other person for the injury or harm.

2. That the claimant has suffered an injury or harm that can be caused only by a manufactured product chemically and physically identical to the specific product that allegedly caused the claimant's injury or harm.

3. That the manufacturer, distributor, seller, or promoter of a product manufactured, distributed, sold, or promoted a complete integrated product, in the form used by the claimant or to which the claimant was exposed, and that meets all of the following criteria:

a. Is chemically and physically identical to the specific product that allegedly caused the claimant's injury or harm.

b. Was manufactured, distributed, sold, or promoted in the geographic market where the injury or harm is alleged to have occurred during the time period in which the specific product that allegedly caused the claimant's injury or harm was manufactured, distributed, sold, or promoted.

c. Was distributed or sold without labeling or any distinctive characteristic that identified the manufacturer, distributor, seller, or promoter.

(b) The action names, as defendants, those manufacturers of a product who collectively manufactured at least 80 percent of all products sold in this state during the relevant production period by all manufacturers of the product in existence during the relevant production period that are chemically identical to the specific product that allegedly caused the claimant's injury or harm.

(5) LIMITATION ON LIABILITY. No manufacturer, distributor, seller, or promoter of a product is liable under sub. (4) if more than 25 years have passed between the date that the manufacturer, distributor, seller, or promoter of a product last manufactured, distributed, sold, or promoted the specific product chemically identical to the specific product that allegedly caused the claimant's injury and the date that the claimant's cause of action accrued.

(6) APPORTIONMENT OF LIABILITY. If more than one manufacturer, distributor, seller, or promoter of a product is found liable for the claimant's injury or harm under subs. (4) and (5), the court shall apportion liability among those manufacturers, distributors, sellers, and promoters, but that liability shall be several and not joint.

History: 2011 a. 2; 2013 a. 20; s. 35.17 correction in (1g).

Article I, section 1, of the Wisconsin Constitution prohibits retroactive application of this section. Wisconsin Supreme Court precedent demands holding that this section violates state due−process principles by trying to extinguish the plaintiff's vested right in the plaintiff's negligence and strict−liability causes of action. Gibson v. American Cyanamid Co., 760 F.3d 600 (2014).

This section reinstates ordinary causation principles in all products liability cases, while carving out a narrow exception for plaintiffs like *Collins*, 116 Wis. 2d 166 (1984), who have no other remedy and whose injuries stem from a completely integrated product produced in chemically and physically identical forms and sold in generic packaging. The net effect of this section, *Thomas*, 2005 WI 129, and *Gibson*, 760 F.3d 600 (2014), is a six−year window (2005−2011) in which plaintiffs in Wis-

consin can rely on the risk–contribution theory to sue white lead carbonate manufacturers for injuries arising from their ingestion of white lead carbonate as children. Burton v. E.I. du Pont de Nemours & Co., 994 F.3d 791 (2021).

Although this section may not retroactively extinguish the cause of action that *Thomas*, 2005 WI 129, recognized, the plaintiffs' claims in this case went beyond *Thomas*, and this section forbade the district court's extension of *Thomas*. The district court improperly extended *Thomas* by allowing the plaintiffs to hold the defendants liable in their capacity as manufacturers of finished paint products, and not just in their capacity as manufacturers of white lead carbonate. Burton v. E.I. du Pont de Nemours & Co., 994 F.3d 791 (2021).

Wisconsin Is Open for Business or Business Just as Usual? The Practical Effects and Implications of 2011 Wisconsin Act 2. Irgens. 2012 WLR 1245.

895.047 Product liability. (1) LIABILITY OF MANUFACTURER. In an action for damages caused by a manufactured product based on a claim of strict liability, a manufacturer is liable to a claimant if the claimant establishes all of the following by a preponderance of the evidence:

(a) That the product is defective because it contains a manufacturing defect, is defective in design, or is defective because of inadequate instructions or warnings. A product contains a manufacturing defect if the product departs from its intended design even though all possible care was exercised in the manufacture of the product. A product is defective in design if the foreseeable risks of harm posed by the product could have been reduced or avoided by the adoption of a reasonable alternative design by the manufacturer and the omission of the alternative design renders the product not reasonably safe. A product is defective because of inadequate instructions or warnings only if the foreseeable risks of harm posed by the product could have been reduced or avoided by the provision of reasonable instructions or warnings by the manufacturer and the omission of the instructions or warnings renders the product not reasonably safe.

(b) That the defective condition rendered the product unreasonably dangerous to persons or property.

(c) That the defective condition existed at the time the product left the control of the manufacturer.

(d) That the product reached the user or consumer without substantial change in the condition in which it was sold.

(e) That the defective condition was a cause of the claimant's damages.

(2) LIABILITY OF SELLER OR DISTRIBUTOR. (a) A seller or distributor of a product is not liable based on a claim of strict liability to a claimant unless the manufacturer would be liable under sub. (1) and any of the following applies:

1. The claimant proves by a preponderance of the evidence that the seller or distributor has contractually assumed one of the manufacturer's duties to manufacture, design, or provide warnings or instructions with respect to the product.

2. The claimant proves by a preponderance of the evidence that neither the manufacturer nor its insurer is subject to service of process within this state.

3. A court determines that the claimant would be unable to enforce a judgment against the manufacturer or its insurer.

(b) The court shall dismiss a product seller or distributor as a defendant based on par. (a) 2. if the manufacturer or its insurer submits itself to the jurisdiction of the court in which the suit is pending.

(3) DEFENSES. (a) If the defendant proves by clear and convincing evidence that at the time of the injury the claimant was under the influence of any controlled substance or controlled substance analog to the extent prohibited under s. 346.63 (1) (a), or had an alcohol concentration, as defined in s. 340.01 (1v), of 0.08 or more, there shall be a rebuttable presumption that the claimant's intoxication or drug use was the cause of his or her injury.

(b) Evidence that the product, at the time of sale, complied in material respects with relevant standards, conditions, or specifications adopted or approved by a federal or state law or agency shall create a rebuttable presumption that the product is not defective.

(c) The damages for which a manufacturer, seller, or distributor would otherwise be liable shall be reduced by the percentage of causal responsibility for the claimant's harm attributable to the claimant's misuse, alteration, or modification of the product.

(d) The court shall dismiss the claimant's action under this section if the damage was caused by an inherent characteristic of the product that would be recognized by an ordinary person with ordinary knowledge common to the community that uses or consumes the product.

(e) A seller or distributor of a product is not liable to a claimant for damages if the seller or distributor receives the product in a sealed container and has no reasonable opportunity to test or inspect the product. This paragraph does not apply if the seller or distributor may be liable under sub. (2) (a) 2. or 3.

(4) SUBSEQUENT REMEDIAL MEASURES. In an action for damages caused by a manufactured product based on a claim of strict liability, evidence of remedial measures taken subsequent to the sale of the product is not admissible for the purpose of showing a manufacturing defect in the product, a defect in the design of the product, or a need for a warning or instruction. This subsection does not prohibit the admission of such evidence to show a reasonable alternative design that existed at the time when the product was sold.

(5) TIME LIMIT. In any action under this section, a defendant is not liable to a claimant for damages if the product alleged to have caused the damage was manufactured 15 years or more before the claim accrues, unless the manufacturer makes a specific representation that the product will last for a period beyond 15 years. This subsection does not apply to an action based on a claim for damages caused by a latent disease.

(6) INAPPLICABILITY. This section does not apply to actions based on a claim of negligence or breach of warranty.

History: 2011 a. 2.

Allegations that a defendant was negligent because it selected and applied a mortar that was not appropriate for the context in which it was used did not give rise to a product liability claim because the plaintiffs did not allege that the defendant manufactured or sold a defective product. Wascher v. ABC Insurance Co., 2022 WI App 10, 401 Wis. 2d 94, 972 N.W.2d 162, 20–1961.

When a claim is for defective design: 1) sub. (1) (a) requires proof of a more safe, reasonable alternative design the omission of which renders the product not reasonably safe; 2) proof that the consumer–contemplation standard as set out in sub. (1) (b) for strict liability claims for a defective design has been met; and 3) proof that the remaining three factors of a sub. (1) claim have been met. Murphy v. Columbus McKinnon Corp., 2022 WI 109, 405 Wis. 2d 157, 982 N.W.2d 898, 20–1124.

While sub. (1) (a) appears to borrow language from section 2 of the Restatement (Third) of Torts, the legislature did not adopt the entirety of section 2, nor did it enact the Restatement's voluminous comments. The plain language of sub. (1) (a) is clear, and the court interprets it by its plain language. Regardless of where the language originated, the court will not read Restatement language or comments into the statute, simply because the legislature selectively adopted some wording from the Restatement. Murphy v. Columbus McKinnon Corp., 2022 WI 109, 405 Wis. 2d 157, 982 N.W.2d 898, 20–1124.

Sub. (1) (b), (c), (d), and (e) codify the common law Wisconsin courts have developed and applied for decades, including the common law consumer–contemplation standard in sub. (1) (b). *Vincer*, 69 Wis. 2d 326 (1975), established that the consumer–contemplation test for an unreasonably dangerous defect depends on the reasonable expectations of the ordinary consumer concerning the characteristics of this type of product. Murphy v. Columbus McKinnon Corp., 2022 WI 109, 405 Wis. 2d 157, 982 N.W.2d 898, 20–1124.

Sub. (6) specifically maintains the criteria for claims of negligence and breach of warranty, claims well–grounded in Wisconsin common law. Murphy v. Columbus McKinnon Corp., 2022 WI 109, 405 Wis. 2d 157, 982 N.W.2d 898, 20–1124.

The presumption of nondefectiveness codified in sub. (3) (b) does not shift the burden of proof from one party to another. Instead, the presumption is the legal mechanism for according a product's compliance with certain government standards special weight in the factfinder's ultimate determination whether the product is defective. Vanderventer v. Hyundai Motor America, 2022 WI App 56, 405 Wis. 2d 481, 983 N.W.2d 1, 20–1052.

Sub. (3) (b) is silent regarding what evidence a plaintiff may introduce to rebut the presumption. In this case, the court admitted evidence of 85 recalls involving the defendant's vehicles and components other than the driver's seat at issue in the case. The recall evidence tended to show that vehicles that comply with Federal Motor Vehicle Safety Standards could nonetheless have safety–related defects. This, in turn, could have supported an inference that the subject vehicle's satisfaction of those standards was not especially strong evidence that its driver's seat was not defective. Thus, the court did not exceed its discretion in concluding that recalls related to other vehicles and components carried some probative value on the issue. Vanderventer v. Hyundai Motor America, 2022 WI App 56, 405 Wis. 2d 481, 983 N.W.2d 1, 20–1052.

To prove the existence of a reasonable alternative design under sub. (1) (a), a plaintiff need not produce an actual prototype of a reasonable design alternative, nor does a plaintiff have to show that the alternative design was ever adopted by a manufacturer or considered for commercial use. Instead a plaintiff may rely on credible expert testimony that the alternative design could have been practically adopted as of the time of sale. In addition, other products already available on the market may serve

as reasonable alternatives to the product in question. Vanderventer v. Hyundai Motor America, 2022 WI App 56, 405 Wis. 2d 481, 983 N.W.2d 1, 20−1052.

Wisconsin's codification under 2011 Wis. Act 2 of its product liability law generally did not supersede the common law. Janusz v. Symmetry Medical Inc., 256 F. Supp. 3d 995 (2017).

The contract specification defense does not apply to a claim of strict liability under Wisconsin law. Under the contract specification defense, a manufacturer that makes a product strictly in accordance with the design specifications of another is not liable in negligence unless the specifications are so obviously defective and dangerous that a contractor of reasonable prudence would have been put on notice that the product is dangerous and likely to cause injury. The contract specification defense significantly undermines the policies underlying strict liability. Therefore, the defense does not exist under Wisconsin law. Janusz v. Symmetry Medical Inc., 256 F. Supp. 3d 995 (2017).

A manufacturer of a component that is incorporated into a larger product is not necessarily strictly liable should the larger product prove defective. A component manufacturer is strictly liable only if the injury is directly attributable to a defect in the component and there was no change in the component that was merely incorporated into something larger. But when the component part is subject to further proceeding or substantial change, or when the causing of injury is not directly attributable to defective construction of the component part, the result might be different. The Wisconsin legislature explicitly codified this common law requirement under sub. (1) (d). Janusz v. Symmetry Medical Inc., 256 F. Supp. 3d 995 (2017).

Sellers and distributors are liable under sub. (2), not because of any particular activity on their part, but because they are proxies for absent manufacturers. This structure suggests that, in the absence of the manufacturer, the entity responsible for getting the defective product into Wisconsin is liable. In this case, the defendant did not own the product sold to the plaintiff, but, for products sold under the defendant's "Fulfillment by Amazon" program, the defendant otherwise served all the traditional functions of both retail seller and wholesale distributor. Thus, when the defendant provided order fulfillment services through the program, the defendant was properly considered a seller for purposes of Wisconsin strict product liability law for products sold by third parties through the defendant's website. State Farm Fire & Casualty Co. v. Amazon.com, Inc., 390 F. Supp. 3d 964 (2019).

The Wisconsin Constitution's guarantee to due process prohibits retroactive application of this section in this case. Nelson v. Johnson & Johnson, 428 F. Supp. 3d 1 (2019).

This section alters the way in which a plaintiff proves a strict products liability claim. It essentially changes the elements and redefines a defectively−designed product. Implicit in the language of sub. (1) (a) is the rule that an inherently dangerous product for which there is no safer alternative cannot be found unreasonably dangerous. Sub. (1) (a) thus imposes new burdens on a plaintiff by requiring that the plaintiff prove foreseeability and that a reasonable alternative design exists and should have been adopted by the manufacturer. Nelson v. Johnson & Johnson, 428 F. Supp. 3d 1 (2019).

Wisconsin Is Open for Business or Business Just as Usual? The Practical Effects and Implications of 2011 Wisconsin Act 2. Irgens. 2012 WLR 1245.

A New Era: Products Liability Law in Wisconsin. Edwards & Ozalp. Wis. Law. July 2011.

895.048 Recovery by auto or motorboat owner limited. The owner of a motor vehicle or motorboat which, while being operated by the spouse or minor child of such owner, is damaged as the result of an accident involving another vehicle or boat, may not recover from the owner or operator of such other vehicle or boat for such damages, if the negligence of such spouse or minor child exceeds that of the operator of such other vehicle or boat. In the event that it is judicially determined that a spouse or minor operator of the motor vehicle or motorboat is found to be guilty of less than 50 percent of the causal negligence involved in an accident, then in that event the owner of the motor vehicle or motorboat involved shall be entitled to recover in accordance with the contributory negligence principles as laid down in s. 895.045. For the purposes of recovery of damages by the owner under s. 895.048, and for this purpose only, the negligence of the spouse or minor operator shall be imputed to the owner.

895.049 Recovery by a person who fails to use protective headgear while operating certain motor vehicles. Notwithstanding s. 895.045, failure by a person who operates or is a passenger on a utility terrain vehicle, as defined in s. 23.33 (1) (ng), a motorcycle, as defined in s. 340.01 (32), an all−terrain vehicle, as defined in s. 340.01 (2g), or a snowmobile, as defined in s. 340.01 (58a), on or off a highway, to use protective headgear shall not reduce recovery for injuries or damages by the person or the person's legal representative in any civil action. This section does not apply to any person required to wear protective headgear under s. 23.33 (3g), 23.335 (8) (a) or (b), or 347.485 (1).

History: 2003 a. 148; 2011 a. 208; 2015 a. 170.

When this section applies to prohibit a reduction of damages, it necessarily also precludes a person's failure to wear a helmet from being considered a form of negligence. Hardy v. Hoefferle, 2007 WI App 264, 306 Wis. 2d 513, 743 N.W.2d 843, 06−2861.

895.05 Damages in actions for libel. (1) The proprietor, publisher, editor, writer or reporter upon any newspaper published in this state shall not be liable in any civil action for libel for the publication in such newspaper of a true and fair report of any judicial, legislative or other public official proceeding authorized by law or of any public statement, speech, argument or debate in the course of such proceeding. This section shall not be construed to exempt any such proprietor, publisher, editor, writer or reporter from liability for any libelous matter contained in any headline or headings to any such report, or to libelous remarks or comments added or interpolated in any such report or made and published concerning the same, which remarks or comments were not uttered by the person libeled or spoken concerning the person libeled in the course of such proceeding by some other person.

(2) Before any civil action shall be commenced on account of any libelous publication in any newspaper, magazine or periodical, the libeled person shall first give those alleged to be responsible or liable for the publication a reasonable opportunity to correct the libelous matter. Such opportunity shall be given by notice in writing specifying the article and the statements therein which are claimed to be false and defamatory and a statement of what are claimed to be the true facts. The notice may also state the sources, if any, from which the true facts may be ascertained with definiteness and certainty. The first issue published after the expiration of one week from the receipt of such notice shall be within a reasonable time for correction. To the extent that the true facts are, with reasonable diligence, ascertainable with definiteness and certainty, only a retraction shall constitute a correction; otherwise the publication of the libeled person's statement of the true facts, or so much thereof as shall not be libelous of another, scurrilous, or otherwise improper for publication, published as the libeled person's statement, shall constitute a correction within the meaning of this section. A correction, timely published, without comment, in a position and type as prominent as the alleged libel, shall constitute a defense against the recovery of any damages except actual damages, as well as being competent and material in mitigation of actual damages to the extent the correction published does so mitigate them.

History: 1993 a. 486.

One who contributes a nondefamatory photograph of the plaintiff to a newspaper to accompany a defamatory article is not liable absent knowledge or control of the article. Westby v. Madison Newspapers, Inc., 81 Wis. 2d 1, 259 N.W.2d 691 (1977).

A newscaster did not act with knowledge of falsity or with reckless disregard for the truth by broadcasting that the plaintiff had been charged with a crime when the newscaster was told by a deputy sheriff that charges would be filed. Prahl v. Brosamle, 98 Wis. 2d 130, 295 N.W.2d 768 (Ct. App. 1980).

A contract printer had no reason to know of libel and was entitled to summary judgment. Maynard v. Port Publications, Inc., 98 Wis. 2d 555, 297 N.W.2d 500 (1980).

Sub. (2) applies to non−media defendants, but relates only to libelous publications in print media, not broadcast media. Hucko v. Jos. Schlitz Brewing Co., 100 Wis. 2d 372, 302 N.W.2d 68 (Ct. App. 1981).

The trial court properly dismissed a defamation claim based on a letter by a medical director charging that a foundation conducted a sham nonprofit operation since the director established the defense of truth. Fields Foundation, Ltd. v. Christensen, 103 Wis. 2d 465, 309 N.W.2d 125 (Ct. App. 1981).

The following criteria are applicable to whether a defamation plaintiff may be considered a public figure for a limited range of issues: 1) there must be a public controversy; and 2) the court must look at the nature of the plaintiff's involvement in the public controversy to see whether the plaintiff has voluntarily injected himself or herself into the controversy so as to influence the resolution of the issues involved. Denny v. Mertz, 106 Wis. 2d 636, 318 N.W.2d 141 (1982). But see Wiegel v. Capital Times Co., 145 Wis. 2d 71, 426 N.W.2d 43 (Ct. App. 1988).

A private individual need only prove that a news media defendant was negligent in broadcasting or publishing a defamatory statement. A negligence standard complies with the guarantee of freedom of the press contained in the Wisconsin Constitution. Denny v. Mertz, 106 Wis. 2d 636, 318 N.W.2d 141 (1982).

A former legislator who had gained notoriety within the district while in office and who was allegedly defamed in a radio broadcast within the district was a "public figure" for purposes of a defamation action. Lewis v. Coursolle Broadcasting of Wisconsin, Inc., 127 Wis. 2d 105, 377 N.W.2d 166 (1985).

A computer bulletin board is not a periodical and not subject to sub. (2). It's In the Cards, Inc. v. Fuschetto, 193 Wis. 2d 429, 535 N.W.2d 11 (Ct. App. 1995).

If a defamation plaintiff is a public figure, there must be proof of actual malice. The deliberate choice of one interpretation of a number of possible interpretations does not create a jury issue of actual malice. The selective destruction by a defendant of materials likely to be relevant to defamation litigation allows an inference that the materials would have provided evidence of actual malice, but the inference is of little weight when uncontroverted testimony makes the malice assertion a remote possibility. Torgerson v. Journal/Sentinel Inc., 210 Wis. 2d 524, 563 N.W.2d 472 (1997), 95−1098.

For purposes of libel law, a "public figure" who must prove malice includes a person who by being drawn into or interjecting himself or herself into a public controversy becomes a public figure for a limited purpose because of involvement in the particular controversy. "Public figure" status can be created without purposeful or voluntary conduct by the individual involved. Erdmann v. SF Broadcasting of Green Bay, Inc., 229 Wis. 2d 156, 599 N.W.2d 1 (Ct. App. 1999), 98–2660. See also Sidoff v. Merry, 2023 WI App 49, 409 Wis. 2d 186, 996 N.W.2d 88, 22–1871.

A "public dispute" is not simply a matter of interest to the public. It must be a real dispute, the outcome of which affects the general public in an appreciable way. Essentially private concerns do not become public controversies because they attract attention; the dispute's ramifications must be felt by persons who are not direct participants. Maguire v. Journal Sentinel, Inc., 2000 WI App 4, 232 Wis. 2d 236, 605 N.W.2d 881, 97–3675.

The sub. (2) notice requirement applies to only libel in print. Schultz v. Sykes, 2001 WI App 255, 248 Wis. 2d 746, 638 N.W.2d 604, 00–0915.

In defamation cases, circuit courts should ordinarily decide a pending motion to dismiss for failure to state a claim before sanctioning a party for refusing to disclose information that would identify otherwise–anonymous members of an organization. Lassa v. Rongstad, 2006 WI 105, 294 Wis. 2d 187, 718 N.W.2d 673, 04–0377.

Actual malice requires that an allegedly defamatory statement be made with knowledge that it is false or with reckless disregard of whether it is false or not. Actual malice does not mean bad intent, ill–will, or animus. Repeated publication of a statement after being informed that the statement is false does not constitute actual malice so long as the speaker believes it to be true. Actual malice cannot be inferred from the choice of one rational interpretation of a speech over another. Storms v. Action Wisconsin Inc., 2008 WI 56, 309 Wis. 2d 704, 750 N.W.2d 739, 06–0396.

There are two kinds of public figures: public figures for all purposes and public figures for a limited purpose. Like public officials, public figures for all purposes must prove actual malice in all circumstances. Limited purpose public figures, on the other hand, are otherwise private individuals who have a role in a specific public controversy. Limited purpose public figures are required to prove actual malice only when their role in the controversy is "more than trivial or tangential" and the defamation is germane to their participation in the controversy. Biskupic v. Cicero, 2008 WI App 117, 313 Wis. 2d 225, 756 N.W.2d 649, 07–2314.

The plaintiff was a public figure for all purposes when the plaintiff was involved in highly controversial and newsworthy activities while in public office; the publicity and controversy surrounding these events continued well after the term of office ended; the plaintiff remained in the news after leaving office as a result of new developments in the various inquiries into the plaintiff's official conduct; and the plaintiff had a connection with another public official in the news. Biskupic v. Cicero, 2008 WI App 117, 313 Wis. 2d 225, 756 N.W.2d 649, 07–2314.

In general, the destruction of notes allows an inference that the notes would have provided evidence of actual malice. However, this rule is not absolute. In this case, because the plaintiff had not shown any way the destroyed notes might show actual malice, the destruction of the notes did not create a material factual dispute preventing summary judgment. Biskupic v. Cicero, 2008 WI App 117, 313 Wis. 2d 225, 756 N.W.2d 649, 07–2314.

Sub. (2) provides that an opportunity to correct libelous matter "shall be given by notice in writing specifying the article and the statements therein which are claimed to be false and defamatory and a statement of what are claimed to be the true facts." The optional provision, "The notice may also state the sources, if any, from which the true facts may be ascertained with definiteness and certainty," does not nullify the requirement that the notice contain a statement of what are claimed to be the true facts. Once a claimant has been found to not meet the notice requirements, the action cannot be revived by again attempting to comply with the notice provisions. DeBraska v. Quad Graphics, Inc., 2009 WI App 23, 316 Wis. 2d 386, 763 N.W.2d 219, 07–2931.

The elements of a defamatory communication are: 1) a false statement; 2) communicated by speech, conduct, or in writing to a person other than the person defamed; and 3) the communication is unprivileged and is defamatory, that is, tends to harm one's reputation so as to lower the person in the estimation of the community or to deter third persons from associating or dealing with the person. The statement that is the subject of a defamation action need not be a direct affirmation, but may also be an implication. Terry v. Journal Broadcast Corp., 2013 WI App 130, 351 Wis. 2d 479, 840 N.W.2d 255, 12–1682.

In a defamation action brought by a private figure against a media defendant, the plaintiff has the burden of proving that the speech at issue is false; this requirement is imposed in order to avoid the chilling effect that would be antithetical to the 1st amendment's protection of true speech on matters of public concern. Terry v. Journal Broadcast Corp., 2013 WI App 130, 351 Wis. 2d 479, 840 N.W.2d 255, 12–1682.

On a motion to dismiss or for judgment on the pleadings, the court's role in assessing an allegedly defamatory statement identified in the complaint is limited to determining whether, as a matter of law, the defendant's statement is capable of a defamatory meaning. A statement is capable of a defamatory meaning if a defamatory implication is fairly and reasonably conveyed by the words and images used. If a statement is capable of a defamatory meaning, then the determination of whether such a meaning was in fact conveyed is a factual issue to be resolved by the jury. Wagner v. Allen Media Broadcasting, 2024 WI App 9, 410 Wis. 2d 666, 3 N.W.3d 758, 23–0032.

For a statement to be defamatory, it must refer to some ascertained or ascertainable person, and that person must be the plaintiff. In this case, when news reports mistakenly conflated the identities of two different law enforcement officers with the same name and then attributed their backgrounds and actions to the single officer who was the subject of the reports but who was not the plaintiff, the plaintiff sufficiently alleged ascertainment. Wagner v. Allen Media Broadcasting, 2024 WI App 9, 410 Wis. 2d 666, 3 N.W.3d 758, 23–0032.

The plaintiff in this case was a public official while employed as a sergeant with the police department. Wagner v. Allen Media Broadcasting, 2024 WI App 9, 410 Wis. 2d 666, 3 N.W.3d 758, 23–0032.

Persons who qualify as public officials during their terms in office are no longer considered public officials for 1st amendment purposes after they retire. Wagner v. Allen Media Broadcasting, 2024 WI App 9, 410 Wis. 2d 666, 3 N.W.3d 758, 23–0032.

Discussing publishers' privileges and liabilities regarding libel. Gertz v. Robert Welch, Inc., 418 U.S. 323, 94 S. Ct. 2997, 41 L. Ed. 2d 789 (1974).

A public figure who sues media companies for libel may inquire into the editorial processes of those responsible when proof of "actual malice" is required for recovery. Herbert v. Lando, 441 U.S. 153, 99 S. Ct. 1635, 60 L. Ed. 2d 115 (1979).

Discussing the "public figure" principle in libel cases. Wolston v. Reader's Digest Ass'n, 443 U.S. 157, 99 S. Ct. 2701, 61 L. Ed. 2d 450 (1979).

Under sub. (1), Wisconsin's judicial–proceedings privilege, which protects publishers that report on court activity, newspapers may summarize court proceedings rather than quote them. The limitation is that a reporter may not characterize the allegations in the pleadings as facts. The reporter must declare them for what they are: accusations subject to judicial review. The privilege protects news media coverage of newly filed pleadings. Financial Fiduciaries, LLC v. Gannett Co., 46 F.4th 654 (2022).

If wire service accounts of a judge's remarks are substantially accurate, a defamation suit by the judge is barred under sub. (1). Simonson v. United Press International, Inc., 500 F. Supp. 1261 (1980).

Defamation Law of Wisconsin. Brody. 65 MLR 505 (1982).

The "Public Interest or Concern" Test—Have We Resurrected a Standard That Should Have Remained in the Defamation Graveyard? Joy. 70 MLR 647 (1987).

A Misplaced Focus: Libel Law and Wisconsin's Distinction Between Media and Nonmedia Defendants. Maguire. 2004 WLR 191.

895.052 Defamation by radio and television. The owner, licensee or operator of a visual or sound radio broadcasting station or network of stations, and the agents or employees of any such owner, licensee or operator, shall not be liable in damages for any defamatory statement published or uttered in, or as a part of, a visual or sound broadcast by a candidate for political office in those instances in which, under the acts of congress or the rules and regulations of the federal communications commission, the broadcasting station or network is prohibited from censoring the script of the broadcast.

895.055 Gaming contracts void. (1) All promises, agreements, notes, bills, bonds, or other contracts, mortgages, conveyances or other securities, where the whole or any part of the consideration of the promise, agreement, note, bill, bond, mortgage, conveyance or other security shall be for money or other valuable thing whatsoever won or lost, laid or staked, or betted at or upon any game of any kind or under any name whatsoever, or by any means, or upon any race, fight, sport or pastime, or any wager, or for the repayment of money or other thing of value, lent or advanced at the time and for the purpose, of any game, play, bet or wager, or of being laid, staked, betted or wagered thereon shall be void.

(2) This section does not apply to contracts of insurance made in good faith for the security or indemnity of the party insured.

(3) This section does not apply to any promise, agreement, note, bill, bond, mortgage, conveyance or other security that is permitted under chs. 562 to 569 or under state or federal laws relating to the conduct of gaming on Indian lands.

History: 1993 a. 174; 1995 a. 225; 1997 a. 27.

A Puerto Rican judgment based on a gambling debt was entitled to full faith and credit in Wisconsin. Conquistador Hotel Corp. v. Fortino, 99 Wis. 2d 16, 298 N.W.2d 236 (Ct. App. 1980).

895.056 Recovery of money wagered. (1) In this section:

(a) "Property" means any money, property or thing in action.

(b) "Wagerer" means any person who, by playing at any game or by betting or wagering on any game, election, horse or other race, ball playing, cock fighting, fight, sport or pastime or on the issue or event thereof, or on any future contingent or unknown occurrence or result in respect to anything whatever, shall have put up, staked or deposited any property with any stakeholder or 3rd person, or shall have lost and delivered any property to any winner thereof.

(2) (a) A wagerer may, within 3 months after putting up, staking or depositing property with a stakeholder or 3rd person, sue for and recover the property from the stakeholder or 3rd person whether the property has been lost or won or whether it has been delivered over by the stakeholder or 3rd person to the winner.

(b) A wagerer may, within 6 months after any delivery by the wagerer or the stakeholder of the property put up, staked or deposited, sue for and recover the property from the winner thereof if the property has been delivered over to the winner.

(3) If the wagerer does not sue for and recover the property, which was put up, staked or deposited, within the time specified under sub. (1), any other person may, in the person's behalf and the person's name, sue for and recover the property for the use and benefit of the wagerer's family or heirs, in case of the wagerer's death. The suit may be brought against and property recovered from any of the following:

(a) The stakeholder or a 3rd person if the property is still held by the stakeholder or 3rd person, within 6 months after the putting up, staking or depositing of the property.

(b) The winner of the property, within one year from the delivery of the property to the winner.

(4) This section does not apply to any property that is permitted to be played, bet or wagered under chs. 562 to 569 or under state or federal laws relating to the conduct of gaming on Indian lands.

History: 1993 a. 174, 486; 1995 a. 225; 1997 a. 27, 35.

895.057 Action against judicial officer for loss caused by misconduct. Any judicial officer who causes to be brought in a court over which the judicial officer presides any action or proceeding upon a claim placed in the judicial officer's hands as agent or attorney for collection shall be liable in a civil action to the person against whom such action or proceeding was brought for the full amount of damages and costs recovered on such claim.

History: 1993 a. 486.

895.06 Recovery of divisible personalty. When personal property is divisible and owned by tenants in common and one tenant in common shall claim and hold possession of more than the tenant's share or proportion thereof his or her cotenant, after making a demand in writing, may sue for and recover the cotenant's share or the value thereof. The court may direct the jury, if necessary, in any such action to find what specific articles or what share or interest belongs to the respective parties, and the court shall enter up judgment in form for one or both of the parties against the other, according to the verdict.

History: 1993 a. 486.

895.065 Radioactive waste emergencies. (1) DEFINITIONS. In this section:

(a) "Association" means a relationship in which one person controls, is controlled by or is under common control with another person.

(b) "Company" means any partnership, joint−stock company, business trust or organized group of persons, whether incorporated or not, and any person acting as a receiver, trustee or other liquidator of a partnership, joint−stock company, business trust or organized group of persons. "Company" does not include a state or local governmental body.

(c) "Control" means to possess, directly or indirectly, the power to direct or cause the direction of the management and policies of a company, whether that power is exercised through one or more intermediary companies, or alone, or in conjunction with, or by an agreement with, any other company, and whether that power is established through a majority or minority ownership or voting of securities, common directors, officers, stockholders, voting trusts, holding trusts, affiliated companies, contract or by any other direct or indirect means. "Control" includes owning, holding or controlling, directly or indirectly, at least 5 percent of the voting power in the election of directors of a company. "Control" has the same meaning as the terms "controlled by" and "under common control with".

(d) "Emergency provider" means any person who provides emergency care or facilities and includes emergency management.

(e) "Harm" means:

1. Damage to property.

2. Personal physical injury, illness or death, including mental anguish or emotional harm attendant to the personal physical injury, illness or death.

4. Economic loss.

5. Environmental pollution, as defined in s. 299.01 (4).

6. Expenses incurred by an emergency provider in preparing for and responding to a nuclear incident that are not reimbursed under s. 292.11 (7) or that are not paid by another state under a mutual aid agreement or by a gift or grant.

(f) "Nuclear incident" means any sudden or nonsudden release of ionizing radiation, as defined under s. 254.31 (3g), from radioactive waste being stored or disposed of in a waste repository or transported. "Nuclear incident" does not include any release of radiation from radioactive waste being transported under routine operations.

(g) "Person" means any individual or company. "Person" includes the federal government.

(h) "Radioactive waste" means radioactive waste, as defined in s. 293.25 (1) (b), and radioactive defense waste.

(i) "Responsible party" means any person described under sub. (3) (a) 1. a. to d.

(j) "Routine operations" means the operation of transportation equipment in a manner that is not subject to the requirements for immediate notice of incidents under 49 USC 1801 to 1811 or notice of discharge under s. 292.11 (2).

(k) "Waste repository" means any system used or intended to be used to dispose of or store radioactive waste under 42 USC 10101 to 10226, including but not limited to a permanent disposal system, interim storage system, monitored retrievable storage system, defense waste storage system, away−from−reactor storage facility and a test and evaluation facility.

(2) LIABILITY. All responsible parties are strictly liable, jointly and severally, for any harm caused by a nuclear incident.

(3) REBUTTABLE PRESUMPTION. (a) In any action brought under sub. (2) to recover damages for harm claimed to be caused by a nuclear incident, it is presumed that the nuclear incident was a cause of the harm if the plaintiff produces evidence to the court sufficient to enable a reasonable person to find all of the following:

1. The defendant is any of the following:

a. A person who is in any way responsible for the design, construction, operation or monitoring of the waste repository or transportation equipment from which the radiation was released in the nuclear incident.

b. A person who owns the waste repository or transportation equipment from which the radiation was released in the nuclear incident.

c. A person who produces, possesses, controls or owns radioactive waste stored or disposed of in the waste repository or transportation equipment from which the radiation was released in the nuclear incident.

d. A person who has an association with any person described under subd. 1. a. to c.

2. The harm could reasonably have resulted from the nuclear incident.

(b) A defendant in an action brought under sub. (2) may rebut the presumption under par. (a) by proving that:

1. The defendant is not a responsible party; or

2. The harm claimed to be caused by a nuclear incident could not have reasonably resulted from the nuclear incident.

(4) COURT AWARD. In issuing any final order in any action brought under this section in which the plaintiff prevails, the court shall award to the plaintiff the cost of the suit, including reasonable attorney and expert witness fees, and the damages sustained by the plaintiff.

(5) CONSTRUCTION. This section may not be deemed to have any effect upon the liability of any person for any harm caused by any incident which is not a nuclear incident.

History: 1985 a. 29; 1989 a. 31; 1989 a. 56 s. 259; 1993 a. 27; 1995 a. 227, 247; 1999 a. 9; 2009 a. 42 ss. 153 to 156; Stats. 2009 s. 895.065.

895.07 Claims against contractors and suppliers. (1) DEFINITIONS. In this section:

(a) "Action" means a civil action or an arbitration under ch. 788.

(b) "Association" means a homeowner's association, condominium association under s. 703.02 (1m), unit owner's association, or a nonprofit corporation created to own and operate portions of a planned community that may assess unit owners for the costs incurred in the performance of the association's obligations.

(c) "Claim" means a request or demand to remedy a construction defect caused by a contractor or supplier related to the construction or remodeling of a dwelling.

(d) "Claimant" means the owner, tenant, or lessee of a dwelling, or an association, who has standing to sue a contractor or supplier regarding a construction defect.

(e) "Construction defect," in those cases when the contractor or supplier has provided a warranty to a consumer, means the definition of "defect" in the warranty. In all other cases, "construction defect" means a deficiency in the construction or remodeling of a dwelling that results from any of the following:

1. Defective material.

2. Violation of applicable codes.

3. Failure to follow accepted trade standards for workmanlike construction.

(f) "Consumer" means a person who enters into a written or oral contract with a contractor to construct or remodel a dwelling.

(g) "Contractor" means a person that enters into a written or oral contract with a consumer to construct or remodel a dwelling.

(h) "Dwelling" means any premises or portion of a premises that is used as a home or a place of residence and that part of the lot or site on which the dwelling is situated that is devoted to residential use. "Dwelling" includes other existing structures on the immediate residential premises such as driveways, sidewalks, swimming pools, terraces, patios, fences, porches, garages, and basements.

(i) "Remodel" means to alter or reconstruct a dwelling. "Remodel" does not include maintenance or repair work.

(j) "Serve" or "service" means personal service or delivery by certified mail, return receipt requested, to the last–known address of the addressee.

(k) "Supplier" means a person that manufactures or provides windows or doors for a dwelling.

(L) "Working day" means any day except Saturday, Sunday, and holidays designated in s. 230.35 (4) (a).

(2) NOTICE AND OPPORTUNITY TO REPAIR. (a) Before commencing an action against a contractor or supplier regarding a construction defect, a claimant shall do all of the following:

1. No later than 90 working days before commencing the action, deliver written notice to the contractor containing a description of the claim in sufficient detail to explain the nature of the alleged defect and a description of the evidence that the claimant knows or possesses, including expert reports, that substantiates the nature and cause of the alleged construction defect.

2. Provide the contractor or supplier with the opportunity to repair or to remedy the alleged construction defect.

(b) Within 15 working days after the claimant serves notice of claim under par. (a), or within 25 working days if the contractor makes a claim for contribution from a supplier under sub. (7) (a), each contractor that has received the notice of claim shall serve on the claimant any of the following:

1. A written offer to repair or remedy the construction defect at no cost to the claimant. The offer shall include a description of any additional construction necessary to remedy the construction defect and a timetable for the completion of the construction.

2. A written offer to settle the claim by monetary payment.

3. A written offer including a combination of repairs and monetary payment.

4. A written statement that the contractor rejects the claim. The contractor shall state in the written response to the claim the reason for rejecting the claim and include a comprehensive description of all evidence the contractor knows or possesses, including expert reports, that substantiates the reason for rejecting the claim. The contractor shall also include in the written response to the claim any settlement offer received from a supplier.

5. A proposal for inspection of the dwelling under par. (c).

(c) If a proposal for inspection is made under par. (b), the claimant shall, within 15 working days of receiving the contractor's proposal, provide the contractor and any supplier on whom a contribution claim has been made and its agents, experts, and consultants reasonable access to the dwelling to inspect the dwelling, document any alleged construction defects, and perform any testing required to evaluate fully the nature, extent, and cause of the claimed construction defects and the nature and extent of any repairs or replacements that may be necessary to remedy them. If destructive testing is required, the contractor shall deliver the claimant and all persons on whom a notice of claim or contribution claim has been served advance notice of the testing at least 5 working days before commencement of the testing and shall, after completion of the testing, return the dwelling to its pre–testing condition within a reasonable time after completion of the testing, at the contractor's expense. If any inspection or testing reveals a condition that requires additional testing to allow the contractor to evaluate fully the nature, cause, and extent of the construction defect, the contractor shall deliver notice to the claimant and all persons on whom a notice of claim or contribution claim has been served of the need for the additional testing and the claimant shall provide reasonable access to the dwelling. If a claim is asserted on behalf of the owners of multiple dwellings, then the contractor shall be entitled to inspect each of the dwellings subject to the claim. The claimant shall either provide a specific day for the inspection upon reasonable notice for an inspection or require the contractor to request in writing a date for the inspection, at least 3 working days before the inspection.

(d) Within 10 working days following completion of the inspection and testing under par. (c), the contractor shall serve on the claimant a notice that includes any of the offers or statements under par. (b) 1. to 4.

(e) If the claimant rejects a settlement offer made by the contractor, the claimant shall, within 15 working days after receiving the offer, serve written notice of that rejection to the contractor. The notice shall include the reasons for the claimant's rejection of the contractor's offer. If the claimant believes that the settlement offer omits reference to any portion of the claim, or was unreasonable, the claimant's written notice shall include those items that the claimant believes were omitted and set forth the reasons why the claimant believes the settlement offer is unreasonable. The contractor shall deliver the claimant's response to a supplier upon whom a contribution claim has been made.

(f) Upon receipt of a claimant's rejection and the reasons for the rejection, the contractor shall, within 5 working days after receiving the rejection, serve the claimant a written supplemental offer to repair or to remedy the construction defect or serve on the claimant written notice that no additional offer will be made.

(g) If the claimant rejects the supplemental offer made by the contractor under par. (f) to remedy the construction defect or to settle the claim by monetary payment or a combination of each, the claimant shall serve written notice of the claimant's rejection on the contractor within 15 working days after receipt of the supplemental offer. The notice shall include the reasons for the claimant's rejection of the contractor's supplemental settlement offer. If the claimant believes the contractor's supplemental settlement

offer is unreasonable, the claimant shall set forth the reasons why the claimant believes the supplemental settlement offer is unreasonable. If the contractor declines to make a supplemental offer, or if the claimant rejects the supplemental offer, the claimant may bring an action against the contractor for the claim described in the notice of claim without further notice.

(h) If a claimant accepts any offer made under this subsection, and the contractor or supplier does not proceed to repair or remedy the construction defect under the terms of the offer or within the agreed upon timetable, the claimant may bring an action against the contractor or supplier for the claim described in the notice of claim without further notice.

(i) If a claimant accepts a contractor's offer to repair a construction defect described in a notice of claim, the claimant shall provide the contractor and its agents, experts, and consultants reasonable access to the dwelling to perform and complete the construction by the timetable stated in the settlement offer.

(j) If a claimant receives a written statement that the contractor rejects the claim, or if the contractor does not respond to the claimant's notice, the claimant may bring an action against the contractor for the claim described in the notice of claim without further notice.

(k) If a claimant commences an action against a supplier and the supplier has not been provided notice of the claim by the contractor and an opportunity to repair or remedy the construction defect described in the claim as provided under to sub. (7), the court or arbitrator shall dismiss without prejudice or stay the action until the claimant serves the supplier with a copy of the notice of claim and provides the supplier an opportunity to repair or remedy the construction defect in the same manner as provided a contractor under this section.

(3) ACTION; DISMISSAL WITHOUT PREJUDICE. If the claimant commences an action but fails to comply with the requirements of sub. (2) (a) and the contractor or supplier establishes that the claimant was provided the notice and brochure under s. 101.148 (2), the circuit court or arbitrator shall dismiss the action without prejudice. If the claimant commences an action but fails to comply with the requirements of sub. (2) (a) and the contractor or supplier cannot establish that the notice and brochure was delivered to the claimant under s. 101.148 (2), the circuit court or arbitrator shall stay the action and order the parties to comply with the requirements of sub. (2) (a) and s. 101.148 (2). Before commencing an action against a supplier seeking contribution for a claim that a claimant has served on a contractor, the contractor shall serve the supplier with a notice of contribution claim under sub. (7). If the contractor commences an action against a supplier but fails to serve the notice of contribution claim, the circuit court or arbitrator shall stay the action until the contractor has complied with the requirements of this subsection and sub. (7).

(4) WARRANTY TERMS. The claimant and contractor or supplier are bound by any contractor or supplier warranty terms pertaining to products or services supplied for the dwelling.

(5) ADDITIONAL CONSTRUCTION DEFECTS AND NOTICE AND OPPORTUNITY TO REPAIR. A construction defect that is discovered after an initial claim or contribution claim notice has been provided may not be alleged in an action until the claimant or contractor has served the contractor or supplier written notice of the new claim or contribution claim regarding the alleged new construction defect. The contractor or supplier shall have an opportunity to resolve the notice of the new claim or contribution claim in the manner provided in subs. (2) and (7).

(6) ACTION OF CONTRACTOR OR SUPPLIER. In any action initiated by a contractor or supplier in which a claimant raises an affirmative defense or counterclaim alleging a construction defect, the claimant is not required to comply with this section.

(7) CONTRIBUTION. (a) Before commencing an action seeking contribution from a supplier for a claim that a claimant makes against the contractor, the contractor shall serve the supplier with a written notice of the claimant's claim and a contribution claim within 5 working days after the contractor's receipt of the claim, except that a contractor may make a contribution claim later than 5 days after the contractor's receipt of the initial claim if the contractor has not done any of the following:

1. Taken any action to repair the defect.

2. Performed destructive testing.

3. Authorized the claimant to take any action to repair the defect.

4. Interfered materially with or altered the property that is the subject of the claim.

5. Materially precluded a supplier's ability to offer to remedy the defect by making repairs.

(b) Before commencing an action against a supplier, a contractor shall provide the supplier with the opportunity to respond to the contribution claim and repair the alleged construction defect under this section. The notice of contribution claim shall state that the contractor asserts a construction defect claim. The notice of contribution claim shall describe the contribution claim in sufficient detail to explain the nature of the alleged construction defect and shall offer the opportunity to correct the construction defect. The contractor shall include in the notice of claim a description of the alleged construction defect and include a comprehensive description of all evidence that the contractor knows or possesses, including expert reports, that substantiates the nature and cause of the alleged construction defect.

(c) Within 15 working days after a supplier has received notice that a contractor is seeking contribution under par. (a), the supplier shall serve the contractor with any of the following:

1. A written offer to remedy fully or partially the construction defect at no cost to the claimant. The offer shall include a description of any additional construction necessary to remedy the construction defect and a timetable for the completion of the construction.

2. A written offer to settle the claim by monetary payment.

3. A written offer including a combination of repairs and monetary payment.

4. A written statement that the supplier rejects the claim. The supplier shall state in the written response to the claim the reason for rejecting the claim and include a comprehensive description of all evidence the supplier knows or possesses, including expert reports, that substantiates the reason for rejecting the claim.

5. A proposal for the inspection of the dwelling, following the procedures under par. (e).

(d) The contractor shall forward the supplier's response to the claimant. The supplier and contractor shall use their best efforts to coordinate their responses to claims and contribution claims.

(e) If a supplier proposes to inspect the dwelling that is the subject of the contribution claim, the contractor and claimant shall, within 15 working days after receiving the supplier's proposal, provide the supplier and its agents, experts, and consultants reasonable access to the dwelling to inspect the dwelling, document any alleged construction defects, and perform any testing required to evaluate fully the nature, extent, and cause of the claimed construction defects and the nature and extent of any repairs or replacements that may be necessary to remedy them. If destructive testing is required, the supplier shall give the contractor and claimant and all persons on whom a notice of claim or contribution claim has been served advance notice of the testing at least 5 working days before commencement of the testing and shall, after completion of the testing, return the dwelling to its pre−testing condition within a reasonable time after completion of the testing, at the supplier's expense. If any inspection or testing reveals a condition that requires additional testing to allow the supplier to evaluate fully the nature, cause, and extent of the construction defect, the supplier shall provide notice to the contractor and claimant and all persons on whom a notice of claim or contribution claim has been served of the need for the additional testing and the contractor and claimant shall provide reasonable access to the dwelling. If a

claim is asserted on behalf of the contractor of multiple dwellings, then the supplier shall be entitled to inspect each of the dwellings. The contractor and claimant shall provide a specific day for the inspection upon reasonable notice for an inspection or require the supplier to request in writing a date for the inspection, at least 3 working days before the inspection.

(f) Within 10 working days following completion of the inspection and testing under par. (e), the supplier shall serve on the contractor a notice that includes any of the offers or statements under par. (c) 1. to 4.

(g) If the contractor rejects a settlement offer made by the supplier, the contractor shall, within 15 working days after receiving the offer, send written notice of that rejection to the supplier. The notice shall include the reasons for the contractor's rejection of the supplier's offer. If the contractor believes that the settlement offer omits reference to any portion of the claim, or was unreasonable, the contractor's written notice shall include those items that the contractor believes were omitted and set forth the reasons why the contractor believes the settlement offer is unreasonable.

(h) Upon receipt of a contractor's rejection and the reasons for the rejection, the supplier shall, within 5 working days of receiving the rejection, make a supplemental offer of repair or monetary payment to the contractor or serve on the contractor written notice that no additional offer will be made.

(i) If the contractor rejects the supplemental offer made by the supplier to remedy the construction defect or to settle the claim by monetary payment or a combination of each, the contractor shall, within 15 working days after receiving the offer, serve written notice of the contractor's rejection on the supplier. The notice shall include the reasons for the contractor's rejection of the supplier's supplemental settlement offer. If the contractor believes the supplier's supplemental settlement offer is unreasonable, the contractor shall set forth the reasons why the contractor believes the supplemental settlement offer is unreasonable. If the supplier declines to make a supplemental offer, or if the contractor rejects the supplemental offer, the contractor may bring an action against the supplier for the claim described in the notice of claim without further notice.

(j) If a contractor accepts any offer made under this subsection, and the supplier does not proceed to make the monetary payment or remedy the construction defect within the agreed upon timetable, the contractor may bring an action against the supplier for the claim described in the notice of claim without further notice. The contractor may also file the supplier's offer and contractor's acceptance in the circuit court action, and the offer and acceptance create a rebuttable presumption that a binding and valid settlement agreement has been created and should be enforced by the court.

(k) If a contractor accepts a supplier's offer to repair a construction defect described in a notice of claim, the contractor, when appropriate, and the claimant shall provide the supplier and its agents, experts, and consultants reasonable access to the dwelling to perform and complete the construction by the timetable stated in the settlement offer.

(L) If a contractor receives a written statement that the supplier rejects the claim, or if the supplier does not respond to the contractor's notice, the contractor may bring an action against the supplier for the claim described in the notice of claim without further notice.

(m) A contractor who is seeking contribution from a supplier and who elects to inspect a dwelling under sub. (2) (b) shall serve the supplier written notice of the inspection date and dwelling address, and whether destructive testing is contemplated, at least 5 working days before the inspection.

(8) FAILURE TO RESPOND TO NOTICE. If a person fails to timely respond to any notice served in a manner required under this section, then any offer made in that notice is rejected.

(9) LIMITATION PERIOD. If, during the pendency of the notice, inspection, offer, acceptance, or repair process, an applicable limitation period would otherwise expire, the limitation period is tolled pending completion of the notice of claim process described in this section. This subsection shall not be construed to revive a limitation period that has expired before the date on which a claimant's written notice of claim is served or extend any applicable statute of repose.

(10) ALTERATION OF PROCEDURE. After service of the initial notice of claim and initial contribution claim, a claimant, a contractor, and a supplier may, by written mutual agreement, alter the procedure for the notice of claim process described in this section.

(11) APPLICATION TO OTHERS. This section does not apply to a contractor's or supplier's right to seek contribution, indemnity, or recovery against any party other than a supplier for a claim made against a contractor or supplier.

(12) HOMEOWNER REPAIRS. Without giving notice under this section, a homeowner may make immediate repairs to a dwelling to protect the health or safety of its occupants.

(13) BROCHURE. The department of safety and professional services shall prepare a brochure explaining the process under this section and shall provide that brochure to contractors.

History: 2005 a. 201; 2007 a. 97; 2011 a. 32.

Sub. (9) provides that it shall not be construed to extend any applicable statute of repose. Thus, although the statute of repose in this case had not yet expired when the plaintiffs gave the written notice required by sub. (2), the notice did not extend the statute of repose. Wascher v. ABC Insurance Co., 2022 WI App 10, 401 Wis. 2d 94, 972 N.W.2d 162, 20–1961.

895.08 Sport shooting ranges; actions related to safety.

(1) DEFINITIONS. In this section:

(a) "Clear and immediate public safety hazard" means an unsafe condition that originates from, or is at, a sport shooting range and that could reasonably be expected to cause death or serious injury to an individual.

(b) "Local unit of government" means the governing body of a county, city, town, village, or the elected tribal governing body of a federally recognized American Indian tribe or band in this state.

(c) "Sport shooting range" has the meaning given in s. 895.527 (1).

(2) TEMPORARY CLOSURE. (a) Except as provided in par. (b), no law enforcement officer or court may require the owner or operator of a sport shooting range to cease or suspend any portion of its operation, the use of a particular firearm type at the sport shooting range, or the conduct of a particular activity at the sport shooting range because of an alleged or actual unsafe condition at, or originating from, the sport shooting range.

(b) 1. A court may, upon petition by a law enforcement officer, temporarily order the owner or operator of a sport shooting range to cease or suspend a portion of its operation, the use of a particular firearm type at the sport shooting range, or the conduct of a particular activity at the sport shooting range if it finds that there is probable cause to believe that the portion of the operation, the use of a particular firearm type at the sport shooting range, or the conduct of a particular activity at the sport shooting range constitutes a clear and immediate public safety hazard.

2. A court may, upon petition by a local unit of government or an individual, temporarily order the owner or operator of a sport shooting range to cease or suspend a portion of its operation, the use of a particular firearm type at the sport shooting range, or the conduct of a particular activity at the sport shooting range if the court finds, upon a preponderance of the evidence presented, that the portion of the sport shooting range's operation, the use of a particular firearm type at the sport shooting range, or the conduct of a particular activity at the sport shooting range constitutes a clear and immediate public safety hazard.

3. There is a rebuttable presumption that no portion of a sport shooting range's operation, use of a particular firearm type at the sport shooting range, or conduct of a particular activity at the sport shooting range constitutes a clear and immediate public safety hazard.

(3) CONTINUING OPERATIONS. (a) An owner or operator of a sport shooting range who has been ordered by a court under sub. (2) to temporarily cease or suspend a portion of its operation, the use of a particular firearm type at the sport shooting range, or the conduct of a particular activity at the sport shooting range may arrange for an evaluation of the sport shooting range by an entity designated by the department of natural resources under s. 23.43 as qualified to evaluate the sport shooting range. The evaluation shall identify any deficiencies in public safety measures employed at the range as compared to general safe range design and operation practices and provide recommendations to rectify any deficiencies that exist. The entity's report on the findings of the evaluation shall be submitted to the court upon completion of the evaluation.

(b) After receiving a report under par. (a) that states that no deficiencies in public safety measures employed at the range as compared to general safe range design and operation practices exist, the court shall rescind the order issued under sub. (2) and dismiss the proceedings.

(c) After receiving a report under par. (a) that identifies any deficiency in public safety measures employed at the range as compared to general safe range design and operation practices that poses a clear and immediate public safety hazard, the court shall allow the range owner or operator to provide proof that such deficiencies have been remedied. If the range owner or operator provides proof that the deficiencies have been remedied, the court shall rescind the order issued under sub. (2) and dismiss the proceedings.

(d) After receiving a report under par. (a) that identifies any deficiency in public safety measures employed at the range as compared to general safe range design and operation practices that poses a clear and immediate public safety hazard and that cannot be remedied in the range's location, the court may order permanent cessation of a portion of the sport shooting range operation, use of a particular firearm type at the sport shooting range, or the conduct of a particular activity at the sport shooting range to which the deficiency applies.

(e) If a court dismisses a petition on the grounds that the petitioner failed to demonstrate that a portion of a sport shooting range's operation constitutes a clear and immediate public safety hazard, or if the court rescinds an order issued under sub. (2) on the grounds that a report filed under par. (a) finds no deficiencies in public safety measures employed at the range as compared to general safe range design and operation practices that constitute a clear and immediate public safety hazard, the court may order the petitioner to pay the defending party's costs of litigation, including reasonable attorneys fees and consultant fees.

History: 2017 a. 179.

895.09 Scrap metal or plastic bulk merchandise container theft; civil liability. (1) Any owner of nonferrous scrap, a metal article, or a proprietary article, as those terms are defined in s. 134.405 (1), who incurs injury or loss as a result of a violation of s. 134.405 or s. 943.20 may bring a civil action against the person who committed the violation.

(2) If the person who incurs the loss prevails against a person who committed the violation, the court shall grant the prevailing party all of the following:

(a) Actual damages.

(b) Any lost profits that are attributable to the violation and that were not taken into account in determining the amount of actual damages under par. (a).

(c) Notwithstanding the limitations under s. 799.25 or 814.04, costs, disbursements, and reasonable attorney fees.

(3) If the court finds that the violation was committed for the purpose of commercial advantage, the court may award punitive damages to the person who incurs the loss.

(4) Any awards provided under sub. (2) (a) or (b) shall be reduced by the amount of any restitution collected for the same act under s. 800.093 or 973.20.

(5) The person who incurs the loss has the burden of proving by the preponderance of the evidence that a violation of s. 134.405 or 943.20 occurred.

History: 2007 a. 64; 2011 a. 194.

895.10 Tort actions in residential real estate transactions. (1) In this section, "residential real estate transaction" means a real estate transfer to which s. 709.01 (1) applies.

(2) In addition to any other remedies available under law, a transferee in a residential real estate transaction may maintain an action in tort against the real estate transferor for fraud committed, or an intentional misrepresentation made, by the transferor in the residential real estate transaction.

History: 2009 a. 4.

895.14 Tenders of money and property. (1) TENDER MAY BE PLEADED. The payment or tender of payment of the whole sum due on any contract for the payment of money, although made after the money has become due and payable, may be pleaded to an action subsequently brought in like manner and with the like effect as if such tender or payment had been made at the time prescribed in the contract.

(2) TENDER AFTER ACTION COMMENCED. A tender may be made after an action is brought on the contract of the whole sum then due, plus legal costs of suit incurred up to the time, at any time before the action is called for trial. The tender may be made to the plaintiff or attorney, and if not accepted the defendant may plead the same by answer or supplemental answer, in like manner as if it had been made before the commencement of the action, bringing into court the money so tendered for costs as well as for debt or damages.

(3) PROCEEDINGS ON ACCEPTANCE OF TENDER. If the tender is accepted the plaintiff or attorney shall, at the request of the defendant, sign a stipulation of discontinuance of the action for that reason and shall deliver it to the defendant; and also a certificate or notice thereof to the officer who has any process against the defendant, if requested. If costs are incurred for any service made by the officer after the tender is accepted and before the officer receives notice of the acceptance, the defendant shall pay the costs to the officer or the tender is invalid.

(4) INVOLUNTARY TRESPASS. A tender may be made in all cases of involuntary trespass before action is commenced. When in the opinion of the court or jury a sufficient amount was tendered to the party injured, agent or attorney for the trespass complained of, judgment shall be entered against the plaintiff for costs if the defendant kept the tender good by paying the money into court at the trial for the use of the plaintiff.

(5) PAYMENT INTO COURT OF TENDER; RECORD OF DEPOSITS. (a) When tender of payment in full is made and pleaded, the defendant shall pay the tender in full into court before the trial of the action is commenced and notify the opposite party in writing, or be deprived of all benefit of the tender. When the sum tendered and paid into court is sufficient, the defendant shall recover the taxable costs of the action, if the tender was prior to the commencement of the action. The defendant shall recover taxable costs from the time of the tender, if the tender was after suit commenced.

(b) When any party, pursuant to an order or to law, deposits any money or property with the clerk of court, the clerk shall record the deposit in the minute record describing the money or property and stating the date of the deposit, by whom made, under what order or for what purpose and shall deliver a certificate of these facts to the depositor, with the volume and page of the record endorsed on the certificate.

History: 1981 c. 67; 1983 a. 192 ss. 274 to 279; 1983 a. 302 s. 8; Stats. 1983 s. 895.14.

895.28 Remedies not merged. When the violation of a right admits of both a civil and criminal remedy the right to prosecute the one is not merged in the other.

895.33 Limitation of surety's liability. Any person may limit the amount of liability as a surety upon any bond or other obligation required by law or ordered by any court, judge, municipal judge or public official for any purpose. The amount of the limited liability may be recited in the body of the bond or stated in the justification of the surety. In an action brought upon the bond, no judgment may be recovered against the surety for a sum larger than the amount of the liability stated, together with the proportional share of the costs of the action. In an action brought on the bond, a surety may deposit in court the amount of the liability, whereupon the surety shall be discharged and released from any further liability under the bond.

History: 1979 c. 110 s. 60 (11); 1985 a. 332.

895.34 Renewal of sureties upon becoming insufficient and effects thereof. If any bail bond, recognizance, undertaking or other bond or undertaking given in any civil or criminal action or proceeding, becomes at any time insufficient, the court or judge thereof, municipal judge or any magistrate before whom such action or proceeding is pending, may, upon notice, require the plaintiff or defendant to give a new bond, recognizance or undertaking. Every person becoming surety on any such new bond, recognizance or undertaking is liable from the time the original was given, the same as if he or she had been the original surety. If any person fails to comply with the order made in the case the adverse party is entitled to any order, judgment, remedy or process to which he or she would have been entitled had no bond, recognizance or undertaking been given at any time.

History: 1977 c. 305.

A precondition for this section to apply is that the bond must at one time have been sufficient. Breuer v. Town of Addison, 194 Wis. 2d 616, 534 N.W.2d 634 (Ct. App. 1995).

895.345 Justification of individual sureties. (1) This section shall apply to any bond or undertaking in an amount of more than $1,000 whereon individuals are offered as sureties, which is authorized or required by any provision of the statutes to be given or furnished in or in connection with any civil action or proceeding in any court of record in this state, in connection with which bond or undertaking real property is offered as security.

(2) Before any such bond or undertaking shall be approved, there shall be attached thereto and made a part of such bond or undertaking a statement under oath in duplicate by the surety that the surety is the sole owner of the property offered by the surety as security and containing the following additional information:

(a) The full name and address of the surety.

(b) That the surety is a resident of this state.

(c) An accurate description by lot and block number, if part of a recorded and filed plat, or by metes and bounds of the real estate offered as security.

(d) A statement that none of the properties offered constitute the homestead of the surety.

(e) A statement of the total amount of the liens, unpaid taxes and other encumbrances against each property offered.

(f) A statement as to the assessed value of each property offered, its market value and the value of the equity over and above all encumbrances, liens and unpaid taxes.

(g) That the equity of the real property is equal to twice the penalty of the bond or undertaking.

(3) This sworn statement shall be in addition to and notwithstanding other affidavits or statements of justification required or provided for elsewhere in the statutes in connection with such bonds and undertakings.

History: 1993 a. 486; 1999 a. 96.

Cross–reference: This section does not apply to bonds of personal representatives. See s. 856.25.

895.346 Bail, deposit in lieu of bond. When any bond or undertaking is authorized in any civil or criminal action or proceeding, the would–be obligor may, in lieu thereof and with like legal effect, deposit with the proper court or officer cash or certified bank checks or U.S. bonds or bank certificates of deposit in an amount at least equal to the required security; and the receiver thereof shall give a receipt therefor and shall notify the payor bank of any deposits of bank certificates of deposit. Section 808.07 shall govern the procedure so far as applicable.

History: Sup. Ct. Order, 67 Wis. 2d 585, 784 (1975); 1977 c. 187 s. 135.

This section applies to all bonds, not just bail bonds. Aiello v. Village of Pleasant Prairie, 206 Wis. 2d 68, 556 N.W.2d 697 (1996), 95–1352.

895.35 Expenses in actions against municipal and other officers. (1) Whenever in any city, town, village, school district, technical college district or county charges of any kind are filed or an action is brought against any officer thereof in the officer's official capacity, or to subject any such officer, whether or not the officer is being compensated on a salary basis, to a personal liability growing out of the performance of official duties, and such charges or such action is discontinued or dismissed or such matter is determined favorably to such officer, or such officer is reinstated, or in case such officer, without fault on the officer's part, is subjected to a personal liability as aforesaid, such city, town, village, school district, technical college district or county may pay all reasonable expenses which such officer necessarily expended by reason thereof. Such expenses may likewise be paid, even though decided adversely to such officer, where it appears from the certificate of the trial judge that the action involved the constitutionality of a statute, not theretofore construed, relating to the performance of the official duties of said officer.

(2) (a) In this subsection:

1. "Criminal proceeding" means an action or proceeding under chs. 967 to 979.

2. "Protective services officer" means an emergency medical services practitioner, as defined in s. 256.01 (5), an emergency medical responder, as defined in s. 256.01 (4p), a fire fighter, or a law enforcement or correctional officer.

(b) 1. Notwithstanding sub. (1), the city, town, village, school district, technical college district, or county shall reimburse a protective services officer for reasonable attorney fees incurred by the officer in connection with a criminal proceeding arising from the officer's conduct in the performance of official duties unless, in relation to that conduct, any of the following applies:

a. The officer is convicted of a crime.

b. The officer's employment is terminated for cause.

c. The officer resigns for reasons other than retirement before the attorney fees are incurred.

d. The officer is demoted or reduced in rank.

e. The officer is suspended without pay for 10 or more working days.

2. If a collective bargaining agreement covering the protective services officer defines reasonable attorney fees for the purpose of subd. 1., that definition shall apply.

History: 1971 c. 154; 1993 a. 399, 486; 2005 a. 73; 2007 a. 130; 2017 a. 12.

A county has the option to refuse payment of its sheriff's criminal defense attorney's fees. Bablitch & Bablitch v. Lincoln County, 82 Wis. 2d 574, 263 N.W.2d 218 (1978).

This section allows a municipality or county to pay an officer's attorney fees if it so elects. If the municipality refuses payment, the officer has no cause of action against the municipality under this section, even if the municipality had a practice of reimbursing attorney fees and costs incurred and it failed to pay because of political concerns. Murray v. City of Milwaukee, 2002 WI App 62, 252 Wis. 2d 613, 642 N.W.2d 541, 01–0106.

A city may reimburse a commissioner of the city redevelopment authority for legal expenses incurred by the commissioner when charges are filed against the commissioner in the commissioner's official capacity seeking the commissioner's removal from office for cause and the charges are found by the common council to be unsupported. Such reimbursement is discretionary. The city redevelopment authority lacks statutory authority to authorize reimbursement for such legal expenses. 63 Atty. Gen. 421.

A city council can, in limited circumstances, reimburse a council member for reasonable attorney fees incurred in defending an alleged violation of the open meeting law, but cannot reimburse the member for any forfeiture imposed. 66 Atty. Gen. 226.

This section applies to criminal charges brought against a former officer for alleged fraudulent filing of expense vouchers. 71 Atty. Gen. 4.

This section and s. 895.46 apply to actions for open meetings law violations to the same extent that they apply to other actions against public officers and employees, except that public officials cannot be reimbursed for forfeitures they are ordered to pay for violating open meetings law. 77 Atty. Gen. 177.

895.36 Process against corporation or limited liability company officer. No process against private property shall issue in an action or upon a judgment against a public corporation or limited liability company or an officer or manager in his or her official capacity, when the liability, if any, is that of the corporation or limited liability company nor shall any person be liable as garnishee of such public corporation or limited liability company.

History: 1993 a. 112; 2005 a. 155.

895.37 Abrogation of defenses in employee personal injury actions. (1) In any action to recover damages for a personal injury sustained within this state by an employee while engaged in the line of the employee's duty as an employee, or for death resulting from personal injury so sustained, in which recovery is sought upon the ground of want of ordinary care of the employer, or of any officer, agent, or servant of the employer, it shall not be a defense:

(a) That the employee either expressly or impliedly assumed the risk of the hazard complained of.

(b) When such employer has at the time of the injury in a common employment 3 or more employees, that the injury or death was caused in whole or in part by the want of ordinary care of a fellow servant.

(c) When such employer has at the time of the injury in a common employment 3 or more employees, that the injury or death was caused in whole or in part by the want of ordinary care of the injured employee, where such want of ordinary care was not willful.

(2) Any employer who has elected to pay compensation as provided in ch. 102 shall not be subject to this section.

(3) Subsection (1) (a), (b) and (c) shall not apply to farm labor, except such farm labor as is subject to ch. 102.

(4) No contract, rule, or regulation, shall exempt the employer from this section.

History: 1993 a. 486; 2005 a. 155.

The fellow servant defense is not available to a farm employer of a child employed in violation of child labor laws. Tisdale v. Hasslinger, 79 Wis. 2d 194, 255 N.W.2d 314 (1977).

895.375 Abrogation of defense that contract was champertous. No action, special proceeding, cross complaint or counterclaim in any court shall be dismissed on the ground that a party to the action is a party to a contract savoring of champerty or maintenance unless the contract is the basis of the claim pleaded.

895.42 Deposit of undistributed money and property by personal representatives and others. (1) (a) In this subsection, "trust company" means any trust company or any state or national bank in this state that is authorized to exercise trust powers.

(b) If in any proceeding in any court of record it is determined that moneys or other personal property in the custody of or under the control of any personal representative, trustee, receiver, or other officer of the court, belongs to a natural person if the person is alive, or to an artificial person if it is in existence and entitled to receive, and otherwise to some other person, and the court finds any of the following, the court may direct the officer having custody or control of the money or property to deposit the money or property with any trust company:

1. That there is not sufficient evidence showing that the natural person first entitled to take is alive, or that the artificial person is in existence and entitled to receive.

2. That the money or other personal property, including any legacy or share of intestate property, cannot be delivered to the person entitled to the money or property because the person is a member of the military or naval forces of the United States or any of its allies or is engaged in any of the armed forces abroad or with the American Red Cross society or other body or similar business.

(c) Any officer depositing money or property with a trust company under par. (b), shall take the trust company's receipt for the deposit. The receipt shall, to the extent of the deposit, constitute a complete discharge of the officer in any accounting made by the officer in the proceeding.

(2) In case such deposit is directed to be made, the court shall require the trust company or bank in which said deposit is ordered to be made, as a condition of the receipt thereof, to accept and handle, manage and invest the same as trust funds to the same extent as if it had received the same as a testamentary trust, unless the court shall expressly otherwise direct, except that the reports shall be made to the court of its appointment.

(3) No distribution of the moneys or personal property so deposited shall be made by the depository as such trustee or otherwise without an order of the court on notice as prescribed by s. 879.03, and the jurisdiction of the court in the proceeding will be continued to determine, at any time at the instance of any party interested, the ownership of said funds, and to order their distribution.

History: 1973 c. 90; 1993 a. 486; 2001 a. 102; 2005 a. 149.

895.43 Intentional killing by beneficiary of contract. The rights of a beneficiary of a contractual arrangement who kills the principal obligee under the contractual arrangement are governed by s. 854.14.

History: 1981 c. 228; 1987 a. 222; 1997 a. 188.

895.435 Intentional killing by beneficiary of certain death benefits. The rights of a beneficiary to receive benefits payable by reason of the death of an individual killed by the beneficiary are governed by s. 854.14.

History: 1981 c. 228; 1987 a. 222; 1997 a. 188.

895.441 Sexual exploitation by a therapist; action for. (1) DEFINITIONS. In this section:

(a) "Physician" has the meaning designated in s. 448.01 (5).

(b) "Psychologist" means a person who practices psychology, as described in s. 455.01 (5).

(c) "Psychotherapy" has the meaning designated in s. 455.01 (6).

(d) "Sexual contact" has the meaning designated in s. 940.225 (5) (b).

(e) "Therapist" means a physician, psychologist, social worker, marriage and family therapist, professional counselor, nurse, chemical dependency counselor, member of the clergy or other person, whether or not licensed or certified by the state, who performs or purports to perform psychotherapy.

(2) CAUSE OF ACTION. (a) Any person who suffers, directly or indirectly, a physical, mental or emotional injury caused by, resulting from or arising out of sexual contact with a therapist who is rendering or has rendered to that person psychotherapy, counseling or other assessment or treatment of or involving any mental or emotional illness, symptom or condition has a civil cause of action against the psychotherapist for all damages resulting from, arising out of or caused by that sexual contact. Consent is not an issue in an action under this section, unless the sexual contact that is the subject of the action occurred more than 6 months after the psychotherapy, counseling, assessment or treatment ended.

(b) Notwithstanding ss. 801.09 (1), 801.095, 802.04 (1) and 815.05 (1g) (a), in an action brought under this section, the plaintiff may substitute his or her initials, or fictitious initials, and his or her age and county of residence for his or her name and address on the summons and complaint. The plaintiff's attorney shall supply the court the name and other necessary identifying information of the plaintiff. The court shall maintain the name and other identifying information, and supply the information to other parties to the action, in a manner that reasonably protects the information from being disclosed to the public.

(c) Upon motion by the plaintiff, and for good cause shown, or upon its own motion, the court may make any order that justice requires to protect:

1. A plaintiff who is using initials in an action under this section from annoyance, embarrassment, oppression or undue burden that would arise if any information identifying the plaintiff were made public.

2. A plaintiff in an action under this section from unreasonably long, repetitive or burdensome physical or mental examinations.

3. The confidentiality of information which under law is confidential, until the information is provided in open court in an action under this section.

(3) PUNITIVE DAMAGES. A court or jury may award punitive damages to a person bringing an action under this section.

(4) CALCULATION OF STATUTE OF LIMITATIONS. An action under this section is subject to s. 893.585.

(5) SILENCE AGREEMENTS. Any provision in a contract or agreement relating to the settlement of any claim by a patient against a therapist that limits or eliminates the right of the patient to disclose sexual contact by the therapist to a subsequent therapist, the department of safety and professional services, the department of health services, the injured patients and families compensation fund peer review council, or a district attorney is void.

History: 1985 a. 275; 1987 a. 352; 1991 a. 160, 217; 1995 a. 27 s. 9126 (19); 1999 a. 85; 2003 a. 111; 2005 a. 155 s. 62; Stats. 2005 s. 895.441; 2007 a. 20 s. 9121 (6) (a); 2011 a. 32.

Under sub. (2), consent is not an issue, and, as such, an instruction regarding the victim's contributory negligence was improper. Block v. Gomez, 201 Wis. 2d 795, 549 N.W.2d 783 (Ct. App. 1996), 94–1085.

This section grants no cause of action against a therapist's employer. L.L.N. v. Clauder, 203 Wis. 2d 570, 552 N.W.2d 879 (Ct. App. 1996), 95–2084.

Reversed on other grounds. 209 Wis. 2d 674, 563 N.W.2d 434 (1997), 95–2084.

895.442 Sexual exploitation by a member of the clergy; action for. (1) DEFINITIONS. In this section:

(a) "Member of the clergy" has the meaning given in s. 48.981 (1) (cx).

(b) "Religious organization" means an association, conference, congregation, convention, committee, or other entity that is organized and operated for a religious purpose and that is exempt from federal income tax under 26 USC 501 (c) (3) or (d) and any subunit of such an association, conference, congregation, convention, committee, or entity that is organized and operated for a religious purpose.

(c) "Sexual contact" has the meaning given in s. 940.225 (5) (b).

(2) CAUSE OF ACTION. (a) Any person who suffers an injury as a result of sexual contact with a member of the clergy that occurs while the person is under the age of 18 may bring an action against the member of the clergy for all damages caused by that sexual contact.

(b) Any person who may bring an action under par. (a) may bring an action against the religious organization that employed the member of the clergy for all damages caused by that sexual contact if, at the time that the sexual contact occurred, another employee of that religious organization whose duties included supervising that member of the clergy knew or should have known that the member of the clergy previously had sexual contact with a person under the age of 18 and failed to do all of the following:

1. Report that sexual contact under s. 48.981 (3).

2. Exercise ordinary care to prevent similar incidents from occurring.

(c) Notwithstanding ss. 801.09 (1), 801.095, 802.04 (1), and 815.05 (1g) (a), in an action brought under this section, the plaintiff may substitute his or her initials, or fictitious initials, and his or her age and county of residence for his or her name and address on the summons and complaint. The plaintiff's attorney shall supply the court the name and other necessary identifying information of the plaintiff. The court shall maintain the name and other identifying information, and supply the information to other parties to the action, in a manner that reasonably protects the information from being disclosed to the public.

(d) Upon motion by the plaintiff, and for good cause shown, or upon its own motion, the court may make any order that justice requires to protect any of the following:

1. A plaintiff who is using initials in an action under this section from annoyance, embarrassment, oppression, or undue burden that would arise if any information identifying the plaintiff were made public.

2. A plaintiff in an action under this section from unreasonably long, repetitive, or burdensome physical or mental examinations.

3. The confidentiality of information which under law is confidential, until the information is provided in open court in an action under this section.

(3) CONSENT. Consent is not an issue in an action under this section.

(4) CALCULATION OF STATUTE OF LIMITATIONS. An action under this section is subject to s. 893.587.

(5) SILENCE AGREEMENTS. Any contract or agreement concerning the settlement of any claim under this section that limits or eliminates the right of the injured person to disclose the sexual contact described under sub. (2) to another member of the religious organization to which the member of the clergy under sub. (2) belongs, to a therapist, as defined in s. 895.441 (1) (e), to a person listed under s. 48.981 (2) (a), or to a district attorney, is void.

History: 2003 a. 279; 2005 a. 155 s. 63; Stats. 2005 s. 895.442.

895.443 Physical injury, emotional distress, loss or damage suffered by members of certain groups; action for. (1) If a person suffers physical injury to his or her person or emotional distress or damage to or loss of his or her property by reason of conduct that is prohibited under s. 943.012 and that causes damage to any property specified in s. 943.012 (1) to (4) or by reason of conduct that is grounds for a penalty increase under s. 939.645 (1), the person has a civil cause of action against the person who caused the physical injury, emotional distress, damage or loss.

(2) The burden of proof in a civil action under sub. (1) rests with the person who suffers the physical injury, emotional distress, damage or loss to prove his or her case by a preponderance of the credible evidence.

(3) If the plaintiff prevails in a civil action under sub. (1), he or she may recover special and general damages, including damages for emotional distress; punitive damages; and costs, including all reasonable attorney fees and other costs of the investigation and litigation which were reasonably incurred.

(4) A person may bring a civil action under sub. (1) regardless of whether there has been a criminal action related to the physical injury, emotional distress, loss or damage under sub. (1) and regardless of the outcome of any such criminal action.

(5) This section does not limit the right of a person to recover from any parent or parents under s. 895.035.

History: 1987 a. 348; 2003 a. 243; 2005 a. 155 s. 65; Stats. 2005 s. 895.443.

895.444 Injury caused by criminal gang activity; action for. (1) DEFINITIONS. In this section:

(a) "Criminal gang" has the meaning given in s. 939.22 (9).

(b) "Criminal gang activity" has the meaning given in s. 941.38 (1) (b).

(c) "Political subdivision" means a city, village, town or county.

(2) CIVIL CAUSE OF ACTION. (a) The state, a school district or a political subdivision may bring an action in circuit court for any expenditure of money for the allocation or reallocation of law enforcement, fire fighting, emergency or other personnel or

resources if the expenditure of money by the state, a school district or a political subdivision is the result of criminal gang activity.

(b) Any person who suffers physical injury or incurs property damage or loss resulting from any criminal gang activity has a cause of action for the actual damages sustained. The burden of proof in a civil action under this paragraph rests with the person who suffers the physical injury or property damage or loss to prove his or her case by a preponderance of the credible evidence.

(c) The action may be brought against the criminal gang or against any member, leader, officer or organizer of a criminal gang who participates in a criminal gang activity or who authorizes, causes, orders, ratifies, requests or suggests a criminal gang activity. An action brought under this subsection shall also name as defendants the criminal gang and any criminal gang members that participated in the criminal gang activity. An action brought under this subsection may name, as a class of defendants, all unknown criminal gang members.

(d) The plaintiff may bring a civil action under this subsection regardless of whether there has been a criminal action related to the injury, property damage or loss or expenditure of money under par. (a) or (b) and regardless of the outcome of that criminal action.

(3) SERVICE OF PROCESS. A summons may be served individually upon any member, leader, officer or organizer of a criminal gang by service as provided under s. 801.11 (1), (2), (5) or (6) where the claim sued upon arises out of or relates to criminal gang activity within this state sufficient to subject a defendant to personal jurisdiction under s. 801.05 (2) to (10). A judgment rendered after service under this subsection is a binding adjudication against the criminal gang.

(4) INJUNCTIVE RELIEF, DAMAGES, COSTS AND FEES. (a) The court, upon the request of the state, a school district or a political subdivision, may grant an injunction restraining an individual from committing an act that would injure the state, a school district or a political subdivision or may order such other relief as the court determines is proper.

(b) The court may order a criminal gang member to divest himself or herself of any interest or involvement in any criminal gang activity and may restrict a criminal gang member from engaging in any future criminal gang activity.

(c) In addition to the costs allowed under s. 814.04, a final judgment in an action under sub. (2) (a) in favor of the plaintiff shall include compensatory damages for the expenditure of money for the allocation or reallocation of law enforcement, fire fighting, emergency or other personnel or resources caused by the criminal gang activity and compensation for the costs of the investigation and prosecution and reasonable attorney fees.

(d) In addition to the costs allowed under s. 814.04, a final judgment in an action under sub. (2) (b) in favor of the plaintiff shall include attorney fees and the costs of the investigation and litigation.

(e) The final judgment in favor of the plaintiff in an action under sub. (2) (a) or (b) may include punitive damages assessed against a criminal gang leader, officer, organizer or member who is found to have participated in criminal gang activity.

History: 1993 a. 98; 2005 a. 155 s. 67; Stats. 2005 s. 895.444.

895.445 Damage to certain machines; action for. **(1)** An owner of a machine operated by the insertion of coins, currency, debit cards or credit cards that is damaged by a person acting with the intent to commit a theft from that machine may bring an action against the person.

(2) The owner has the burden of proving his or her case under sub. (1) by a preponderance of the credible evidence.

(3) If the owner prevails in a civil action under sub. (1), he or she may recover all of the following:

(a) Treble damages.

(b) Costs, including all reasonable attorney fees and other costs of the investigation and litigation that were reasonably incurred.

(4) An owner may bring a civil action under sub. (1) regardless of whether there has been a criminal action related to the damage under sub. (1) and regardless of the outcome of any such criminal action.

History: 1995 a. 133; 2005 a. 155 s. 69; Stats. 2005 s. 895.445.

895.446 Property damage or loss caused by crime; action for. **(1)** Any person who suffers damage or loss by reason of intentional conduct that occurs on or after November 1, 1995, and that is prohibited under s. 943.01, 943.20, 943.21, 943.24, 943.26, 943.34, 943.395, 943.41, 943.50, 943.61, 943.74, or 943.76, or by reason of intentional conduct that occurs on or after April 28, 1998, and that is prohibited under s. 943.201 or 943.203, or by reason of intentional conduct that occurs on or after July 1, 2004, and that is prohibited under s. 943.011, 943.012, or 943.017, has a cause of action against the person who caused the damage or loss.

(2) The burden of proof in a civil action under sub. (1) is with the person who suffers damage or loss to prove a violation of s. 943.01, 943.011, 943.012, 943.017, 943.20, 943.201, 943.203, 943.21, 943.24, 943.26, 943.34, 943.395, 943.41, 943.50, 943.61, 943.74, or 943.76 by a preponderance of the credible evidence. A conviction under s. 943.01, 943.011, 943.012, 943.017, 943.20, 943.201, 943.203, 943.21, 943.24, 943.26, 943.34, 943.395, 943.41, 943.50, 943.61, 943.74, or 943.76 is not required to bring an action, obtain a judgment, or collect on that judgment under this section.

(3) If the plaintiff prevails in a civil action under sub. (1), he or she may recover all of the following:

(a) Actual damages, including the retail or replacement value of damaged, used, or lost property, whichever is greater, for a violation of s. 943.01, 943.011, 943.012, 943.017, 943.20, 943.201, 943.203, 943.21, 943.24, 943.26, 943.34, 943.395, 943.41, 943.50, 943.61, 943.74, or 943.76.

(b) All costs of investigation and litigation that were reasonably incurred, including the value of the time spent by any employee or agent of the victim.

(c) Exemplary damages of not more than 3 times the amount awarded under par. (a). No additional proof is required under this section for an award of exemplary damages under this paragraph.

(3m) (a) In this subsection, "plant" includes the material taken, extracted, or harvested from a plant, or a seed or other plant material that is being used or that will be used to grow or develop a plant.

(b) If the violation of s. 943.01 (1) involves the circumstances under s. 943.01 (2d), the court may award a prevailing plaintiff the reasonable attorney fees incurred in litigating the action and, when determining the damages recoverable under sub. (3), shall include the market value of the plant before the damage or destruction, and the costs of production, research, testing, replacement, and plant development directly related to the plant that has been damaged or destroyed.

(4) Any recovery under this section shall be reduced by the amount recovered as restitution under ss. 800.093 and 973.20 and ch. 938 for the same act or as recompense under s. 969.13 (5) (a) for the same act.

(5) No person may bring a cause of action under both this section and s. 95.195, 895.449, 943.212, 943.245 or 943.51 regarding the same incident or occurrence. If the plaintiff has a cause of action under both this section and s. 895.449, 943.212, 943.245 or 943.51 regarding the same incident or occurrence, the plaintiff may choose which action to bring. If the plaintiff has a cause of action under both this section and s. 95.195, the plaintiff must bring the action under s. 95.195.

(6) A person is not criminally liable under s. 943.30 for any action brought in good faith under this section.

History: 1995 a. 27; 1997 a. 101; 2001 a. 16, 91; 2003 a. 36, 138; 2005 a. 155 s. 70; Stats. 2005 s. 895.446; 2005 a. 447 s. 1; 2007 a. 96; 2011 a. 186.

Civil theft under this section is an "other civil action" under s. 799.01 (1) (d), not an "action based in tort" under s. 799.01 (1) (cr). The use of the term "civil action" in this section to describe the cause for civil theft indicates that the cause may also

be properly characterized as a "civil action" under s. 799.01. This statutory civil theft claim has been specifically distinguished from similar claims of conversion, which sound in tort. Estate of Miller v. Storey, 2017 WI 99, 378 Wis. 2d 358, 903 N.W.2d 759, 14−2420.

Attorney fees are included within the meaning of "costs of investigation and litigation" under sub. (3) (b) because *Stathus*, 2003 WI App 28, has long stood for that proposition and the legislature, despite taking other, subsequent action in this section, has not legislated so as to alter that interpretation. Estate of Miller v. Storey, 2017 WI 99, 378 Wis. 2d 358, 903 N.W.2d 759, 14−2420.

Current or continuing possession of property is not an element of a claim under this section and is not a requirement under general standing principles. Pagoudis v. Keidl, 2023 WI 27, 406 Wis. 2d 542, 988 N.W.2d 606, 20−0225.

Both conversion and civil theft under sub. (1) and s. 943.20 (1) (b) require the victim to have an ownership interest in the property converted or stolen. Under the agreement in this case, the plaintiff operated a brain injury center in the defendant's nursing facility; the defendant handled all billing and collections for the services the plaintiff provided; and, through a process outlined in the agreement, the defendant remitted the funds collected to the plaintiff. However, the defendant failed to follow through on its obligations under the contract, redirecting the plaintiff's funds to pay the defendant's employees and other creditors instead. When one party receives funds from an outside source and is required to remit those funds to the other party, that is enough to create an ownership interest. Milwaukee Center for Independence, Inc. v. Milwaukee Health Care, LLC, 929 F.3d 489 (2019).

Under Wisconsin law, the economic loss doctrine does not bar recovery under s. 100.18, but it does bar recovery under s. 895.80 [now this section], at least under the facts of this case. Dow v. Poltzer, 364 F. Supp. 2d 931 (2005).

895.447 Certain agreements to limit or eliminate tort liability void.

(1) Any provision to limit or eliminate tort liability as a part of or in connection with any contract, covenant or agreement relating to the construction, alteration, repair or maintenance of a building, structure, or other work related to construction, including any moving, demolition or excavation, is against public policy and void.

(2) This section does not apply to any insurance contract or worker's compensation plan.

(3) This section shall not apply to any provision of any contract, covenant or agreement entered into prior to July 1, 1978.

History: 1977 c. 441; Stats. 1977 s. 895.47; 1977 c. 447; Stats. 1977 s. 895.49; 2005 a. 155 s. 49; Stats. 2005 s. 895.447.

This section did not void an indemnity clause in a contract. Gerdmann v. United States Fire Insurance Co., 119 Wis. 2d 367, 350 N.W.2d 730 (Ct. App. 1984).

This section did not void a subrogation waiver in a contract because the waiver did not limit or eliminate tort liability. "Tort liability" is the legal obligation or responsibility to another resulting from a civil wrong or injury for which a remedy may be obtained. The subrogation waiver in this case did not limit or eliminate the legal responsibility of the contractors to the property owner for the contractors' negligent acts. Instead, the subrogation waiver waived the property owner's right to recover damages from the contractors for their wrongful acts to the extent those damages were covered by a property insurance policy. Collection of damages does not equate with liability. Rural Mutual Insurance Co. v. Lester Buildings, LLC, 2019 WI 70, 387 Wis. 2d 414, 929 N.W.2d 180, 16−1837.

895.448 Safety devices on farm equipment, ordinary negligence.

(1) In this section:

(a) "Farm equipment" means a tractor or other machine used in the business of farming.

(b) "Safety device" means a guard, shield or other part that has the purpose of preventing injury to humans.

(2) If a person in the business of selling or repairing farm equipment fabricates a safety device and installs the safety device on used farm equipment, after determining either that the farm equipment was not originally equipped with such a safety device or that a replacement is not available from the original manufacturer or from a manufacturer of replacements, and notifies the owner or purchaser of the farm equipment that the person fabricated the safety device, the person is not liable for claims founded in tort for damages arising from the safety device unless the claimant proves, by a preponderance of the evidence, that a cause of the claimant's harm was the failure to use reasonable care with respect to the design, fabrication, inspection, condition or installation of, or warnings relating to, the safety device.

History: 1993 a. 455; 2005 a. 155 s. 50; Stats. 2005 s. 895.448.

895.449 Action for loss caused by failure to pay for gasoline or diesel fuel.

(1) In this section:

(a) "Association" means a membership organization whose membership is composed of retail businesses that sell gasoline or diesel fuel.

(b) "Fuel retailer" means a person who suffers a loss as the result of a violation of s. 943.21 (1m) (d).

(c) "Vehicle owner" means a person who holds the legal title of the vehicle that received gasoline or diesel fuel involved in a violation of s. 943.21 (1m) (d).

(2) Any fuel retailer has a cause of action against a vehicle owner whose vehicle was involved in a violation of s. 943.21 (1m) (d). The fuel retailer may provide an association with an affidavit specifying the time and date that the violation occurred, the registration plate number of the vehicle that received the gasoline or diesel fuel, and the retail value of gasoline or diesel fuel involved in the violation.

(3) Upon receipt by an association of an affidavit under sub. (2), that association may obtain from the department of transportation, based on the registration plate number of the motor vehicle that received the gasoline or diesel fuel in violation of s. 943.21 (1m) (d), identifying information regarding the owner of that motor vehicle and may forward the identifying information to the person who provided the affidavit under sub. (2).

(4) The fuel retailer may send a letter by 1st class mail to the vehicle owner at the address obtained under sub. (3), requesting payment of the amount owed for the unpaid gasoline or diesel fuel, plus a service fee that does not exceed $30. The letter shall include the time and date of the violation, the registration plate number of the vehicle that received the gasoline or diesel fuel, and a statement that if the vehicle owner fails to pay the amount demanded within 30 days of receipt of the letter, the fuel retailer may commence a court action to collect that amount. If a vehicle owner fails to make the payment owed within 30 days of his or her receipt of the letter, the fuel retailer may commence an action in circuit court to collect the amount demanded.

(5) If the fuel retailer prevails in an action brought under this section, the fuel retailer shall be entitled to the amount of the loss incurred, the $30 service fee, and court costs.

History: 2011 a. 186.

895.45 Service representatives for adult abusive conduct complainants.

(1) DEFINITIONS. In this section:

(a) "Abusive conduct" means domestic abuse, as defined under s. 49.165 (1) (a), 813.12 (1) (am), or 968.075 (1) (a), harassment, as defined under s. 813.125 (1) (am) 4., sexual exploitation by a therapist under s. 940.22, sexual assault under s. 940.225, child abuse, as defined under s. 813.122 (1) (a), or child abuse under ss. 948.02 to 948.11.

(b) "Complainant" means an adult who alleges that he or she was the subject of abusive conduct or who alleges that a crime has been committed against him or her.

(c) "Service representative" means an individual member of an organization or victim assistance program who provides counseling or support services to complainants or petitioners and charges no fee for services provided to a complainant under sub. (2) or to a petitioner under s. 813.122.

(2) RIGHT TO BE PRESENT. A complainant has the right to select a service representative to attend, with the complainant, hearings, depositions and court proceedings, whether criminal or civil, and all interviews and meetings related to those hearings, depositions and court proceedings, if abusive conduct is alleged to have occurred against the complainant or if a crime is alleged to have been committed against the complainant and if the abusive conduct or the crime is a factor under s. 767.41 or is a factor in the complainant's ability to represent his or her interest at the hearing, deposition or court proceeding. The complainant shall notify the court orally, or in writing, of that selection. A service representative selected by a complainant has the right to be present at every hearing, deposition and court proceeding and all interviews and meetings related to those hearings, depositions and court proceedings that the complainant is required or authorized to attend. The service representative selected by the complainant has the right to sit adjacent to the complainant and confer orally and in writing with the complainant in a reasonable manner during every hearing, deposition or court proceeding and related interviews and meetings, except when the complainant is testifying or is repre-

sented by private counsel. The service representative may not sit at counsel table during a jury trial. The service representative may address the court if permitted to do so by the court.

(3) FAILURE TO EXERCISE RIGHT NOT GROUNDS FOR APPEAL. The failure of a complainant to exercise a right under this section is not a ground for an appeal of a judgment of conviction or for any court to reverse or modify a judgment of conviction.

History: 1991 a. 276; 1995 a. 220; 2001 a. 109; 2005 a. 155 s. 64; Stats. 2005 s. 895.45; 2005 a. 443 s. 265; 2007 a. 20; 2015 a. 253; 2021 a. 76.

895.453 Payments of chiropractic services from attorney contingency fees. (1) In this section:

(a) "Chiropractor" means a person licensed under ch. 446.

(b) "Motor vehicle" means a vehicle, including a combination of 2 or more vehicles or an articulated vehicle, which is self−propelled, except a vehicle operated exclusively on a rail.

(2) Notwithstanding s. 803.03, if all of the following conditions exist, fees for chiropractic services provided to an injured person shall be paid out of the amount of fees due to his or her attorney under the contingency fee arrangement made between the person and the attorney:

(a) The person is injured as the result of a motor vehicle accident.

(b) The services were provided by a chiropractor because of the injuries arising from the motor vehicle accident.

(c) The person is represented by an attorney under a contingency fee arrangement.

(d) The person receives an amount under a settlement agreement that is less than his or her damages.

(e) Prior to the person's acceptance of the settlement agreement, the chiropractor has not been paid for his or her services and has provided written notification to the person's attorney of the services that were provided to the person.

(3) Except as provided in sub. (4), if the conditions under sub. (2) are met, the distribution of the amount due under the contingency fee arrangement shall be allocated on a pro rata basis between the person's attorney and each chiropractor who provided services, based on the percentage obtained by comparing the outstanding fees owed to the attorney and each chiropractor to the aggregate outstanding attorney and chiropractic fees.

(4) This section does not apply if any of the following exist:

(a) The chiropractor is eligible for payment for the services provided to the person under any health insurance contract or self−insured health plan.

(b) The chiropractor is eligible for payment for the services provided to the person under any governmental health plan or program, including Medicaid or Medicare.

History: 2011 a. 32.

895.455 Limits on recovery by prisoners. A prisoner, as defined in s. 801.02 (7) (a) 2., may not recover damages for mental or emotional injury unless the prisoner shows that he or she has suffered a physical injury as a result of the same incident that caused the mental or emotional injury.

History: 1997 a. 133; 2005 a. 155 s. 66; Stats. 2005 s. 895.455.

895.457 Limiting felon's right to damages. (1) In this section:

(a) "Crime" means a crime under the laws of this state or under federal law.

(b) "Damages" means damages for an injury to real or personal property, for death, or for personal injury.

(c) "Felony" means a felony under the laws of this state or under federal law.

(d) "Victim" means a person against whom an act constituting a felony was committed.

(2) No person may recover damages from any of the following persons for injury or death incurred while committing, or as a result of committing, an act that constituted a felony, if the person was convicted of a felony for that act:

(a) A victim of that felony.

(b) An individual other than a victim of that felony who assisted or attempted to assist in the prevention of the act, who assisted or attempted to assist in the protection of the victim, or who assisted or attempted to assist in the apprehension or detention of the person committing the act unless the individual who assisted or attempted to assist is convicted of a crime as a result of his or her assistance or attempted assistance.

(3) This section does not prohibit a person from recovering damages for death or personal injury resulting from a device used to provide security that is intended or likely to cause great bodily harm, as defined in s. 939.22 (14), or death.

(4) (a) Any applicable statute of limitations for an action to recover damages against a person described under sub. (2) (a) or (b) for injury or death incurred while committing, or as a result of committing, an act that constituted a felony is tolled during the period beginning with the commencement of a criminal proceeding charging the person who committed the act with a felony for that act and ending with the final disposition, as defined in s. 893.13 (1), of the criminal proceeding.

(b) Any applicable statute of limitations for an action to recover damages from an individual described under sub. (2) (b) for injury or death incurred while committing, or as a result of committing, an act that constituted a felony is tolled during the period beginning with the commencement of a criminal proceeding charging the individual described under sub. (2) (b) with a crime as a result of his or her assistance or attempt to assist and ending with the final disposition, as defined in s. 893.13 (1), of the criminal proceeding. This paragraph does not apply if a criminal proceeding described in par. (a) does not result in a felony conviction and there is no other criminal proceeding described under par. (a) pending.

(5) A court may stay a civil action described under sub. (2) until the final disposition of a criminal proceeding described under sub. (4).

History: 2003 a. 87; 2005 a. 155 s. 68; Stats. 2005 s. 895.457.

895.46 State and political subdivisions thereof to pay judgments taken against officers. (1) (a) If the defendant in any action or special proceeding is a public officer or employee and is proceeded against in an official capacity or is proceeded against as an individual because of acts committed while carrying out duties as an officer or employee and the jury or the court finds that the defendant was acting within the scope of employment, the judgment as to damages and costs entered against the officer or employee, except as provided in s. 146.89 (4), in excess of any insurance applicable to the officer or employee shall be paid by the state or political subdivision of which the defendant is an officer or employee. Agents of any department of the state shall be covered by this section while acting within the scope of their agency. Regardless of the results of the litigation the governmental unit, if it does not provide legal counsel to the defendant officer or employee, shall pay reasonable attorney fees and costs of defending the action, unless it is found by the court or jury that the defendant officer or employee did not act within the scope of employment. Except as provided in s. 146.89 (4), the duty of a governmental unit to provide or pay for the provision of legal representation does not apply to the extent that applicable insurance provides that representation. If the employing state agency or the attorney general denies that the state officer, employee or agent was doing any act growing out of or committed in the course of the discharge of his or her duties, the attorney general may appear on behalf of the state to contest that issue without waiving the state's sovereign immunity to suit. Failure by the officer or employee to give notice to his or her department head of an action or special proceeding commenced against the defendant officer or employee as soon as reasonably possible is a bar to recovery by the officer or employee from the state or political subdivision of reasonable attorney fees and costs of defending the action. The

attorney fees and expenses shall not be recoverable if the state or political subdivision offers the officer or employee legal counsel and the offer is refused by the defendant officer or employee. If the officer, employee or agent of the state refuses to cooperate in the defense of the litigation, the officer, employee or agent is not eligible for any indemnification or for the provision of legal counsel by the governmental unit under this section.

(am) If a court determines that costs are awardable to an employee or official who has been provided representation by a governmental unit under par. (a), the court shall award those costs to the unit of government that provided the representation.

(b) Persons holding the office of county sheriff on March 1, 1983, are covered by this subsection. This subsection covers other county sheriffs who have:

1. Satisfactorily completed or are currently enrolled in the preparatory program of law enforcement training under s. 165.85 (4) (a) 1. and, if applicable, the recertification programs under s. 165.85 (4) (a) 7., or have provided evidence of equivalent law enforcement training and experience as determined by the law enforcement standards board; or

2. At least 5 years of full–time employment as a law enforcement officer, as defined in s. 165.85 (2) (c).

(c) This subsection does not apply to any action or special proceeding brought by a county against its county sheriff if the action or proceeding is determined in favor of the county.

(d) On and after March 1, 1983, all persons employed as deputy sheriffs, as defined in s. 40.02 (48) (b) 3., are covered by this subsection. The county board shall adopt written policies for payments under this subsection on behalf of any other person, provided that person has satisfied the minimum standards of the law enforcement standards board, who serves at the discretion of the sheriff as a law enforcement officer as defined in s. 165.85 (2) (c), and the county may make the payments upon approval by the county board.

(dm) All security officers employed by the department of military affairs who are deputed under s. 59.26 (4m) are covered by this section while acting within the scope of their duties assigned under s. 59.26 (4m), as if they were state employees acting within the scope of their state employment.

(e) Any nonprofit corporation operating a museum under a lease agreement with the state historical society, and all officers, directors, employees and agents of such a corporation, and any local emergency planning committee appointed by a county board under s. 59.54 (8) (a) and all members of such a committee, are state officers, employees or agents for the purposes of this subsection.

(2) Any town officer held personally liable for reimbursement of any public funds paid out in good faith pursuant to the directions of electors at any annual or special town meeting shall be reimbursed by the town for the amount of the judgment for damages and costs entered against the town officer.

(3) The protection afforded by this section shall apply to any state officer, employee or agent while operating a state–owned vehicle for personal use in accordance with s. 20.916 (7).

(4) The protection afforded by this section applies to members of the board of governors created under s. 619.04 (3), members of a committee or subcommittee of that board of governors, members of the injured patients and families compensation fund peer review council created under s. 655.275 (2), and persons consulting with that council under s. 655.275 (5) (b), with respect to judgments, attorney fees, and costs awarded before, on, or after April 25, 1990.

(5) The protection afforded by this section applies to any of the following:

(a) A volunteer health care provider who provides services under s. 146.89, except a volunteer health care provider described in s. 146.89 (5) (a), for the provision of those services.

(am) A practitioner who provides services under s. 257.03 and a health care facility on whose behalf services are provided under s. 257.04.

(b) A physician under s. 251.07 or 252.04 (9) (b).

(6) The protection afforded by this section applies to any criminal action under s. 291.97 (2) or 293.87 (2) or under 7 USC 136L (b), 15 USC 2616 (b), 33 USC 1319 (c), 42 USC 2284, 6928 (d) and (e), 6973 (b), 6992 (b) and (c), 7413 (c), 9603 (b), 9606 (b) and 11045 (b) or 49 USC 5124 that is commenced against a state officer or state employee who is proceeded against in his or her official capacity or as an individual because of acts committed in the storage, transportation, treatment or disposal of hazardous substances, as defined in s. 289.01 (11), if that officer or employee is found to be acting within the scope of his or her employment and if the attorney general determines that the state officer or state employee acted in good faith. Regardless of the determination made by the attorney general, the protection afforded by this section applies if the state officer or agent is not found guilty of the criminal action commenced under this subsection. This protection includes the payment of reasonable attorney fees in defending the action and costs or fines arising out of the action.

(7) The protection afforded by this section does not apply to any law enforcement officer of another state acting in Wisconsin under an agreement authorized under s. 175.46.

(8) The protection afforded by this section applies to any owner of land within a drainage district established under ch. 88 who undertakes work on a drain if the work is approved by the drainage board.

(9) (a) The state shall reimburse a state officer or state employee for reasonable attorney fees and costs incurred by the officer or employee in connection with a John Doe proceeding under s. 968.26 (2) arising from the officer's or employee's conduct in the performance of official duties if all the following apply:

1. The officer or employee was acting within the scope of his or her employment.

2. The officer or employee is not convicted of a crime arising from the conduct that is the subject of any criminal complaint issued under s. 968.26 (2) (d).

(b) The state shall reimburse a state officer or state employee for reasonable attorney fees and costs incurred by the officer or employee in defending a criminal complaint issued under s. 968.26 (2) (d) arising from the officer's or employee's conduct in the performance of official duties if all of the following apply:

1. The officer or employee was acting within the scope of his or her employment.

2. The officer or employee is not convicted of a crime arising from the conduct that is the subject of the criminal complaint issued under s. 968.26 (2) (d).

(10) Any employee of the state of Minnesota who is named as a defendant and who is found liable as a result of performing services for this state under a valid agreement between this state and the state of Minnesota providing for interchange of employees or services shall be indemnified by this state to the same extent as an employee of this state performing the same services for this state pursuant to this section.

History: 1973 c. 333; Sup. Ct. Order, 67 Wis. 2d 585, 761 (1975); Stats. 1975 s. 895.45; 1975 c. 81, 198, 199; Stats. 1975 s. 895.46; 1977 c. 29; 1979 c. 74, 221; 1981 c. 20; 1981 c. 96 s. 67; 1981 c. 314 s. 136; 1983 a. 6; 1983 a. 27 s. 2202 (32); 1985 a. 29, 66; 1987 a. 342; 1987 a. 403 s. 256; 1989 a. 31, 115, 187, 206, 359; 1991 a. 245, 269; 1993 a. 27, 28, 49, 238, 456, 490; 1995 a. 201, 227, 411; 1997 a. 35; 1999 a. 185; 2003 a. 111; 2005 a. 96; 2007 a. 79, 130; 2009 a. 24, 42, 93, 154; 2011 a. 32; 2013 a. 214, 241.

Cross–reference: See s. 775.06 for a special procedure applying to state law enforcement officers.

Highway commission [now transportation dept.] supervisors who are responsible for the placement of highway warning signs may be sued if a sign is not placed in accordance with commission rules. They cannot claim the state's immunity from suit. Chart v. Dvorak, 57 Wis. 2d 92, 203 N.W.2d 673 (1973).

"Litigation" under sub. (1) refers only to civil proceedings. Bablitch & Bablitch v. Lincoln County, 82 Wis. 2d 574, 263 N.W.2d 218 (1978).

Mandatory payment under sub. (1) did not apply to an official who was sued for illegally retaining the official's salary due to an alleged failure to comply with the statutory requirements for a bond and oath of office. The official was not acting in his official capacity when filing the bond or taking the oath or in defending a related suit. Thuermer v. Village of Mishicot, 86 Wis. 2d 374, 272 N.W.2d 409 (Ct. App. 1978).

An insurer of public employees had no right of recovery under s. 270.58 (1) [now sub. (1)]. Horace Mann Insurance Co. v. Wauwatosa Board of Education, 88 Wis. 2d 385, 276 N.W.2d 761 (1979).

The state could not be sued as an indemnitor under s. 270.58 (1) [now sub. (1)]. Fiala v. Voight, 93 Wis. 2d 337, 286 N.W.2d 824 (1980).

The state may not be sued directly for the tortious acts of its employees. Miller v. Smith, 100 Wis. 2d 609, 302 N.W.2d 468 (1981).

The "color of law" element of a 42 USC 1983 lawsuit is not identical to the "scope of employment" element under sub. (1). Cameron v. City of Milwaukee, 102 Wis. 2d 448, 307 N.W.2d 164 (1981).

Whether alderpersons were acting within the scope of their employment was inappropriately decided by summary judgment. Schroeder, Gedlen, Riester & Moerke v. Schoessow, 108 Wis. 2d 49, 321 N.W.2d 131 (1982).

Once a governmental unit decides to provide counsel, it must provide complete and full representation on all issues. Beane v. City of Sturgeon Bay, 112 Wis. 2d 609, 334 N.W.2d 235 (1983).

Sub. (1) applied to a forfeiture action against a police officer. Crawford v. City of Ashland, 134 Wis. 2d 369, 396 N.W.2d 781 (Ct. App. 1986).

"Any action" in sub. (1) (a) means a trial in which the issue of "scope of employment" is essential and evidence on the issue is introduced and argued. Desotelle v. Continental Casualty Co., 136 Wis. 2d 13, 400 N.W.2d 524 (Ct. App. 1986).

In "scope of employment" cases under sub. (1) (a), consideration must be given to whether the employee was "actuated," in some measure, by a purpose to serve the employer. Olson v. Connerly, 156 Wis. 2d 488, 457 N.W.2d 479 (1990).

A former school employee sued by the school district over the employee's employment contract was not entitled to costs under sub. (1) (a). School Board v. Bomber, 214 Wis. 2d 397, 571 N.W.2d 189 (Ct. App. 1997), 97−1469.

Voting members of a commission created by two villages were public officers protected by sub. (1). 74 Atty. Gen. 208.

This section and s. 895.35 apply to actions for open meetings law violations to the same extent that they apply to other actions against public officers and employees, except that public officials cannot be reimbursed for forfeitures they are ordered to pay for violating the open meetings law. 77 Atty. Gen. 177.

The University of Wisconsin has no authority to agree to hold harmless a county that incurs liability because of a university officer's torts, but common law would require the officer to indemnify the county and statutory indemnification would require the state to indemnify the officer when acting in the scope of employment. 78 Atty. Gen. 1.

State Emergency Response Board Committee and Local Emergency Planning Committee subcommittee members appointed by a county board are entitled to indemnity for damage liability under this section and legal representation by the attorney general under s. 165.25. 81 Atty. Gen. 17.

Members of the Investment Board, Employee Trust Fund Board, Teachers Retirement Board, Wisconsin Retirement Board, Group Insurance Board, and Deferred Compensation Board are subject to the limitations on damages under s. 893.82 and are entitled to the state's indemnification for liability under this section. OAG 2−06.

An assistant district attorney on furlough pursuant to executive order is entitled to representation and indemnification if the attorney is carrying out duties within the scope of employment. OAG 9−09.

This section may require indemnification for actions that are not intended to benefit the employer when those actions further the objectives of employment. Hibma v. Odegaard, 769 F.2d 1147 (1985).

Section 893.80 (4) bars direct suits against municipalities for the torts of their employees. It does not preclude suing the officer directly and using this section to indirectly recover from the municipality. Graham v. Sauk Prairie Police Commission, 915 F.2d 1085 (1990).

An employee can misuse or exceed the employee's authority while still acting within the scope of employment. *Graham*, 915 F.2d 1085 (1990), exemplifies the principle that a police officer can grossly exceed the officer's authority to use force and still be found to have acted within the scope of employment. Javier v. City of Milwaukee, 670 F.3d 823 (2012).

Sub. (1) does not prevent a state official from asserting "good faith" as a defense to a charge of infringement of civil rights. Clarke v. Cady, 358 F. Supp. 1156 (1973).

The purpose of this section is not to transform any suit against a state employee into a suit against the state, but to shield state employees from monetary loss in tort suits. Ware v. Percy, 468 F. Supp. 1266 (1979).

A county could not be held liable for a civil rights judgment against a county judge when the judgment held that the judge was not carrying out duties of the office at the relevant time. Harris v. County of Racine, 512 F. Supp. 1273 (1981).

If an employee is part of an inter−municipal team under s. 66.305 [now s. 66.0313], the agency requesting the team's services is the de facto employer for purposes of indemnification under this section. Liebenstein v. Crowe, 826 F. Supp. 1174 (1992).

A sheriff represents the county when enforcing the law. Sovereign immunity for state officials under the 11th amendment to the U.S. Constitution does not apply. Abraham v. Piechowski, 13 F. Supp. 2d 870 (1998).

895.463 Zoning ordinances. In any matter relating to a zoning ordinance or shoreland zoning ordinance enacted or enforced by a city, village, town, or county, the court shall resolve an ambiguity in the meaning of a word or phrase in a zoning ordinance or shoreland zoning ordinance in favor of the free use of private property.

History: 2015 a. 391.

895.47 Indemnification of the Wisconsin State Agencies Building Corporation and the Wisconsin State Public Building Corporation. If the Wisconsin State Agencies Building Corporation or the Wisconsin State Public Building Corporation is the defendant in an action or special proceeding in its capacity as owner of facilities occupied by any department or agents of any department of state government, the judgment as to damages and costs shall be paid by the state from the appropriation made under s. 20.865 (1) (fm). The state, when it does not provide legal counsel to the defendant, its members, officers or employees, shall pay reasonable attorney fees and costs of defending the action regardless of the results of the litigation, unless the court or jury finds that the member, officer or employee did not act within the scope of that person's employment. Failure by the defendant to give notice to the department of justice of an action or special proceeding commenced against it, its members, officers or employees as soon as reasonably possible shall bar recovery by the defendant, its members, officers or employees from the state under this section. Attorney fees and expenses may not be recovered if the state offers the member, officer or employee legal counsel and the offer is refused.

History: 1977 c. 344, 447.

895.472 Indemnification of a financial institution. A financial institution, as defined in s. 943.80 (2), that compensates a customer for a pecuniary loss resulting from a financial crime, as defined in s. 943.80 (1), or assumes the loss, may bring a civil action against the person who committed the crime to recover the amount of the loss, any other damages incurred by the financial institution as a result of the crime, and the costs incurred to bring the action, including attorney's fees.

History: 2005 a. 212 s. 2; 2007 a. 97 s. 239.

SUBCHAPTER II

EXEMPTIONS FROM, AND LIMITATIONS ON, LIABILITY

895.475 Exemption from civil liability for furnishing safety inspection or advisory services. The furnishing of, or failure to furnish, safety inspection or advisory services intended to reduce the likelihood of injury, death or loss shall not subject a state officer, employee or agent, or an insurer, the insurer's agent or employee undertaking to perform such services as an incident to insurance, to liability for damages from injury, death or loss occurring as a result of any act or omission in the course of the safety inspection or advisory services. This section shall not apply if the active negligence of the state officer, employee or agent, or of the insurer, the insurer's agent or employee created the condition that was the proximate cause of injury, death or loss. This section shall not apply to an insurer, the insurer's agent or employee performing the safety inspection or advisory services when required to do so under the provisions of a written service contract.

History: 1991 a. 39; 2005 a. 155 s. 42; Stats. 2005 s. 895.475.

A "written service contract" is a contract that obligates the insurer to provide loss control services to an insured. Samuels Recycling Co. v. CNA Insurance Cos., 223 Wis. 2d 233, 588 N.W.2d 385 (Ct. App. 1998), 97−3511.

This section does not provide immunity from liability for a post−loss claim investigation performed by or on behalf of an insurance company pursuant to an insurance contract. This exemption from civil liability applies when an insurer voluntarily inspects an insured's property to ensure that it is safe and up−to−code, not when it arrives on the scene after the fact to adjust the insured's post−loss insurance claim based on its contractual obligations to do so. The very use of the terms "safety inspection" and "advisory services," as well as the exclusion for contractually obligated services, clearly indicates that this section is forward−looking, involving voluntary loss prevention services. Cincinnati Insurance Co. v. Ropicky, 2021 WI App 25, 397 Wis. 2d 196, 959 N.W.2d 356, 20−0791.

895.476 Civil liability exemption; exposure to the novel coronavirus SARS−CoV−2 or COVID−19. (1) In this section:

(a) "COVID−19" means the infection caused by the novel coronavirus SARS−CoV−2 or by any viral strain originating from SARS−CoV−2, and conditions associated with the infection.

(b) "Entity" means a partnership, corporation, association, governmental entity, tribal government, tribal entity, or other legal entity, including a school, institution of higher education, or nonprofit organization. "Entity" includes an employer or business owner, employee, agent, or independent contractor of the entity, regardless of whether the person is paid or an unpaid volunteer. "Entity" includes an employer covered under ch. 108.

(2) Beginning March 1, 2020, an entity is immune from civil liability for the death of or injury to any individual or damages caused by an act or omission resulting in or relating to exposure, directly or indirectly, to the novel coronavirus identified as SARS–CoV–2 or COVID–19 in the course of or through the performance or provision of the entity's functions or services.

(3) Subsection (2) does not apply if the act or omission involves reckless or wanton conduct or intentional misconduct.

(4) Immunity under this section is in addition to, not in lieu of, other immunity granted by law, and nothing in this section limits immunity granted under any other provision of law, including immunity granted under s. 893.80 (4).

History: 2021 a. 4.

895.478 Civil liability exemption; opioid antagonists. **(1)** DEFINITIONS. In this section:

(a) "Administer" has the meaning given in s. 118.29 (1) (a).

(b) "Health care professional" has the meaning given in s. 118.29 (1) (c).

(c) "High degree of negligence" has the meaning given in s. 118.29 (1) (d).

(d) "Opioid antagonist" has the meaning given in s. 450.01 (13v).

(e) "Opioid–related drug overdose" has the meaning given in s. 256.40 (1) (d).

(f) "Residence hall director" means the individual employed by any of the following to reside at a residence hall for students and oversee the management and operation of the hall:

1. The University of Wisconsin System.

2. A technical college district.

3. The governing body of a private nonprofit institution of higher education located in this state.

(2) RESIDENCE HALL DIRECTORS. (am) Notwithstanding chs. 441, 447, 448, and 450, a residence hall director may administer an opioid antagonist to any student or other person who appears to be undergoing an opioid–related drug overdose if all of the following are satisfied:

1. The residence hall director has received training on the administration of opioid antagonists that is approved by his or her employer specified in sub. (1) (f) 1., 2., or 3.

2. As soon as practicable after administering the opioid antagonist, the residence hall director reports the drug overdose by dialing the telephone number "911" or, in an area in which the telephone number "911" is not available, the telephone number for an emergency medical service provider.

(bm) A residence hall director is immune from civil liability for his or her acts or omissions in administering an opioid antagonist under par. (am) unless the act or omission constitutes a high degree of negligence. This paragraph does not apply to a residence hall director who is a health care professional.

(cm) An employer specified in sub. (1) (f) 1., 2., or 3. who approves training required under par. (am) 1. for the administration of opioid antagonists by a residence hall director is immune from civil liability for the act of approval unless it constitutes a high degree of negligence.

(3m) ELEMENTARY AND SECONDARY SCHOOLS. An elementary or secondary school and its designated school personnel, and a physician, advanced practice nurse prescriber, or physician assistant who provides or administers an opioid antagonist, are not liable for any injury that results from the opioid antagonist, regardless of whether authorization was given by the pupil's parent or guardian or by the pupil's physician, advanced practice nurse prescriber, or physician assistant, unless the injury is the result of an act or omission that constitutes gross negligence or willful or wanton misconduct. The immunity from liability provided under this subsection is in addition to and not in lieu of that provided under s. 895.48.

History: 2017 a. 29; 2023 a. 194.

895.48 Civil liability exemption; emergency medical care. **(1)** Except as provided in sub. (1g), any person who renders emergency care at the scene of any emergency or accident in good faith shall be immune from civil liability for his or her acts or omissions in rendering such emergency care.

(1g) The immunity described in sub. (1) and s. 450.11 (1i) (c) 3. does not extend when employees trained in health care or health care professionals render emergency care for compensation and within the scope of their usual and customary employment or practice at a hospital or other institution equipped with hospital facilities, at the scene of any emergency or accident, enroute to a hospital or other institution equipped with hospital facilities, or at a physician's office.

(1m) (a) Except as provided in par. (b), any physician, podiatrist, or athletic trainer licensed under ch. 448, physician assistant who is licensed under subch. IX of ch. 448 or who holds a compact privilege under subch. XIII of ch. 448, naturopathic doctor licensed under ch. 466, chiropractor licensed under ch. 446, dentist or dental therapist who is licensed under subch. I of ch. 447 or who holds a compact privilege under subch. II of ch. 447, emergency medical services practitioner licensed under s. 256.15, emergency medical responder certified under s. 256.15 (8), registered nurse licensed under ch. 441, massage therapist or bodywork therapist licensed under ch. 460, or naturopathic doctor licensed under ch. 466 who renders voluntary health care to a participant in an athletic event or contest sponsored by a nonprofit corporation, as defined in s. 66.0129 (6) (b), a private school, as defined in s. 115.001 (3r), a tribal school, as defined in s. 115.001 (15m), a public agency, as defined in s. 46.856 (1) (b), or a school, as defined in s. 609.655 (1) (c), is immune from civil liability for his or her acts or omissions in rendering that care if all of the following conditions exist:

NOTE: Par. (a) (intro.) is shown as amended by 2023 Wis. Acts 81, 87, and 88 and as merged by the legislative reference bureau under s. 13.92 (2) (i).

1. The health care is rendered at the site of the event or contest, during transportation to a health care facility from the event or contest, or in a locker room or similar facility immediately before, during or immediately after the event or contest.

2. The physician, naturopathic doctor, podiatrist, athletic trainer, chiropractor, dentist, dental therapist, emergency medical services practitioner, as defined in s. 256.01 (5), emergency medical responder, as defined in s. 256.01 (4p), physician assistant, registered nurse, massage therapist or bodywork therapist does not receive compensation for the health care, other than reimbursement for expenses.

(b) Paragraph (a) does not apply to health care services provided by a volunteer health care provider under s. 146.89.

(4) (ag) In this subsection:

1. "Cardiac arrest" means the sudden cessation of cardiac function and the disappearance of arterial blood pressure that connote ventricular fibrillation or pulseless ventricular tachycardia.

2. "Pulseless ventricular tachycardia" means a disturbance in the normal rhythm of the heart that is characterized by rapid electrical activity of the heart with no cardiac output.

(am) Any of the following, other than an emergency medical services practitioner or an emergency medical responder — defibrillation, is immune from civil liability for the acts or omissions of a person in rendering in good faith emergency care by use of an automated external defibrillator to an individual who appears to be in cardiac arrest:

1. The person who renders the care.

2. The owner of the automated external defibrillator.

3. The person who provides the automated external defibrillator for use, if the person ensures that the automated external defibrillator is maintained and tested in accordance with any operational guidelines of the manufacturer.

4. Any person who provides training in the use of an automated external defibrillator to the person who renders care.

(b) The immunity specified in par. (am) does not extend to any of the following:

1. A person whose act or omission resulting from the use or the provision for use of the automated external defibrillator constitutes gross negligence.

2. A health care professional who renders emergency care for compensation and within the scope of his or her usual and customary employment or practice at a hospital or other institution equipped with hospital facilities, at the scene of an emergency or accident, enroute to a hospital or other institution equipped with hospital facilities or at a physician's office.

History: 1977 c. 164; 1987 a. 14; 1989 a. 31; 1993 a. 109; 1995 a. 227; 1997 a. 67, 156, 191; 1999 a. 7, 9, 32, 56, 186; 2001 a. 74; 2003 a. 33; 2005 a. 155, 188, 486; 2007 a. 130; 2009 a. 113, 302, 355; 2011 a. 260; 2013 a. 200; 2017 a. 12; 2021 a. 130; 2023 a. 81, 87, 88; s. 13.92 (2) (i).

Whatever the precise scope of "scene of any emergency or accident" in sub. (1), the phrase is sufficiently broad to include the defendant's home when the injured, bleeding plaintiff arrived after being hurt in an incident involving an all−terrain vehicle in nearby woods. In the circumstances of the case, "emergency care" under sub. (1) refers to the initial evaluation and immediate assistance, treatment, and intervention rendered to the plaintiff during the period before care could be transferred to professional medical personnel. Mueller v. McMillan Warner Insurance Co., 2006 WI 54, 290 Wis. 2d 571, 714 N.W.2d 183, 05−0121.

There are three requirements before sub. (1) relieves a person from liability: 1) emergency care must be rendered at the scene of the emergency; 2) the care rendered must be emergency care; and 3) any emergency care must be rendered in good faith. Clayton v. American Family Mutual Insurance Co., 2007 WI App 228, 305 Wis. 2d 766, 741 N.W.2d 297, 07−0051.

Discussing the "Good Samaritan" law. 67 Atty. Gen. 218.

Incidental benefits received by volunteer members of the National Ski Patrol in exchange for rendering emergency care to disabled skiers may result in a loss of civil liability immunity under the Good Samaritan law. 79 Atty. Gen. 194.

The Good Samaritan Statute. Lieb. 62 MLR 469 (1979).

The Good Samaritan Statute: Civil Liability Exemptions for Emergency Care. Szymanski. Wis. Law. July 2007.

895.4801 Immunity for health care providers during COVID−19 emergency.

(1) DEFINITIONS. In this section:

(a) "Health care professional" means an individual licensed, registered, or certified by the medical examining board under subch. II of ch. 448 or the board of nursing under ch. 441.

(b) "Health care provider" has the meaning given in s. 146.38 (1) (b) and includes an adult family home, as defined in s. 50.01 (1).

(2) IMMUNITY. Subject to sub. (3), any health care professional, health care provider, or employee, agent, or contractor of a health care professional or health care provider is immune from civil liability for the death of or injury to any individual or any damages caused by actions or omissions that satisfy all of the following:

(a) The action or omission is committed while the professional, provider, employee, agent, or contractor is providing services during the state of emergency declared under s. 323.10 on March 12, 2020, by executive order 72, or the 60 days following the date that the state of emergency terminates.

(b) The actions or omissions relate to health services provided or not provided in good faith or are substantially consistent with any of the following:

1. Any direction, guidance, recommendation, or other statement made by a federal, state, or local official to address or in response to the emergency or disaster declared as described under par. (a).

2. Any guidance published by the department of health services, the federal department of health and human services, or any divisions or agencies of the federal department of health and human services relied upon in good faith.

(c) The actions or omissions do not involve reckless or wanton conduct or intentional misconduct.

(3) APPLICABILITY. This section does not apply if s. 257.03, 257.04, 323.41, or 323.44 applies.

History: 2019 a. 185.

895.4802 Civil liability exemption; hazardous materials.

(1) In this section:

(a) "Discharge" has the meaning given under s. 292.01 (3).

(b) "Hazardous substance" has the meaning given under s. 299.01 (6).

(c) "Hazardous substance prediction" means any declaration or estimate of the likely spread or impact of an actual discharge of a hazardous substance that is based on meteorological, mathematical, computer or similar models.

(d) "Hazardous substance predictor" means any person who makes a hazardous substance prediction pursuant to a contract or agreement with a public agency or pursuant to a contract or agreement with a person who possesses or controls hazardous substances for the purpose of assisting that person in supplying a public agency with a hazardous substance prediction in the event of an actual discharge of a hazardous substance.

(2) Any person is immune from civil liability for his or her good faith acts or omissions related to assistance or advice which the person provides relating to an emergency or a potential emergency regarding either of the following:

(a) Mitigating or attempting to mitigate the effects of an actual or threatened discharge of a hazardous substance.

(b) Preventing or cleaning up or attempting to prevent or clean up an actual or threatened discharge of a hazardous substance.

(3) The immunity under sub. (2) does not extend to any person:

(a) Whose act or omission causes in whole or in part the actual or threatened discharge and who would otherwise be liable for the act or omission;

(b) Who would be liable for the discharge under chs. 281 to 285 or 289 to 299 or any rule promulgated or permit or order issued under chs. 281 to 285 or 289 to 299;

(c) Whose act or omission constitutes gross negligence or involves reckless, wanton or intentional misconduct; or

(d) Who receives or expects to receive compensation, other than reimbursement for out−of−pocket expenses, for rendering the advice and assistance.

(4) (a) Any hazardous substance predictor or any person who provides the technology to enable hazardous substance predictions to be made is immune from civil liability for his or her good faith acts or omissions in making that prediction or providing that technology.

(b) The good faith of any hazardous substance predictor or any person who provides the technology to make a prediction is presumed in any civil action. Any person who asserts that the acts or omissions under par. (a) were not made in good faith has the burden of proving that assertion by clear and convincing evidence.

(c) The immunity under par. (a) does not extend to any person described under sub. (3) (a), (b), or (c).

History: 2005 a. 155 ss. 45, 47; 2005 a. 347 s. 55.

NOTE: 2005 Wis. Act 347, which affected this section, contains extensive explanatory notes.

895.4803 Civil liability exemption; information concerning paternity.

Any member of the staff of a hospital who is designated by the hospital and trained by the department of children and families under s. 69.14 (1) (cm) and who in good faith provides to a child's available parents written information that is provided by the department of children and families and oral information or an audio or video presentation about statements acknowledging paternity as prescribed by the state registrar under s. 69.15 (3) (b) 3. and about the significance and benefits of, and alternatives to, establishing paternity, under the requirements of

s. 69.14 (1) (cm), is immune from civil liability for his or her acts or omissions in providing that oral information or audio or video presentation and written information.

History: 2005 a. 155 ss. 46, 48; 2007 a. 20; 2017 a. 334.

895.481 Civil liability exemption; equine activities. (1) In this section:

(a) "Equine" means a donkey, hinny, horse, mule or pony.

(b) "Equine activity" means any of the following:

1. Shows, fairs, competitions, performances or parades that involve any breeds of equines and any equine disciplines, including combined training, competitive trail riding, cutting, dressage, driving, endurance trail riding, English or western performance riding, grand prix jumping, horse racing, hunter and jumper shows, hunting, polo, pulling, rodeos, 3−day events and western games.

2. Equine training or teaching.

3. Boarding of equines.

4. Riding, inspecting or evaluating an equine belonging to another, regardless of whether the owner of the equine receives monetary or other consideration for the use of the equine or permits the riding, inspection or evaluation of the equine.

5. Riding, training or driving an equine or being a passenger on an equine.

5d. Equine−assisted learning.

5r. Equine−assisted psychotherapy.

6. Riding, training or driving a vehicle pulled by an equine or being a passenger on a vehicle pulled by an equine.

7. Assisting in the medical treatment of an equine.

8. Shoeing of an equine.

9. Assisting a person participating in an activity listed in subds. 1. to 8.

(c) "Equine activity sponsor" means a person, whether operating for profit or nonprofit, who organizes or provides the facilities for an equine activity, including owners or operators of arenas, clubs, fairs, schools, stables and therapeutic riding programs.

(d) "Equine professional" means a person engaged for compensation in the rental of equines or equine equipment or tack or in the instruction of a person in the riding or driving of an equine or in being a passenger upon an equine.

(e) "Inherent risk of equine activities" means a danger or condition that is an integral part of equine activities, including all of the following:

1. The propensity of an equine to behave in a way that may result in injury or death to a person on or near it.

2. The unpredictability of an equine's reaction to a sound, movement or unfamiliar object, person or animal.

3. A collision with an object or another animal.

4. The potential for a person participating in an equine activity to act in a negligent manner, to fail to control the equine or to not act within his or her ability.

5. Natural hazards, including surface and subsurface conditions.

(f) "Property" means real property and buildings, structures and improvements on the real property.

(g) "Spectator" means a person who attends or watches an equine activity but does not participate in the equine activity or perform any act or omission related to the equine activity that contributes to the injury or death of a participant in the equine activity.

(2) Except as provided in subs. (3) and (6), a person, including an equine activity sponsor or an equine professional, is immune from civil liability for acts or omissions related to his or her participation in equine activities if a person participating in the equine activity is injured or killed as the result of an inherent risk of equine activities.

(3) The immunity under sub. (2) does not apply if the person seeking immunity does any of the following:

(a) Provides equipment or tack that he or she knew or should have known was faulty and the faulty equipment or tack causes the injury or death.

(b) Provides an equine to a person and fails to make a reasonable effort to determine the ability of the person to engage safely in an equine activity or to safely manage the particular equine provided based on the person's representations of his or her ability.

(c) Fails to conspicuously post warning signs of a dangerous inconspicuous condition known to him or her on the property that he or she owns, leases, rents or is otherwise in lawful control of or possession.

(d) Acts in a willful or wanton disregard for the safety of the person.

(e) Intentionally causes the injury or death.

(3m) A person whose only involvement in an equine activity is as a spectator shall not be considered to be participating in the equine activity.

(4) Every equine professional shall post and maintain signs in a clearly visible location on or near stables, corrals or arenas owned, operated or controlled by the equine professional. The signs shall be white with black lettering, each letter a minimum of one inch in height, and shall contain the following notice: "NOTICE: A person who is engaged for compensation in the rental of equines or equine equipment or tack or in the instruction of a person in the riding or driving of an equine or in being a passenger upon an equine is not liable for the injury or death of a person involved in equine activities resulting from the inherent risks of equine activities, as defined in section 895.481 (1) (e) of the Wisconsin Statutes."

(5) If an equine professional uses a written contract for the rental of equines or equine equipment or tack or for the instruction of a person in the riding, driving or being a passenger upon an equine, the contract shall contain the notice set forth in sub. (4) in clearly readable bold print of not less than the same size as the print used in the remainder of the contract.

(6) This section does not limit the liability of a person under any applicable products liability laws.

(7) This section does not limit the immunity created under s. 895.52.

History: 1995 a. 256; 2015 a. 66.

The application of this section is not limited to equine professionals. The exception to immunity under sub. (3) (a) for faulty equipment did not apply when no connection between the equipment and the plaintiff's injuries was shown. Kangas v. Perry, 2000 WI App 234, 239 Wis. 2d 392, 620 N.W.2d 429, 00−0001.

"Provides an equine" in sub. (3) (b) means to make available for use an equine that the provider either owns or controls and does not encompass an equine previously sold or given to the individual claiming damages. Barritt v. Lowe, 2003 WI App 185, 266 Wis. 2d 863, 669 N.W.2d 189, 03−0034.

A person asserting that the person has immunity because the person was "riding," as an "equine activity," at the time of the injury−producing accident need not show that the person was on the back of a horse at the moment of the accident. The statute is worded in terms of immunity for acts or omissions "related to" participation in an equine activity and not only for the act of the activity itself. Hellen v. Hellen, 2013 WI App 69, 348 Wis. 2d 223, 831 N.W.2d 430, 12−1916.

While it is true that a person who already owns or controls an equine can participate in an equine activity without being provided with an equine, in order for a person who does not own or control an equine to participate in an equine activity, someone must provide an equine within the meaning of sub. (3) (b). It is immaterial whether the person who allegedly provides the equine retains sole or primary control of the equine. Hellen v. Hellen, 2013 WI App 69, 348 Wis. 2d 223, 831 N.W.2d 430, 12−1916.

The exception under sub. (3) (b) centers on the assessment by a provider of a horse of a rider's abilities based on the rider's representations of his or her ability. The exception does not abrogate immunity for a provider's negligent management of a horse, and the exception does not require an actual demonstration of riding ability or a test ride. Dilley v. Holiday Acres Properties, Inc., 905 F.3d 508 (2018).

Under *Barritt*, 2003 WI App 185, "providing an equine," for purposes of the exception under sub. (3) (b), means that the defendant owns or controls the equine in question and makes it available for the plaintiff's use. A riding instructor does not "provide" a horse owned by the riding student merely by exercising control over the riding lesson. Dilley v. Holiday Acres Properties, Inc., 905 F.3d 508 (2018).

The Exculpatory Contract and Public Policy. Anzivino. 102 MLR 747 (2019).

895.482 Civil liability exemption; ski patrol members. (1) In this section:

(a) "Compensation" means wages, salary, commission or bonuses paid for services rendered, but does not include the provi-

sion, at a discounted price or without charge, of food, beverages, clothing, passes or other incidental benefits to ski patrol members.

(b) "Ski patrol member" means a registered member of the national ski patrol who serves in that capacity without compensation.

(2) Except as provided in sub. (3), a ski patrol member is immune from civil liability for his or her acts or omissions while he or she is acting in his or her capacity as a ski patrol member, including the rendering of emergency care.

(3) The immunity under this section does not apply if the act or omission of the ski patrol member involves reckless, wanton or intentional misconduct.

History: 1991 a. 318.

895.483 Civil liability exemption; regional and local emergency response teams and their sponsoring agencies. (1) A regional emergency response team, a member of such a team, and a local agency, as defined in s. 323.70 (1) (b), that contracts with the division of emergency management in the department of military affairs for the provision of a regional emergency response team, are immune from civil liability for acts or omissions related to carrying out responsibilities under a contract under s. 323.70 (2).

(2) A local emergency response team, a member of such a team and the county, city, village, or town that contracts to provide the emergency response team to the county are immune from civil liability for acts or omissions related to carrying out responsibilities pursuant to a designation under s. 323.61 (2m) (e).

(3) A local emergency planning committee created under s. 59.54 (8) (a) 1. that receives a grant under s. 323.61 is immune from civil liability for acts or omissions related to carrying out responsibilities under s. 323.61.

(4) An urban search and rescue task force, a member of such a task force, and a local agency, as defined in s. 323.70 (1) (b), that contracts with the division of emergency management in the department of military affairs for the provision of emergency services, are immune from civil liability for acts or omissions related to carrying out responsibilities under a contract under s. 323.72 (1).

History: 1991 a. 104; 1995 a. 13, 201; 1997 a. 27; 2001 a. 16; 2009 a. 42, 43; 2011 a. 258; 2021 a. 104.

A town that responds to a Level B hazardous waste release in its own capacity in the absence of a county wide agreement does not receive immunity from civil liability under former sub. (2), 1997 stats., but other statutory and common law immunities apply. OAG 1−99.

895.484 Civil liability exemption; entering a vehicle to render assistance. (1) In this section:

(a) "Domestic animal" means a dog, cat, or other animal that is domesticated and kept as a household pet, but does not include a farm animal, as defined in s. 951.01 (3).

(b) "Vehicle" means a motor vehicle, or any other vehicle, that is used to transport persons or cargo and that is enclosed.

(2) A person is immune from civil liability for property damage or injury that results from his or her forcible entry into a vehicle if all of the following are true:

(a) A person or a domestic animal was present in the vehicle and the actor had a good faith belief that the person or domestic animal was in imminent danger of suffering bodily harm unless he or she exited or was removed from the vehicle.

(b) The actor determined that the vehicle was locked and that forcible entry was necessary to enable the actor to enter the vehicle or to enable the person or domestic animal to be removed from or to exit the vehicle.

(c) The actor dialed the telephone number "911" or otherwise contacted law enforcement, emergency medical services, or animal control before he or she forcibly entered the vehicle.

(d) The actor remained with the person or domestic animal until a law enforcement officer, emergency medical service provider, animal control officer, or other emergency medical responder, as defined in s. 256.01 (4p), arrived at the scene.

(e) The actor used no more force than he or she reasonably believed necessary to enter the vehicle in order to remove the person or domestic animal or to allow the person or domestic animal to exit the vehicle.

(f) If the actor left the scene before the owner or operator of the vehicle returned to the scene, the actor placed a notice on the windshield of the vehicle that included his or her name, telephone number, and mailing address, the reason he or she entered the vehicle, and the location, if known, of the person or domestic animal when the actor left the scene.

History: 2015 a. 103; 2017 a. 12.

895.485 Civil liability exemption; out−of−home care providers and child−placing agencies. (1) DEFINITIONS. In this section:

(ag) "Age or developmentally appropriate activities" has the meaning given in s. 48.02 (1dm).

(b) "Foster home" has the meaning given in s. 48.02 (6).

(c) "Out−of−home care provider" has the meaning given in s. 48.02 (12r).

(d) "Reasonable and prudent parent standard" has the meaning given in s. 48.02 (14r).

(2) FOSTER PARENTS; LIABILITY EXEMPTION. Except as provided in ss. 167.10 (7) and 343.15 (2), any foster parent licensed under s. 48.62 is immune from civil liability for any of the following:

(a) An act or omission of the foster parent while that parent is acting in his or her capacity as a foster parent.

(b) An act or omission of a child who is placed in a foster home while the child is in the foster parent's care.

(3) FOSTER PARENTS; EXCEPTIONS TO LIABILITY EXEMPTION. The immunity specified in sub. (2) does not apply if the act or omission of a foster parent was not done in good faith or was not in compliance with any written instructions received from the agency that placed the child regarding specific care and supervision of the child. The good faith of a foster parent and the compliance of the foster parent with any written instructions received from the agency that placed the child are presumed in a civil action. Any person who asserts that a foster parent did not act in good faith, or did not comply with written instructions received from the agency that placed the child, has the burden of proving that assertion.

(4) CHILD−PLACING AGENCIES; LIABILITY EXEMPTION; EXCEPTIONS. Any agency that acts in good faith in placing a child with a foster parent is immune from civil liability for any act or omission of the agency, the foster parent, or the child unless all of the following occur:

(a) The agency has failed to provide the foster parent with any information relating to a medical, physical, mental, or emotional condition of the child that the agency is required to disclose under this paragraph. The department of children and families shall promulgate rules specifying the kind of information that an agency shall disclose to a foster parent that relates to a medical, physical, mental, or emotional condition of the child.

(b) Bodily injury to the child or any other person or damage to the property of the child or any other person occurs as a direct result of the failure under par. (a).

(5) OUT−OF−HOME CARE PROVIDERS; LIABILITY EXEMPTION. Except as provided in ss. 167.10 (7) and 343.15 (2), an out−of−home care provider who grants permission for a child in the care of the out−of−home care provider to participate in an age or developmentally appropriate activity is immune from civil liability for any act or omission of the out−of−home care provider in granting that permission if in granting that permission the out−of−home care provider applied the reasonable and prudent parent standard in accordance with the requirements of ss. 48.383 (1) and 938.383 (1) and the rules promulgated under ss. 48.383 (3) and 938.383 (3). The immunity provided under this subsection applies only to the decision granting that permission itself and does not extend to

any other act or omission of the out–of–home care provider, including any act or omission relating to the out–of–home care provider's duty to comply with any provision of licensure under s. 48.70, rule promulgated under s. 48.67, or any other statute, rule, or regulation that is applicable to the out–of–home care provider's duty to protect the health, safety, and welfare of the child. The immunity provided under this subsection does not affect any immunity from, limitation on, or defense to liability that is available under any other statute or the common law.

(6) OUT–OF–HOME CARE PROVIDERS; LIABILITY EXEMPTION; PRESUMPTIONS. An out–of–home care provider who grants permission for a child in the care of the out–of–home care provider to participate in an age or developmentally appropriate activity is presumed to have applied the reasonable and prudent parent standard in granting that permission. Any person who asserts that an out–of–home care provider did not apply the reasonable and prudent parent standard in granting that permission has the burden of proving that assertion.

History: 1987 a. 377; 1989 a. 31; 1993 a. 446; 1995 a. 27 s. 9126 (19); 2007 a. 20; 2009 a. 28; 2015 a. 128.

NOTE: 1987 Wis. Act 377 contains a prefatory note explaining the act.

Cross–reference: See also ch. DCF 37, Wis. adm. code.

Foster parents are not agents of the county for purposes of tort liability. Kara B. v. Dane County, 198 Wis. 2d 24, 542 N.W.2d 777 (Ct. App. 1995), 94–1081. See also Estate of Cooper v. Milwaukee County, 103 F. Supp. 2d 1124 (2000).

895.486 Civil immunity exemption; reports of insurance fraud. (1) In this section, "insurance fraud" means the presentation of any statement, document or claim, or the preparation of a statement, document or claim with the knowledge that the statement, document or claim will be presented, that the person knew or should have known contained materially false, incomplete or misleading information concerning any of the following:

(a) An application for the issuance of an insurance policy.

(b) A claim for payment, reimbursement or benefits payable under an insurance policy.

(c) A payment made in accordance with the terms of an insurance policy.

(d) A premium on an insurance policy.

(e) The rating of an insurance policy.

(2) Any person who, absent malice, files a report with or furnishes information concerning suspected, anticipated, or completed insurance fraud is immune from civil liability for his or her acts or omissions in filing the report or furnishing the information to any of the following or to their agents, employees or designees:

(a) The office of the commissioner of insurance.

(b) A law enforcement officer.

(c) The National Association of Insurance Commissioners.

(d) Any governmental agency established to detect and prevent insurance fraud.

(e) Any nonprofit organization established to detect and prevent insurance fraud.

(f) Any insurer or authorized representative of an insurer.

(3) Any information furnished by an insurer in response to a report or information furnished under sub. (2) is confidential and may be made public only if required in a civil or criminal action.

(4) If a civil action is commenced against a person for damages related to the filing of a report or the furnishing of information under sub. (2) and the court determines that the person is immune from civil liability for his or her acts or omissions in filing the report or furnishing the information, the person filing the report or furnishing the information shall recover costs under ch. 814 and, notwithstanding s. 814.04 (1), reasonable attorney fees.

History: 1995 a. 177.

895.487 Civil liability exemption; employment references. (1) In this section:

(a) "Employee" has the meaning given in s. 101.01 (3) and also includes a former employee.

(b) "Employer" has the meaning given in s. 101.01 (4).

(c) "Reference" means a statement about an employee's job performance or qualifications for employment and includes a statement about an employee's job performance or qualifications for employment provided pursuant to the settlement of a dispute between the employer and employee or provided pursuant to an agreement between the employer and employee relating to the termination of the employee's employment.

(2) An employer who, on the request of an employee or a prospective employer of the employee, provides a reference to that prospective employer is presumed to be acting in good faith and, unless lack of good faith is shown by clear and convincing evidence, is immune from all civil liability that may result from providing that reference. The presumption of good faith under this subsection may be rebutted only upon a showing by clear and convincing evidence that the employer knowingly provided false information in the reference, that the employer made the reference maliciously or that the employer made the reference in violation of s. 111.322.

History: 1995 a. 441; 1997 a. 35.

The malice referred to in sub. (2) is express malice, which requires a showing of ill will, bad intent, envy, spite, hatred, revenge, or other bad motives against the person defamed, and not actual malice, which requires statements made with knowledge of falsity or with reckless disregard for the truth. Gibson v. Overnite Transportation Co., 2003 WI App 210, 267 Wis. 2d 429, 671 N.W.2d 388, 02–3158.

Employer Liability for Employment References. Mac Kelly. Wis. Law. Apr. 2008.

895.488 Civil liability exemption; owner or person in lawful possession of the premises. (1) In this section:

(a) "Construction site" has the meaning given in s. 943.15 (2) (a).

(b) "Owner or person in lawful possession of the premises" has the meaning given in s. 943.15 (2) (b).

(2) The owner or person in lawful possession of the premises and his or her employees are immune from civil liability for the injury or death of an assessor or a member of the staff of an assessor who enters a construction site without the permission of the owner or person in lawful possession of the premises or his or her employee to make an assessment on behalf of the state or a political subdivision.

(3) The immunity under this section does not apply if the injury or death resulted from the reckless, wanton, or intentional misconduct of the owner or person in lawful possession of the premises or his or her employee.

History: 2009 a. 68.

895.489 Civil liability exemption; tenancy references. (1) In this section:

(a) "Reference" means a written or oral statement about the rental performance of an applicant for tenancy and may include statements about the applicant's payment history, conformance to rental agreement requirements, or conformance to local and state laws; factual statements regarding any rental agreement enforcement actions, including notices given under s. 704.17, 704.19, or 710.15 (5r); and factual statements about any dispute settlement between the landlord and applicant in accordance with any agreement between the landlord and applicant relating to termination of the applicant's tenancy.

(b) "Tenant" means a residential tenant, regardless of the type of tenancy or rental period.

(2) A landlord who, on the request of a prospective landlord of an applicant for tenancy or on the request of the applicant for tenancy, provides a reference to the prospective landlord is presumed to be acting in good faith and, unless lack of good faith is shown by clear and convincing evidence, is immune from all civil liability that may result from providing that reference. The presumption of good faith under this subsection may be rebutted only upon a showing by clear and convincing evidence that the landlord knowingly provided false information in the reference or made the reference maliciously.

History: 2013 a. 76.

895.492 Civil liability exemption; certificate of qualification for employment. (1) In this section:

(a) "Employee" has the meaning given in s. 101.01 (3) and also includes a former employee.

(b) "Employer" has the meaning given in s. 101.01 (4).

(2) An employer who hires an employee who has been issued a certificate of qualification for employment under s. 973.25 is immune from liability for the intentional acts or omissions of the employee, for the acts of the employee that are outside of the course of the employee's employment, and in any proceeding on a claim against the employer for negligent hiring, retention, training, or supervision of the employee unless the employer, when he or she hired the employee, acted maliciously towards the plaintiff or with intentional disregard of the rights of the plaintiff.

History: 2019 a. 123; 2021 a. 240 s. 30.

895.497 Civil liability exemption: furnishing safety services relating to child safety restraint systems. (1) In this section:

(a) "Child passenger safety technician" means a person who holds a valid certification as a child passenger safety technician or technician instructor issued by the National Highway Traffic Safety Administration or any entity authorized by the National Highway Traffic Safety Administration to issue such certifications.

(b) "Safety program" means any program utilizing the services of child passenger safety technicians and not conducted for pecuniary profit that provides assistance, inspections, education, or advice to the public in the fitting, installation, or adjustment of child safety restraint systems.

(c) "Sponsoring organization" means any person or organization that does any of the following:

1. Employs a child passenger safety technician.

2. Sponsors, offers, or organizes any safety program.

3. Owns property on which a safety program is conducted.

(2) (a) A child passenger safety technician who inspects, installs, fits, or adjusts any child safety restraint system specified under s. 347.48 (4), or who provides education or other assistance or advice relating to the safe installation, fitting, or adjustment of child safety restraint systems, is immune from civil liability for his or her acts or omissions in rendering in good faith such services.

(b) The immunity under par. (a) does not extend to any of the following:

1. A person who receives compensation for providing the services specified in par. (a), other than reimbursement for expenses.

2. A person whose acts or omissions in providing the services specified in par. (a) involve reckless, wanton, or intentional misconduct.

(c) The good faith of a person in providing the services specified in par. (a) is presumed in any civil action if the services provided are within the scope of the person's training for which the person has been certified. Any person who asserts that the acts or omissions under par. (a) were not made in good faith has the burden of proving that assertion by clear and convincing evidence.

(3) A sponsoring organization is immune from civil liability arising from any acts or omissions of a child passenger safety technician in providing services specified in sub. (2) (a) or arising in connection with a safety program if the sponsoring organization receives no compensation for the services provided by the child passenger safety technician or for participating in the safety program.

History: 2005 a. 322; 2007 a. 97.

895.501 Civil liability exemption; credit card reencoders and scanning devices. (1) In this section:

(a) "Automated teller machine" has the meaning given in s. 134.85 (1) (a).

(b) "Credit card" has the meaning given in s. 943.202 (1) (b).

(c) "Reencoder" has the meaning given in s. 943.202 (1) (c).

(d) "Scanning device" has the meaning given in s. 943.202 (1) (d).

(2) Any person who sells or distributes motor vehicle fuel and who dispenses that fuel from a pump capable of reading a credit card and any person who owns or is responsible for an automated teller machine is immune from civil liability for the unauthorized access, storage, or use of credit card information by another person by means of a credit card reencoder or scanning device that has been installed on his or her machine.

History: 2017 a. 54.

895.506 Civil liability exemption; weight gain and obesity claims. (1) Any person who manufactures, markets, packs, distributes, advertises, or sells food, as defined in 21 USC 321 (f), is immune from civil liability for a person's weight gain or obesity caused by the consumption of the food, or for a health condition related to weight gain or obesity.

(2) Subsection (1) does not apply to any of the following:

(a) A claim that a defendant under sub. (1) knowingly violated a federal or state law concerning the manufacturing, marketing, distribution, advertisement, labeling, or sale of the food, and the violation was the proximate cause of the weight gain, obesity, or related health condition.

(b) A claim for breach of contract or express warranty in connection with the purchase of the food.

(c) A claim regarding the sale of food that is adulterated under 21 USC 342.

(3) In addition to the costs allowed under s. 814.04, a defendant that prevails on a motion under s. 802.08 filed in an action under sub. (2) may recover reasonable attorney fees and the costs of the investigation and litigation.

History: 2005 a. 325; 2007 a. 97.

895.508 Liability exemption; provision of previously owned eyeglasses. (1) In this section, "charitable organization" means an organization described in section 501 (c) of the Internal Revenue Code and exempt from federal income tax under section 501 (a) of the Internal Revenue Code.

(2) A charitable organization is not liable for any damages arising out of providing previously owned eyeglasses to an individual if all of the following are true:

(a) The recipient of the eyeglasses is at least 14 years of age.

(b) The eyeglasses are provided without charge.

(c) For distribution of eyeglasses, the eyeglasses are provided by a licensed optometrist or ophthalmologist who has done any of the following:

1. Personally examined the individual who will receive the eyeglasses and issued a prescription for the eyeglasses.

2. Personally consulted with the licensed optometrist or ophthalmologist who issued the prescription for the eyeglasses.

History: 2021 a. 257.

895.51 Civil liability exemption: food or emergency household products; emergency medical supplies; donation, sale, or distribution. (1) In this section:

(b) "Charitable organization" means an organization the contributions to which are deductible by corporations in computing net income under s. 71.26 (2).

(bd) "Cost of production" means the cost of inputs, wages, operating the manufacturing facility, and transporting the product.

(bg) "Emergency medical supplies" means any medical equipment or supplies necessary to limit the spread of, or provide treatment for, a disease associated with the public health emergency related to the 2019 novel coronavirus pandemic, including life support devices, personal protective equipment, cleaning supplies, and any other items determined to be necessary by the secretary of health services.

(c) "Food distribution service" means a program of a private nonprofit organization that provides food products directly to individuals with low incomes or that collects food products for and distributes food products to persons who provide the food products directly to individuals with low incomes.

(d) "Food products" has the meaning specified in s. 93.01 (6).

(dm) "Governmental unit" means the United States; the state; any county, city, village, or town; any political subdivision, department, division, board, or agency of the United States, the state, or any county, city, village, or town; or any federally recognized American Indian tribe or band in this state or an agency of the tribe or band.

(dp) "Public health emergency related to the 2019 novel coronavirus pandemic" means the period covered by the public health emergency declared under 42 USC 247d by the secretary of the federal department of health and human services on January 31, 2020, in response to the 2019 novel coronavirus or the national emergency declared by the U.S. president under 50 USC 1621 on March 13, 2020, in response to the 2019 novel coronavirus.

(dr) "Qualified emergency household products" includes flashlights, generators, blankets, personal care products, household cleaning products, and emergency supplies that meet the standards for safety and quality established by federal or state law, regulation, or rule, that are not defective, and that have not been recalled by the consumer products safety commission.

(e) "Qualified food" means food products that meet the standards of quality established by state law or rule or federal law or regulations, including food products that are not readily marketable due to appearance, age, freshness, grade, size, surplusage or other condition, except that "qualified food" does not include canned food products that are leaking, swollen, dented on a seam or not airtight.

(2) Any person engaged in the processing, distribution, or sale of food products, for profit or not for profit, who donates or sells, at a price not to exceed overhead and transportation costs, qualified food to a charitable organization, food distribution service, or governmental unit is immune from civil liability for the death of or injury to an individual caused by the qualified food donated or sold by the person.

(2m) Any person engaged in the manufacturing, distribution, or sale of qualified emergency household products, for profit or not for profit, who donates or sells, at a price not to exceed overhead and transportation costs, qualified emergency household products to a charitable organization or governmental unit in response to a state of emergency declared under s. 323.10 or 323.11 is immune from civil liability for the death of or injury to an individual caused by the qualified emergency household product donated or sold by the person.

(2r) Any person engaged in the manufacturing, distribution, or sale of emergency medical supplies, who donates or sells, at a price not to exceed the cost of production, emergency medical supplies to a charitable organization or governmental unit to respond to the public health emergency related to the 2019 novel coronavirus pandemic is immune from civil liability for the death of or injury to an individual caused by the emergency medical supplies donated or sold by the person.

(3) Any charitable organization or food distribution service which distributes free of charge qualified food to any person is immune from civil liability for the death of or injury to an individual caused by the qualified food distributed by the charitable organization or food distribution service.

(3m) Any charitable organization that distributes free of charge qualified emergency household products received under sub. (2m) is immune from civil liability for the death of or injury to an individual caused by the qualified emergency household product distributed by the charitable organization.

(3r) Any charitable organization that distributes free of charge emergency medical supplies received under sub. (2r) is immune from civil liability for the death of or injury to an individual caused by the emergency medical supplies distributed by the charitable organization.

(4) This section does not apply if the death or injury was caused by willful or wanton acts or omissions.

History: 1981 c. 219; 1983 a. 189 s. 329 (20); 1987 a. 27; 1987 a. 312 s. 17; 1989 a. 108; 1991 a. 39; 2005 a. 155; 2007 a. 79; 2009 a. 42, 180; 2019 a. 185.

895.512 Civil liability exemption; access to toilet facility. If an employee of a retail establishment permits a person to use the establishment's toilet facility, under the requirements of s. 146.29, the employee and the establishment are immune from civil liability for the death of or injury to the person, or an individual other than an employee who accompanies the person, that is caused by or during the use of the facility, unless the death or injury was caused by a willful or wanton act or omission of the employee.

History: 2009 a. 198.

895.514 Civil liability exemption; Health Insurance Risk–Sharing Plan and Authority. (1) In this section:

(a) "Authority" means the Health Insurance Risk–Sharing Plan Authority established under subch. III of ch. 149, 2011 stats.

(b) "Board" means the board of directors of the authority.

(c) "Commissioner" means the commissioner of insurance of this state.

(d) "Plan" means the health care insurance plan established under subch. II of ch. 149, 2011 stats.

(2) No cause of action of any nature may arise against, and no liability may be imposed upon, the authority, plan, or board; or any agent, employee, or director of any of them; or insurers participating in the plan; or the commissioner; or any agent, employee, or representative of the commissioner, for any act or omission by any of them in the performance of their powers and duties under ch. 149, 2011 stats., under 2013 Wisconsin Act 20, section 9122 (1L), or under 2013 Wisconsin Act 116, section 32 (1) (b), unless the person asserting liability proves that the act or omission constitutes willful misconduct.

(3) (a) Except as provided in 2013 Wisconsin Act 20, section 9122 (1L), and 2013 Wisconsin Act 116, section 32 (1) (b), neither the state nor any political subdivision of the state nor any officer, employee, or agent of the state or a political subdivision acting within the scope of employment or agency is liable for any debt, obligation, act, or omission of the authority.

(b) All of the expenses incurred by the authority, or the commissioner, or any agent, employee, or representative of the commissioner, in exercising its duties and powers under ch. 149, 2011 stats., under 2013 Wisconsin Act 20, section 9122 (1L), or under 2013 Wisconsin Act 116, section 32 (1) (b), shall be payable only from funds of the authority.

History: 2013 a. 20, 116; 2015 a. 55, 85.

895.515 Civil liability exemption; equipment or technology donation. (1) In this section:

(a) "Commercial equipment or technology" means goods or related procedures used or bought for use primarily in a business, including farming and a profession.

(b) "Institution of higher education" means an institution within the University of Wisconsin System, a technical college or a private, nonprofit institution of higher education located in this state.

(2) Any person engaged in the sale or use of commercial equipment or technology, for profit or not for profit, who donates any commercial equipment or technology to a public or private elementary or secondary school, a tribal school, as defined in s. 115.001 (15m), or an institution of higher education or who accepts reimbursement in an amount not to exceed overhead and transportation costs for any commercial equipment or technology provided to a public or private elementary or secondary school, to a tribal school, or to an institution of higher education is immune from civil liability for the death of or injury to an individual caused by the commercial equipment or technology.

(3) This section does not apply if the death or injury was caused by a willful or wanton act or omission of the person who donated or accepted reimbursement for the commercial equipment or technology.

(4m) This section does not apply to the manufacturer of the donated commercial equipment or technology.

History: 1995 a. 112; 1997 a. 237; 2005 a. 155; 2009 a. 302.

895.517 Civil liability exemption: solid waste donation or sale. (1) In this section:

(a) "Charitable organization" has the meaning given in s. 895.51 (1) (b).

(b) "Municipality" has the meaning given in s. 289.01 (23).

(c) "Qualified food" has the meaning given in s. 895.51 (1) (e).

(d) "Responsible unit" has the meaning given in s. 287.01 (9).

(e) "Solid waste" has the meaning given in s. 289.01 (33).

(2) Any person who donates or sells, at a price not exceeding overhead and transportation costs, solid waste, or a material that is separated from mixed soil waste, to a materials reuse program that is operated by a charitable organization, municipality or responsible unit is immune from civil liability for the death of or injury to an individual or the damage to property caused by the solid waste or material donated or sold by the person.

(3) This section does not apply if the death or injury was caused by willful or wanton acts or omissions.

(4) This section does not apply to the sale or donation of qualified food.

History: 1997 a. 60; 2005 a. 155.

895.519 Civil liability exemption; private campgrounds. (1) In this section:

(am) "Inherent risk of camping" means a danger or condition that is an integral part of camping, including dangers posed by any of the following:

1. Features of the natural world, such as trees, tree stumps, roots, brush, rocks, mud, sand, and soil.

2. Uneven or unpredictable terrain.

3. Natural bodies of water.

4. Another camper or visitor at the private campground acting in a negligent manner, where the campground owner or employees are not involved.

5. A lack of lighting, including lighting at campsites.

6. Campfires in a fire pit or enclosure provided by the campground.

7. Weather.

8. Insects, birds, and other wildlife.

(bm) "Private campground" means a facility that is issued a campground license under s. 97.67 and that is owned and operated by a private property owner, as defined in s. 895.52 (1) (e).

(2) Except as provided in sub. (3), a private campground, an owner or operator of a private campground, and any employees and officers of a private campground or private campground owner or operator are immune from civil liability for acts or omissions related to camping at a private campground if a person is injured or killed, or property is damaged, as a result of an inherent risk of camping.

(3) The immunity of sub. (2) does not apply if the person seeking immunity does any of the following:

(a) Intentionally causes the injury, death, or property damage.

(b) Acts with a willful or wanton disregard for the safety of the party or the property damaged. In this paragraph, "willful or wanton disregard" means conduct committed with an intentional or reckless disregard for the safety of others.

(c) Fails to conspicuously post warning signs of a dangerous inconspicuous condition known to him or her on the property that he or she owns, leases, rents, or is otherwise in lawful control or possession of.

(4) This section does not limit the immunity created under s. 895.52.

(5) Nothing in this section affects the assumption of risk under s. 895.525 by a person participating in a recreational activity including camping.

History: 2015 a. 293; 2017 a. 365 ss. 87, 110.

The Exculpatory Contract and Public Policy. Anzivino. 102 MLR 747 (2019).

895.52 Recreational activities; limitation of property owners' liability. (1) DEFINITIONS. In this section:

(ag) "Agricultural tourism activity" means an educational or recreational activity that takes place on a farm, ranch, grove, or other place where agricultural, horticultural, or silvicultural crops are grown or farm animals or farmed fish are raised, and that allows visitors to tour, explore, observe, learn about, participate in, or be entertained by an aspect of agricultural production, harvesting, or husbandry that occurs on the farm, ranch, grove, or other place.

(ar) "Governmental body" means any of the following:

1. The federal government.

2. This state.

3. A county or municipal governing body, agency, board, commission, committee, council, department, district or any other public body corporate and politic created by constitution, statute, ordinance, rule or order.

4. A governmental or quasi−governmental corporation.

5. A formally constituted subunit or an agency of subd. 1., 2., 3. or 4.

(b) "Injury" means an injury to a person or to property.

(c) "Nonprofit organization" means an organization or association not organized or conducted for pecuniary profit.

(d) "Owner" means either of the following:

1. A person, including a governmental body or nonprofit organization, that owns, leases or occupies property.

2. A governmental body or nonprofit organization that has a recreational agreement with another owner.

(e) "Private property owner" means any owner other than a governmental body or nonprofit organization.

(f) "Property" means real property and buildings, structures and improvements thereon, and the waters of the state, as defined under s. 281.01 (18).

(g) "Recreational activity" means any outdoor activity undertaken for the purpose of exercise, relaxation or pleasure, including practice or instruction in any such activity. "Recreational activity" includes hunting, fishing, trapping, camping, picnicking, exploring caves, nature study, bicycling, horseback riding, bird−watching, motorcycling, operating an all−terrain vehicle or utility terrain vehicle, operating a vehicle, as defined in s. 340.01 (74), on a road designated under s. 23.115, recreational aviation, ballooning, hang gliding, hiking, tobogganing, sledding, sleigh riding, snowmobiling, skiing, skating, water sports, sight−seeing, rock−climbing, cutting or removing wood, climbing observation towers, animal training, harvesting the products of nature, participating in an agricultural tourism activity, sport shooting and any other outdoor sport, game or educational activity. "Recreational activity" does not include any organized team sport activity sponsored by the owner of the property on which the activity takes place.

(h) "Recreational agreement" means a written authorization granted by an owner to a governmental body or nonprofit organization permitting public access to all or a specified part of the owner's property for any recreational activity.

(hm) "Recreational aviation" means the use of an aircraft, other than to provide transportation to persons or property for compensation or hire, upon privately owned land. For purposes of this definition, "privately owned land" does not include a public−use airport, as defined in s. 114.002 (18m).

(i) "Residential property" means a building or structure designed for and used as a private dwelling accommodation or private living quarters, and the land surrounding the building or structure within a 300–foot radius.

(2) NO DUTY; IMMUNITY FROM LIABILITY. (a) Except as provided in subs. (3) to (6), no owner and no officer, employee or agent of an owner owes to any person who enters the owner's property to engage in a recreational activity:

1. A duty to keep the property safe for recreational activities.

2. A duty to inspect the property, except as provided under s. 23.115 (2).

3. A duty to give warning of an unsafe condition, use or activity on the property.

(b) Except as provided in subs. (3) to (6), no owner and no officer, employee or agent of an owner is liable for the death of, any injury to, or any death or injury caused by, a person engaging in a recreational activity on the owner's property or for any death or injury resulting from an attack by a wild animal.

(3) LIABILITY; STATE PROPERTY. Subsection (2) does not limit the liability of an officer, employee or agent of this state or of any of its agencies for either of the following:

(a) A death or injury that occurs on property of which this state or any of its agencies is the owner at any event for which the owner charges an admission fee for spectators.

(b) A death or injury caused by a malicious act or by a malicious failure to warn against an unsafe condition of which an officer, employee or agent knew, which occurs on property designated by the department of natural resources under s. 23.115 or designated by another state agency for a recreational activity.

(4) LIABILITY; PROPERTY OF GOVERNMENTAL BODIES OTHER THAN THIS STATE. Subsection (2) does not limit the liability of a governmental body other than this state or any of its agencies or of an officer, employee or agent of such a governmental body for either of the following:

(a) A death or injury that occurs on property of which a governmental body is the owner at any event for which the owner charges an admission fee for spectators.

(b) A death or injury caused by a malicious act or by a malicious failure to warn against an unsafe condition of which an officer, employee or agent of a governmental body knew, which occurs on property designated by the governmental body for recreational activities.

(5) LIABILITY; PROPERTY OF NONPROFIT ORGANIZATIONS. Subsection (2) does not limit the liability of a nonprofit organization or any of its officers, employees or agents for a death or injury caused by a malicious act or a malicious failure to warn against an unsafe condition of which an officer, employee or agent of the nonprofit organization knew, which occurs on property of which the nonprofit organization is the owner.

(6) LIABILITY; PRIVATE PROPERTY. Subsection (2) does not limit the liability of a private property owner or of an employee or agent of a private property owner whose property is used for a recreational activity if any of the following conditions exist:

(a) The private property owner collects money, goods or services in payment for the use of the owner's property for the recreational activity during which the death or injury occurs, and the aggregate value of all payments received by the owner for the use of the owner's property for recreational activities during the year in which the death or injury occurs exceeds $2,000. The following do not constitute payment to a private property owner for the use of his or her property for a recreational activity:

1. A gift of wild animals or any other product resulting from the recreational activity.

2. An indirect nonpecuniary benefit to the private property owner or to the property that results from the recreational activity.

3. A donation of money, goods or services made for the management and conservation of the resources on the property.

4. A payment of not more than $5 per person per day for permission to gather any product of nature on an owner's property.

5. A payment received from a governmental body.

6. A payment received from a nonprofit organization for a recreational agreement.

7. A payment made to purchase products or goods offered for sale on the property.

(b) The death or injury is caused by the malicious failure of the private property owner or an employee or agent of the private property owner to warn against an unsafe condition on the property, of which the private property owner knew.

(c) The death or injury is caused by a malicious act of the private property owner or of an employee or agent of a private property owner.

(d) The death or injury occurs on property owned by a private property owner to a social guest who has been expressly and individually invited by the private property owner for the specific occasion during which the death or injury occurs, if the death or injury occurs on any of the following:

1. Platted land.

2. Residential property.

3. Property within 300 feet of a building or structure on land that is classified as commercial or manufacturing under s. 70.32 (2) (a) 2. or 3.

(e) The death or injury is sustained by an employee of a private property owner acting within the scope of his or her duties.

(7) NO DUTY OR LIABILITY CREATED. Except as expressly provided in this section, nothing in this section, s. 101.11, or s. 895.529 nor the common law attractive nuisance doctrine creates any duty of care or ground of liability toward any person who uses another's property for a recreational activity.

History: 1983 a. 418; 1985 a. 29; 1989 a. 31; 1995 a. 27, 223, 227; 1997 a. 242; 2011 a. 93, 208; 2013 a. 20, 269, 318; 2015 a. 195.

NOTE: 1983 Wis. Act 418 contains a statement of legislative intent in section 1.

A municipality is immune from liability for a defective highway or public sidewalk only when the municipality has turned the highway or sidewalk over, at least in part, to recreational activities and when damages result from recreational activity. Bystery v. Village of Sauk City, 146 Wis. 2d 247, 430 N.W.2d 611 (Ct. App. 1988). See also Langenhahn v. West Bend Mutual Insurance Co., 2019 WI App 11, 386 Wis. 2d 243, 926 N.W.2d 210, 17–2178.

"Recreational activity" does not apply to random wanderings of a young child that are not similar to activities listed in sub. (1) (g). Shannon v. Shannon, 150 Wis. 2d 434, 442 N.W.2d 25 (1989).

The state's role as trustee of public waters is equivalent to ownership, giving rise to recreational immunity. Sauer v. Reliance Insurance Co., 152 Wis. 2d 234, 448 N.W.2d 256 (Ct. App. 1989).

Indirect pecuniary benefits constitute "payment" under sub. (6) (a). Douglas v. Dewey, 154 Wis. 2d 451, 453 N.W.2d 500 (Ct. App. 1990).

"Injury" under sub. (1) (b) includes death. Moua v. Northern States Power Co., 157 Wis. 2d 177, 458 N.W.2d 836 (Ct. App. 1990).

By providing a lifeguard a landowner does not assume a duty to provide lifeguard services in a non–negligent manner. Ervin v. City of Kenosha, 159 Wis. 2d 464, 464 N.W.2d 654 (1991).

For purposes of sub. (4) (b), conduct is "malicious" when it is the result of hatred, ill will, or revenge, or is undertaken when insult or injury is intended. Ervin v. City of Kenosha, 159 Wis. 2d 464, 464 N.W.2d 654 (1991).

Immunity is not limited to injuries caused by defects in property itself, but applies to all injuries sustained during use. Johnson v. City of Darlington, 160 Wis. 2d 418, 466 N.W.2d 233 (Ct. App. 1991).

A young child's inability to intend to engage in recreational activity does not render landowner immunity inapplicable when the activity is recreational in nature. Nelson v. Schreiner, 161 Wis. 2d 798, 469 N.W.2d 214 (Ct. App. 1991).

Illegal gambling conducted by a club occupying city park land placed the club outside the protection of the immunity statute. Lee v. Elk Rod & Gun Club, Inc., 164 Wis. 2d 103, 473 N.W.2d 581 (Ct. App. 1991).

A party is not immune as an occupant when evidence unequivocally shows intentional and permanent abandonment of the premises has occurred. Mooney v. Royal Insurance Co. of America, 164 Wis. 2d 516, 476 N.W.2d 287 (Ct. App. 1991).

Walking to or from a non–immune activity does not change a landowner's status. Hupf v. City of Appleton, 165 Wis. 2d 215, 477 N.W.2d 69 (Ct. App. 1991).

Sub. (2) (b) does not require a person injured by a wild animal to be engaged in a recreational activity for immunity to attach to the property owner. A captive deer is a wild animal. Hudson v. Janesville Conservation Club, 168 Wis. 2d 436, 484 N.W.2d 132 (1992).

A municipal pier was the type of property intended to be covered by the recreational immunity statute. Crowbridge v. Village of Egg Harbor, 179 Wis. 2d 565, 508 N.W.2d 15 (Ct. App. 1993).

A church that paid a fee to reserve park space, including a ball diamond, for a picnic where a "pickup" softball was played was not a sponsor of an organized team sport activity under sub. (1) (g). Weina v. Atlantic Mutual Insurance Co., 179 Wis. 2d 774, 508 N.W.2d 67 (Ct. App. 1993).

Whether a person intended to engage in recreational activity is not dispositive in determining whether recreational activity is engaged in. The nature and purpose of the activity must be given primary consideration. Linville v. City of Janesville, 184 Wis. 2d 705, 516 N.W.2d 427 (1994).

Recreational immunity does not extend to activities of the landowner acting independently of its functions as owner. Immunity did not apply to city paramedics providing service to an accident victim at a city park. Linville v. City of Janesville, 184 Wis. 2d 705, 516 N.W.2d 427 (1994).

Limited liability for nonprofit organizations is not unconstitutional on equal protection grounds. Szarzynski v. YMCA, 184 Wis. 2d 875, 517 N.W.2d 135 (1994).

Visiting a neighbor to say hello is not a recreational activity under this section. Sievert v. American Family Mutual Insurance Co., 190 Wis. 2d 623, 528 N.W.2d 413 (1995).

That a local firefighters' picnic generated profits that were used for park maintenance and improvements and the purchase of fire equipment did not result in the event being a commercial, rather than recreational, activity under this section. Fischer v. Doylestown Fire Department, 199 Wis. 2d 83, 543 N.W.2d 575 (Ct. App. 1995), 95−0796.

Land need not be open for recreational use for immunity to apply under this section. The focus is on the activity of the person who enters on and uses the land. Immunity applies without regard to the owner's permission. Verdoljak v. Mosinee Paper Corp., 200 Wis. 2d 624, 547 N.W.2d 602 (1996), 94−2549.

An activity essentially recreational in nature will not be divided into component parts, at one moment recreational and at another not, in applying this section. Verdoljak v. Mosinee Paper Corp., 200 Wis. 2d 624, 547 N.W.2d 602 (1996), 94−2549.

Recreational immunity does not attach to a landowner when an act of the landowner's officer, employee, or agent that is unrelated to the maintenance or condition of the land causes injury to a recreational land user. Kosky v. International Ass'n of Lions Clubs, 210 Wis. 2d 463, 565 N.W.2d 260 (Ct. App. 1997), 96−2532.

A portable ice shanty located on a frozen lake does not qualify as recreational "property," and its presence on the lake is insufficient to establish its owner as an "occupant" of the lake entitled to recreational immunity. Doane v. Helenville Mutual Insurance Co., 216 Wis. 2d 345, 575 N.W.2d 734 (Ct. App. 1998), 97−1420.

Walking for exercise through a park on the way to do errands was a recreational activity. Lasky v. City of Stevens Point, 220 Wis. 2d 1, 582 N.W.2d 64 (Ct. App. 1998), 97−2728.

To find immunity under this section, the court must examine not only the plaintiff's reason for being on the property, but also the activity taking place on the property. While a spectator's presence at a school football game is recreational, the exception from landowner immunity for injuries incurred in recreational activities for sponsors of organized sports extends to spectators, not just participants. Meyer v. School District, 226 Wis. 2d 704, 595 N.W.2d 339 (1999), 98−0482.

An attendee at a fair who was injured while attempting to capture a runaway steer was engaged in recreational activity. There is no "Good Samaritan" exception to the recreational immunity provided by this section. Schultz v. Grinnell Mutual Reinsurance, Co., 229 Wis. 2d 513, 600 N.W.2d 243 (Ct. App. 1999), 98−3466.

Immunity for nonprofit organizations is not limited to those that act in the public interest and gratuitously open their land to the general public. It is not a violation of equal protection to treat "non−charitable" nonprofit organizations differently than private property owners. Bethke v. Lauderdale of La Crosse, Inc., 2000 WI App 107, 235 Wis. 2d 103, 612 N.W.2d 332, 99−1897.

Although individual condominium unit owners held title to an undivided interest in common areas, a condominium association was an occupant and therefore an owner under sub. (1) (d). Bethke v. Lauderdale of La Crosse, Inc., 2000 WI App 107, 235 Wis. 2d 103, 612 N.W.2d 332, 99−1897.

An "owner" under sub. (1) (d) 1. includes an "occupant." A child who is an occupant is capable of extending an invitation that triggers the social guest exception under sub. (6) (d). A guest's continuous act that begins on an owner's property but propels the guest a few feet from the property where an injury occurs compelled the conclusion that sub. (6) (d) must be construed to allow for the extension of the social guest status to the injuries suffered. Waters v. Pertzborn, 2001 WI 62, 243 Wis. 2d 703, 627 N.W.2d 497, 99−1702.

The owner of property subject to an easement is an "owner" under sub. (1) (d). The plaintiff's walking across the easement to gain access to a boat was recreational as the walk was inextricably connected to recreational activity. The plaintiff user of the easement, who was granted the right to use it by a third−person holder of the easement, was not a social guest of the land owner under sub. (6) (d) expressly and individually invited to use the property. The fact that the easement owner granted the right of use as part of the sale of the boat did not render the landowner exempt from immunity under sub. (6) (a). Urban v. Grasser, 2001 WI 63, 243 Wis. 2d 673, 627 N.W.2d 511, 99−0933.

This section is liberally construed in favor of property owners when the activity in question is not specifically listed but is substantially similar to listed activities or when the activity is undertaken in circumstances substantially similar to the circumstances of a recreational activity. Minnesota Fire & Casualty Insurance Co. v. Paper Recycling of La Crosse, 2001 WI 64, 244 Wis. 2d 290, 627 N.W.2d 527, 99−0327.

Because a child's subjective assessment of recreational activity could include every form of child's play, an objective, reasonable adult standard must be applied to determine whether a child's play is recreational. Crawling through stacks of baled paper at an industrial site while lighting matches and starting fires was not recreational activity. Minnesota Fire & Casualty Insurance Co. v. Paper Recycling of La Crosse, 2001 WI 64, 244 Wis. 2d 290, 627 N.W.2d 527, 99−0327.

The nature of property can be a significant factor in determining whether an activity is recreational, although it is not dispositive. That a commercial site is used only for a business purpose that is not open to the public, as indicated by a fence to keep people away, argues against childrens' mischievous conduct on the premises being substantially similar to a recreational activity. Minnesota Fire & Casualty Insurance Co. v. Paper Recycling of La Crosse, 2001 WI 64, 244 Wis. 2d 290, 627 N.W.2d 527, 99−0327.

A suit by an elementary school student injured while playing during a mandatory school recess was not barred by this section because the student did not enter the school property to engage in a recreational activity, but for education purposes in order to comply with the state's compulsory attendance and truancy laws. Auman v. School District, 2001 WI 125, 248 Wis. 2d 548, 635 N.W.2d 762, 00−2356.

A deer stand is a "structure" under sub. (1) (f). A structure or improvement need not be owned by the owner of the underlying land to constitute "property" under sub. (1) (f). Peterson v. Midwest Security Insurance Co., 2001 WI 131, 248 Wis. 2d 567, 636 N.W.2d 727, 99−2987.

Sponsorship under sub. (1) (g) contemplates a relationship between the person or organization paying for or planning the project or activity and the intended beneficiary and envisions a relationship between the sponsor and the activity resulting in financial benefits to the sponsor. That a city sponsored one soccer association did not mean it was a sponsor of all organized soccer team activities on city fields. Miller v. Wausau Underwriters Insurance Co., 2003 WI App 58, 260 Wis. 2d 581, 659 N.W.2d 494, 02−1632.

As long as one of the purposes for engaging in the activity is recreation, the statute attaches and bars a claim. Kautz v. Ozaukee County Agricultural Society, 2004 WI App 203, 276 Wis. 2d 833, 688 N.W.2d 771, 03−3281.

That the plaintiff's claim was that the plaintiff was injured when the plaintiff became infected with E Coli as a result of climbing on farm equipment and not as a result of an activity on land or improvements to land was irrelevant. Whether or not the equipment was property within the meaning of this section, the injuring mechanism was not the farm equipment, but rather the bacteria from animal waste tracked onto the equipment from the defendant's real property and was directly related to the condition or maintenance of the defendant's real property. Kautz v. Ozaukee County Agricultural Society, 2004 WI App 203, 276 Wis. 2d 833, 688 N.W.2d 771, 03−3281.

An owner under sub. (1) (d) 1. includes a person who has the actual use of the property without legal title, dominion, or tenancy and encompasses a resident of land who is more transient than either a lessee or an owner. An owner under sub. (1) (d) 2. is a governmental body or nonprofit organization that has a written authorization granted by an owner permitting public access to the owner's property for any recreational activity. It would be unreasonable to allow a snowmobile association immunity if it were granted an easement directly, but disallow it if the easement went first to a government entity, which then arranged with the association to manage, maintain, and construct the trails necessary for recreational access. Leu v. Price County Snowmobile Trails Ass'n, 2005 WI App 81, 280 Wis. 2d 765, 695 N.W.2d 889, 04−1859.

Walking may or may not be a recreational activity under the statute, depending on the circumstances. Mere presence on property suitable for recreational activity when a plaintiff is injured does not, ipso facto, make this section applicable. Although the injured person's subjective assessment of the activity is pertinent, it is not controlling. A court must consider the nature of the property, the nature of the owner's activity, and the reason the injured person is on the property. A court should consider the totality of the circumstances surrounding the activity, including the intrinsic nature, purpose, and consequences of the activity. Rintelman v. Boys & Girls Clubs of Greater Milwaukee, Inc., 2005 WI App 246, 288 Wis. 2d 394, 707 N.W.2d 897, 04−2669.

The legislature did not enact this section to stop landowners from engaging in negligent behavior, but to induce property owners to open their land for recreational use. Recreational users are to bear the risk of the recreational activity. Held v. Ackerville Snowmobile Club, 2007 WI App 43, 300 Wis. 2d 498, 730 N.W.2d 428, 06−0914.

This section does not distinguish between active and passive negligence. Claims for passive negligence, such as a snowmobile club's alleged failure to retrieve grooming equipment from a trail, were no more viable than claims for active negligence, such as an alleged decision to leave the disabled equipment partially on the trail in a blind curve. All of the acts alleged were related to the condition or maintenance of the snowmobile trail. Held v. Ackerville Snowmobile Club, 2007 WI App 43, 300 Wis. 2d 498, 730 N.W.2d 428, 06−0914.

Sub. (1) (c) does not define nonprofit by referencing the chapter under which corporations were incorporated, either ch. 180 or 181, so that factor is not dispositive of the question. It would be an absurd result to read this section as making a for−profit organization out of an organization that throughout its existence has been governed by articles of incorporation that define it as a nonprofit, has been documented by state agencies as a nonprofit, and has been in compliance with Internal Revenue Service regulations as a nonprofit. De La Trinidad v. Capitol Indemnity Corp., 2009 WI 8, 315 Wis. 2d 324, 759 N.W.2d 586, 07−0045.

An occupant under sub. (1) (d) 1. includes persons who, while not owners or tenants, have the actual use of land. Occupant includes one who has the actual use of property without legal title, dominion, or tenancy. In order to give meaning to "occupies," the term should be interpreted to encompass a resident of land who is more transient than either a lessee or an owner. Milton v. Washburn County, 2011 WI App 48, 332 Wis. 2d 319, 797 N.W.2d 924, 10−0316.

By including "cutting or removing wood" within the definition of "recreational activity," the legislature made a policy choice that engaging in the activity of "cutting or removing wood" is a recreational activity. In cases in which an individual is injured while engaging in an activity specifically enumerated under the statute, courts have determined that the activity is "recreational," without examining the various aspects or the purposes of the activity. WEA Property & Casualty Insurance Co. v. Krisik, 2013 WI App 139, 352 Wis. 2d 73, 841 N.W.2d 290, 11−1335.

For purposes of this section, sub. (1) (d) 1. defines an "owner," as a person that owns, leases, or occupies property. It is not the rule that one occupies property for purposes of the recreational immunity statute only when there is express permission to enter the property. WEA Property & Casualty Insurance Co. v. Krisik, 2013 WI App 139, 352 Wis. 2d 73, 841 N.W.2d 290, 11−1335.

Case law makes clear that the act of walking to or from an immune activity constitutes recreational activity. Carini v. ProHealth Care, Inc., 2015 WI App 61, 364 Wis. 2d 658, 869 N.W.2d 515, 14−1131.

Recreational immunity applies when a temporary condition is placed upon the land. The length of time the allegedly negligent unsafe condition is present does not matter. A temporary, artificial condition may constitute a "condition" of the land under sub. (2) (a) 3. Carini v. ProHealth Care, Inc., 2015 WI App 61, 364 Wis. 2d 658, 869 N.W.2d 515, 14−1131.

The defendant hot air balloon company was not entitled to recreational immunity because the defendant was not an "occupier" of land under sub. (1) (d) 1. None of

the prior cases interpreting this section has granted immunity to a third party not responsible for opening up the land to the public. Defining the defendant as an "occupier" would not further the policy of opening as much property as possible for recreational use because the land was already open for public recreational purposes. Roberts v. T.H.E. Insurance Co., 2016 WI 20, 367 Wis. 2d 386, 879 N.W.2d 492, 14−1508.

The defendant hot air balloon company was not an owner of property under sub. (1) (d) 1. as the balloon was not a structure and not "property" under sub. (1) (f). The hot air balloon ride was not constructed on real property. It was transient, designed to be moved at the end of the day, and not designed to remain in one place. Roberts v. T.H.E. Insurance Co., 2016 WI 20, 367 Wis. 2d 386, 879 N.W.2d 492, 14−1508.

"Supervising" other persons, who are themselves engaged in recreational activities, is a "recreational activity" within the meaning of sub. (1) (g). Such supervision involves actively overseeing or directing the performance of the recreational activity of another. Thus, "supervision" is akin to, and subsumed within, "practice" and "instruction" in a recreational activity, which the legislature specifically identified as giving rise to immunity. Wilmet v. Liberty Mutual Insurance Co., 2017 WI App 16, 374 Wis. 2d 413, 893 N.W.2d 251, 15−2259.

Each recreational immunity case poses an intensely fact−driven inquiry. The court applies a multi−factor test to ascertain whether a particular activity is "substantially similar" to those enumerated in the statute, including: 1) the activity's intrinsic nature; 2) the purpose of the activity; 3) the activity's consequences; 4) the property user's intent and reason for being on the property; 5) the nature of the property; and 6) the property owner's intent. Wilmet v. Liberty Mutual Insurance Co., 2017 WI App 16, 374 Wis. 2d 413, 893 N.W.2d 251, 15−2259.

This section does not define the term "agent." An agent is one who acts on behalf of and is subject to reasonably precise control by the principal for the tasks the person performs within the scope of the agency. An agent may be either an employee or an independent contractor. An independent contractor may or may not be an agent. Whether an independent contractor is an agent is a fact−specific inquiry. In this case, there was no evidence that the property owner either controlled the details of the contractor's work or formulated any reasonably precise specifications for that work. The contractor was not the owner's agent for purposes of this section. Westmas v. Creekside Tree Service, Inc., 2018 WI 12, 379 Wis. 2d 471, 907 N.W.2d 68, 15−1039. But see Lang v. Lions Club of Cudahy Wisconsin, Inc., 2020 WI 25, 390 Wis. 2d 627, 939 N.W.2d 582, 17−2510.

The definition of "occupy" in the context of this section is "to take and hold possession." A tree trimming company that moved from temporary location to temporary location for the limited purpose of trimming trees that did not have authority to open up the land to the public and that could not be said to have taken and held possession of the property was not an occupier and thus not a statutory owner of the property for purposes of this section. Westmas v. Creekside Tree Service, Inc., 2018 WI 12, 379 Wis. 2d 471, 907 N.W.2d 68, 15−1039.

Discussing what constitutes an agency relationship for purposes of recreational immunity under sub. (2). Lang v. Lions Club of Cudahy Wisconsin, Inc., 2020 WI 25, 390 Wis. 2d 627, 939 N.W.2d 582, 17−2510.

The Exculpatory Contract and Public Policy. Anzivino. 102 MLR 747 (2019).

Wisconsin's Recreational Use Statute: Towards Sharpening the Picture at the Edges. Ford. 1991 WLR 491.

Minnesota Fire & Casualty Insurance Co. v. Paper Recycling of La Crosse: Why Property Owners Should Fear the Mischief of Boys at Play and Wisconsin Supreme Court Justices at Work. Salvo. 2002 WLR 999.

Wisconsin's Recreational Use Statute. Pendleton. Wis. Law. May 1993.

Recreational Liability: Plaintiff−friendly Standards Remain. Pendleton. Wis. Law. Oct. 2017.

As I See It: Trouble by Design: Recreational Immunity Statute a Barrier to Justice. Rogers. Wis. Law. Nov. 2017.

895.523 Recreational activities in a school building or on school grounds; limitation of liability. (1) DEFINITIONS. In this section:

(a) "Governing body of a charter school" means the person that operates a charter school established under s. 118.40 (2) or (2m) or the entity that operates a charter school established under s. 118.40 (2r) or (2x).

(b) "Injury" means an injury to a person or to property.

(c) 1. Except as provided in subd. 2., "recreational activity" means all of the following:

a. Any indoor physical activity, sport, team sport, or game, whether organized or unorganized, undertaken for the purpose of exercise, relaxation, diversion, education, or pleasure.

b. Any outdoor activity undertaken for the purpose of exercise, relaxation, or pleasure, including practice or instruction in any such activity. In this subd. 1. b., "outdoor activity" includes hunting, fishing, trapping, camping, picnicking, exploring caves, nature study, bicycling, horseback riding, bird−watching, motorcycling, operating an all−terrain vehicle, ballooning, hang gliding, hiking, tobogganing, sledding, sleigh riding, snowmobiling, skiing, skating, water sports, sight−seeing, rock−climbing, cutting or removing wood, climbing observation towers, animal training, harvesting the products of nature, sport shooting, and any other outdoor sport, game, or educational activity.

2. "Recreational activity" does not include any indoor or outdoor organized team sport or activity organized and held by a school district, school board, or governing body of a charter school.

(d) "Recreational agreement" means a written authorization granted by a school board or the governing body of a charter school to a person that permits public access to all or a specified part of the school grounds for the purpose of any recreational activity and that satisfies the requirements under sub. (5).

(e) "School board" means the school board or board of school directors in charge of the public schools of a school district.

(f) "School building" means a building designed for and used as a school by a school district, by a school board, or by the governing body of a charter school.

(g) "School grounds" means real property, and any school buildings, accessory buildings, structures, and improvements thereon, owned, leased, or rented by a school district, by a school board, or by the governing body of a charter school and used primarily for public school purposes.

(gm) "Spectator" means a person who attends or watches a recreational activity but does not engage or participate in or intend to engage or participate in the recreational activity.

(h) "Sport" means an activity requiring physical exertion and skill and which, by its nature and organization, is competitive and includes a set of rules for play.

(2) NO DUTY; IMMUNITY FROM LIABILITY. (a) Except as provided in sub. (3), no school district, no school board, no governing body of a charter school, and no officer, employee, or agent of a school board or of a governing body of a charter school, owes to any person who enters the school grounds of the school board or of the governing body of a charter school to engage or participate in a recreational activity held pursuant to a recreational agreement any of the following:

1. A duty to keep the school grounds safe for the recreational activity.

2. A duty to inspect the school grounds.

3. A duty to give warning of an unsafe condition, use, or activity on the school grounds.

(b) Except as provided in sub. (3), no school district, no school board, no governing body of a charter school, and no officer, employee, or agent of a school board or of a governing body of a charter school, is liable for the death of, any injury to, or any death or injury caused by, a person engaging or participating in a recreational activity held pursuant to a recreational agreement and taking place on the school grounds of the school board or of the governing body of a charter school.

(3) LIABILITY. Subsection (2) does not limit the liability of a school district, a school board, a governing body of a charter school, or an officer, employee, or agent of the school board or of the governing body of a charter school for any of the following:

(a) A death or injury caused by a malicious act or by a malicious failure to warn against an unsafe condition of which an officer, employee, or agent of the school board or of the governing body of a charter school knew, which occurs on the school grounds of the school board or of the governing body of a charter school designated for use in a recreational agreement and being used by a person for a recreational activity held pursuant to the recreational agreement.

(b) The death of or injury to a spectator that occurs on the school grounds of the school board or of the governing body of a charter school designated for use in a recreational agreement during the recreational activity.

(c) The death of or injury to a person participating in a recreational activity involving any of the following pursuant to a recreational agreement:

1. A weight room.

2. A swimming pool.

3. Gymnastic equipment.

(4) NO DUTY OR LIABILITY CREATED. Except as expressly provided in this section, nothing in this section or s. 101.11 nor the

common law attractive nuisance doctrine creates any duty of care or ground of liability toward any person who uses school grounds to engage or participate in a recreational activity held pursuant to a recreational agreement.

(5) RECREATIONAL AGREEMENT. Each recreational agreement shall include all of the following:

(a) A description of the recreational activity or activities to be held on the school grounds pursuant to the agreement.

(b) The time and place of the recreational activity or activities.

(c) Any eligibility requirements for participation in the recreational activity or activities.

(d) Whether and, if so, to what extent participants who are minors will be supervised.

(e) A clear statement describing a participant's assumption of risk.

History: 2011 a. 162; 2015 a. 55.

895.524 Participation in an agricultural tourism activity; limitations on civil liability, assumption of risk. (1) DEFINITIONS. In this section:

(a) "Agricultural tourism activity" means an educational or recreational activity that takes place on a farm, ranch, grove, or other place where agricultural, horticultural, or silvicultural crops are grown or farm animals or farmed fish are raised, and that allows members of the general public, whether or not for a fee, to tour, explore, observe, learn about, participate in, or be entertained by an aspect of agricultural production, harvesting, or husbandry that occurs on the farm, ranch, grove, or other place.

(b) "Agricultural tourism provider" means a person who operates, provides, or demonstrates an agricultural tourism activity.

(c) "Participant" means an individual, other than an agricultural tourism provider, who observes or participates in an agricultural tourism activity.

(d) "Property" means the real property where an agricultural tourism activity takes place and the buildings, structures, and improvements on that real property.

(e) "Risk inherent in an agricultural tourism activity" means a danger or condition that is an integral part of an agricultural tourism activity, including all of the following:

1. The surface and subsurface conditions of land and the natural condition of vegetation and water on the property.

2. The unpredictable behavior of wild, domestic, or farm animals on the property.

3. The ordinary dangers of structures or equipment ordinarily used where agricultural, horticultural, or silvicultural crops are grown or farm animals or farmed fish are raised.

4. The possibility that a participant in an agricultural tourism activity may act in a negligent manner, including by failing to follow instructions given by the agricultural tourism operator or by failing to exercise reasonable caution while engaging in the agricultural tourism activity, that may contribute to the injury to that participant or to another participant.

(2) IMMUNITY FROM LIABILITY. (a) Subject to par. (b), an agricultural tourism provider is immune from civil liability for injury to or the death of an individual who is participating in an agricultural tourism activity on property owned, leased, or managed by the agricultural tourism provider if all of the following apply:

1. The participant is injured or killed as a result of a risk inherent in an agricultural tourism activity.

2. The agricultural tourism provider posts and maintains, in a clearly visible location at each entrance to the property where the agricultural tourism activity takes place or at the location of each agricultural tourism activity, a sign that contains the following notice in black lettering, each letter a minimum of one inch in height, on a white background: "NOTICE: A person who observes or participates in an agricultural tourism activity on this property assumes the risks inherent in the agricultural tourism activity. Risks inherent in the agricultural tourism activity may include conditions on the land, the unpredictable behavior of farm animals, the ordinary dangers associated with equipment used in farming operations, and the potential that a participant in the agricultural tourism activity may act in a negligent way that may contribute to injury or death. The agricultural tourism provider is not liable for the injury or death of a person involved in an agricultural tourism activity resulting from those inherent risks."

(b) 1. Subject to subd. 2., an agricultural tourism provider is not immune from civil liability for injury to or the death of a participant if any of the following applies:

a. The agricultural tourism provider acts with a willful or wanton disregard for the safety of the participant. In this subd. 1. a., "willful or wanton disregard" means conduct committed with an intentional or reckless disregard for the safety of others, such as by failing to exercise ordinary care to prevent a known danger or to discover a danger.

b. The agricultural tourism provider intentionally causes the participant's injury or death.

2. Any person who asserts that the acts or omissions of an agricultural tourism provider satisfy the elements under subd. 1. a. or b. has the burden of proving that assertion by clear and convincing evidence.

(3) APPRECIATION OF CONDITIONS AND RISK OF PARTICIPATION IN AN AGRICULTURAL TOURISM ACTIVITY. A participant in an agricultural tourism activity engaged in on property owned or leased by an agricultural tourism provider who offers facilities to the general public for participation in agricultural tourism activities accepts the risks inherent in the agricultural tourism activity of which the ordinary prudent person is or should be aware.

(4) EFFECT ON RELATED PROVISION. Nothing in this section affects the limitation of a property owner's liability under s. 895.52.

History: 2013 a. 269.

The Exculpatory Contract and Public Policy. Anzivino. 102 MLR 747 (2019).

895.525 Participation in recreational activities; restrictions on civil liability, assumption of risk. (1) LEGISLATIVE PURPOSE. The legislature intends by this section to establish the responsibilities of participants in recreational activities in order to decrease uncertainty regarding the legal responsibility for deaths or injuries that result from participation in recreational activities and thereby to help assure the continued availability in this state of enterprises that offer recreational activities to the public.

(2) DEFINITIONS. In this section:

(a) "Agricultural tourism activity" means an educational or recreational activity that takes place on a farm, ranch, grove, or other place where agricultural, horticultural, or silvicultural crops are grown or farm animals or farmed fish are raised, and that allows visitors to tour, explore, observe, learn about, participate in, or be entertained by an aspect of agricultural production, harvesting, or husbandry that occurs on the farm, ranch, grove, or other place.

(b) "Recreational activity" means any activity undertaken for the purpose of exercise, relaxation or pleasure, including practice or instruction in any such activity. "Recreational activity" does not include participating in an alpine sport at a ski area, as those terms are defined in s. 167.33, but includes hunting, fishing, trapping, camping, bowling, billiards, picnicking, exploring caves, nature study, dancing, bicycling that is not biking, as defined in s. 167.33 (1) (ar), horseback riding, horseshoe−pitching, bird−watching, motorcycling, operating an all−terrain vehicle or utility terrain vehicle, recreational aviation, as defined in s. 895.52 (1) (hm), ballooning, curling, throwing darts, hang gliding, hiking, sleigh riding, snowmobiling, skating, participation in water sports, weight and fitness training, sight−seeing, rock−climbing, cutting or removing wood, climbing observation towers, animal training, harvesting the products of nature, participating in an agricultural tourism activity, sport shooting, and participating in

an alpine sport outside a ski area, as those terms are defined in s. 167.33, and any other sport, game or educational activity.

(3) APPRECIATION OF RISK. A participant in a recreational activity engaged in on premises owned or leased by a person who offers facilities to the general public for participation in recreational activities accepts the risks inherent in the recreational activity of which the ordinary prudent person is or should be aware. In a negligence action for recovery of damages for death, personal injury or property damage, conduct by a participant who accepts the risks under this subsection is contributory negligence, to which the comparative negligence provisions of s. 895.045 shall apply.

(4) RESPONSIBILITIES OF PARTICIPANTS. (a) A participant in a recreational activity engaged in on premises owned or leased by a person who offers facilities to the general public for participation in recreational activities is responsible to do all of the following:

1. Act within the limits of his or her ability.

2. Heed all warnings regarding participation in the recreational activity.

3. Maintain control of his or her person and the equipment, devices or animals the person is using while participating in the recreational activity.

4. Refrain from acting in any manner that may cause or contribute to the death or injury to himself or herself or to other persons while participating in the recreational activity.

(b) A violation of this subsection constitutes negligence. The comparative negligence provisions of s. 895.045 apply to negligence under this subsection.

(4m) LIABILITY OF CONTACT SPORTS PARTICIPANTS. (a) A participant in a recreational activity that includes physical contact between persons in a sport involving amateur teams, including teams in recreational, municipal, high school and college leagues, may be liable for an injury inflicted on another participant during and as part of that sport in a tort action only if the participant who caused the injury acted recklessly or with intent to cause injury.

(b) Unless the professional league establishes a clear policy with a different standard, a participant in an athletic activity that includes physical contact between persons in a sport involving professional teams in a professional league may be liable for an injury inflicted on another participant during and as part of that sport in a tort action only if the participant who caused the injury acted recklessly or with intent to cause injury.

(5) EFFECT ON RELATED PROVISIONS. Nothing in this section affects the limitation of property owners' liability under s. 895.52 or the limitation of school districts' liability, of school boards' liability, and of liability of governing bodies of charter schools under s. 895.523.

History: 1987 a. 377; 1995 a. 223, 447; 1997 a. 242; 2005 a. 155; 2011 a. 162, 199, 208; 2013 a. 165, 269, 318; 2015 a. 168, 195.

NOTE: 1987 Wis. Act 377 contains a prefatory note explaining the act.

This section codifies common law. It does not impose a greater duty of care on individuals than exists at common law. Rockweit v. Senecal, 197 Wis. 2d 409, 541 N.W.2d 742 (1995), 93–1130.

Sub. (3) does not mean that all who ski are negligent under all circumstances. Subs. (3) and (4) when read together impose an obligation of ordinary care on a skier to avoid foreseeable harms, including adherence to the conditions enumerated in sub. (4). Ansani v. Cascade Mountain, Inc., 223 Wis. 2d 39, 588 N.W.2d 321 (Ct. App. 1998), 97–3514.

Cheerleaders are immune from negligence actions because they participate in a recreational activity that includes physical contact between persons in a sport involving amateur teams. Cheerleading is a sport because a sport is an activity involving physical exertion and skill that is governed by a set of rules or customs. Cheerleaders are on amateur teams because a team is a group organized to work together and cheerleaders are a group dedicated to leading fan participation and taking part in competitions. Cheerleading involves a significant amount of contact among the participants that at times can produce a forceful interaction between the cheerleaders when one person is tossed high into the air and then caught by those same tossers. Noffke v. Bakke, 2009 WI 10, 315 Wis. 2d 350, 760 N.W.2d 156, 06–1886.

The Exculpatory Contract and Public Policy. Anzivino. 102 MLR 747 (2019).

Go Team! Wisconsin's Latest Recreational Immunity Controversy. Condon. Wis. Law. June 2009.

895.526 Participation in an alpine sport; restrictions on civil liability, assumption of risk. (1) DEFINITIONS. All definitions in s. 167.33 apply to this section unless the context otherwise requires.

(2) APPRECIATION OF CONDITIONS AND RISK OF PARTICIPATION IN AN ALPINE SPORT. (a) Every participant in an alpine sport at a ski area accepts the conditions and risks of the alpine sport as set forth in s. 167.33 (2).

(b) Every participant in an alpine sport at a ski area is presumed to have seen and understood signage provided by the ski area operator pursuant to s. 167.33 (3).

(c) Every participant in an alpine sport at a ski area accepts that failure to wear a helmet or wearing a helmet that is improperly sized, fitted, or secured increases the risk of injury or death or the risk of a more severe injury. Every participant in an alpine sport at a ski area accepts that a helmet may not be available for purchase or for rent at a ski area.

(d) Every participant in an alpine sport at a ski area accepts that natural or man–made items or obstacles within a ski area, including ski area infrastructure and ski area vehicles, may be unpadded or not heavily padded and accepts that there may be a higher risk of injury or death or of a more severe injury associated with a collision with an item or obstacle that is unpadded or not heavily padded.

(3) RESPONSIBILITIES OF A PARTICIPANT IN AN ALPINE SPORT. Every participant in an alpine sport is responsible to do all of the following:

(a) Fulfill his or her duties set forth in s. 167.33 (5).

(b) Choose whether to wear a helmet while participating in the alpine sport. If the participant chooses to wear a helmet, he or she has the responsibility to ensure the helmet is of the correct size and fit and to ensure that it is properly secured while he or she participates in the alpine sport.

(4) LIMITS ON LIABILITY FOR A SKI AREA OPERATOR; RELEASE AND LIABILITY OF A PARTICIPANT. (a) A ski operator who fulfills all of his or her duties under s. 167.33 (3) and (4) owes no further duty of care to a participant in an alpine sport and is not liable for an injury or death that occurs as a result of any condition or risk accepted by the participant under sub. (2).

(b) A participant involved in a collision with any other participant or with a nonparticipant may be liable for an injury or death that occurs as a result of the collision.

(c) This subsection shall be construed broadly.

(5) EFFECT ON RELATED PROVISION. Nothing in this section affects the limitation of a property owner's liability under s. 895.52.

History: 2011 a. 199; 2015 a. 168.

Codify This: Exculpatory Contracts in Wisconsin Recreational Businesses. Nold. 101 MLR 573 (2017).

The Exculpatory Contract and Public Policy. Anzivino. 102 MLR 747 (2019).

895.5265 Civil liability exemption; placement of certain structures in waterways. (1) In this section, "department" means the department of natural resources.

(2) A person is immune from civil liability for damage to personal property, injury to a person, or death caused by placing a structure on the bed of a navigable water or in a wetland if the structure is placed for the purpose of fish and wildlife habitat creation, protection, or improvement or if the structure is a net pen that meets the requirements under s. 30.12 (3) (b) 1. a., b., and c., and if any of the following applies:

(a) The department authorized the person to place the structure under a permit or other approval issued under subch. II of ch. 30 or under s. 281.36 and the person placed the structure in accordance with the permit or other approval.

(b) The person is exempt from any permit requirement under subch. II of ch. 30 or under s. 281.36 and the structure is placed in a manner that meets the exemption requirements.

(c) The person is acting under the direction of a person described under par. (a) or (b).

(2m) A person is immune from civil liability for damage to personal property, injury to a person, or death caused by a structure described under sub. (2) if the structure was placed on the bed of a navigable water or in a wetland on or adjacent to the person's property by a predecessor in title to the property.

(3) No person authorized under sub. (2) (a), (b), or (c) to place a structure in a navigable water or wetland and no person described under sub. (2m) owe to any person a duty to do any of the following:

(a) Inspect or maintain the structure.

(b) Give warning of the existence of the structure unless specifically required by law.

(c) Give warning of an unsafe condition caused by the structure.

History: 2015 a. 220.

895.527 Sport shooting range activities; limitations on liability and restrictions on operation. (1) In this section, "sport shooting range" means an area designed and operated for the use and discharge of firearms.

(2) A person who owns or operates a sport shooting range is immune from civil liability related to noise resulting from the operation of the sport shooting range.

(3) A person who owns or operates a sport shooting range is not subject to an action for nuisance or to state or local zoning conditions related to noise. If a sport shooting range, on the date it was established, was a lawful or legal nonconforming use under any state law or local ordinance related to its use that was in effect on that date, the sport shooting range continues to be subject to the state laws and local ordinances related to its use that were in effect on the date it was established. No court may enjoin or restrain the operation or use of a sport shooting range on the basis of noise or on the basis of noncompliance with a state law or local ordinance related to its operation or use that was enacted after the date that the sport shooting range was established if the sport shooting range, on the date it was established, was a lawful or legal nonconforming operation or use under any state law or local ordinance related to its operation or use that was in effect on that date.

(4) Any sport shooting range that exists on July 16, 2013, may continue to operate as a sport shooting range at that location notwithstanding any zoning ordinance enacted under s. 59.69, 59.692, 60.61, 60.62, 61.35 or 62.23 (7), if the sport shooting range is a lawful use or a legal nonconforming use under any zoning ordinance enacted under s. 59.69, 59.692, 60.61, 60.62, 61.35 or 62.23 (7) that is in effect on July 16, 2013. The operation of the sport shooting range continues to be a lawful use or legal nonconforming use notwithstanding any expansion of, or enhancement or improvement to, the sport shooting range.

(5) Any sport shooting range that exists on June 18, 1998, may continue to operate as a sport shooting range at that location notwithstanding all of the following:

(a) Section 167.30 (1), 941.20 (1) (d) or 948.605 or any rule promulgated under those sections regulating or prohibiting the discharge of firearms.

(b) Section 66.0409 (3) (b) or any ordinance or resolution.

(c) Any zoning ordinance that is enacted, or resolution that is adopted, under s. 59.69, 60.61, 60.62, 61.35 or 62.23 (7) that is related to noise.

(6) A city, village town or county may regulate the hours between 11:00 p.m. and 6:00 a.m. that an outdoor sport shooting range may operate, except that such a regulation may not apply to a law enforcement officer as defined in s. 165.85 (2) (c), a member of the U.S. armed forces or a private security person as defined in s. 440.26 (1m) who meets all of the requirements under s. 167.31 (4) (a) 4.

(7) A person who is shooting in the customary or a generally acceptable manner at a sport shooting range between the hours of 6:00 a.m. and 11:00 p.m. is presumed to not be engaging in disorderly conduct merely because of the noise caused by the shooting.

(8) An owner or operator of a sport shooting range, or an employee, agent, contractor, customer, or insurer of the owner or operator of a sport shooting range, and any user of a sport shooting range is immune from civil liability in any action commenced by the state or its political subdivisions, or by a special purpose district, related to the use, release, placement, deposition, or accumulation of any projectiles on or under the sport shooting range or other contiguous real property over which the owner or operator of a sport shooting range has an easement, leasehold, or other legal right to use.

(9) An owner, operator, officer, or board member of a sport shooting range, and any employee or volunteer acting on behalf of the owner or operator who provided recommendations regarding the operation of a sport shooting range, are immune from any civil action based solely on the negligent action of a user of the sport shooting range.

(10) This section does not impair or diminish the private property rights of owners of property adjoining a sport shooting range.

History: 1997 a. 242; 2001 a. 30; 2005 a. 155; 2009 a. 371; 2011 a. 35; 2013 a. 35, 202; 2021 a. 238 s. 44.

This section does not prohibit the application of a zoning ordinance to a sport shooting range unless the range was a lawful use under the ordinance as of June 18, 1998. Town of Avon v. Oliver, 2002 WI App 97, 253 Wis. 2d 647, 644 N.W.2d 260, 01−1851.

The Exculpatory Contract and Public Policy. Anzivino. 102 MLR 747 (2019).

895.528 Civil liability exemption; placement of markers in waterways. (1) Except as provided in sub. (2), a person is immune from civil liability for damage or injury caused by placing, or failing to place, buoys or other markers in a waterway if all of the following apply:

(a) The person holds, or acts under the direction of a person who holds, a permit or other approval from the department of natural resources that authorizes the placement of the buoys or markers in the waterway.

(b) The permit or other approval described under par. (a) authorizes placement of buoys or markers for the purpose of identifying or marking hazards in the waterway.

(2) A person is not immune from civil liability under sub. (1) for damage or injury caused by placing, or failing to place, buoys or other markers in a waterway if the person intentionally causes the damage or injury.

History: 2015 a. 91.

895.529 Civil liability limitation; duty of care owed to trespassers. (1) In this section:

(a) "Possessor of real property" means an owner, lessee, tenant, or other lawful occupant of real property.

(b) "Trespasser" means a natural person who enters or remains upon property in possession of another without express or implied consent.

(2) Except as provided in sub. (3), a possessor of real property owes no duty of care to a trespasser.

(3) A possessor of real property may be liable for injury or death to a trespasser under the following circumstances:

(a) The possessor of real property willfully, wantonly, or recklessly caused the injury or death. This paragraph does not apply if the possessor used reasonable and necessary force for the purpose of self−defense or the defense of others under s. 939.48 or used reasonable and necessary force for the protection of property under s. 939.49.

(b) The person injured or killed was a child and all of the following apply:

1. The possessor of real property maintained, or allowed to exist, an artificial condition on the property that was inherently dangerous to children.

2. The possessor of real property knew or should have known that children trespassed on the property.

3. The possessor of real property knew or should have known that the artificial condition he or she maintained or allowed to exist

was inherently dangerous to children and involved an unreasonable risk of serious bodily harm or death to children.

4. The injured or killed child, because of his or her youth or tender age, did not discover the condition or realize the risk involved in entering onto the property, or in playing in close proximity to the inherently dangerous artificial condition.

5. The possessor of real property could have reasonably provided safeguards that would have obviated the inherent danger without interfering with the purpose for which the artificial condition was maintained or allowed to exist.

(4) This section does not create or increase any liability on the part of a possessor of real property for circumstances not specified under this section and does not affect any immunity from or defenses to liability available to a possessor of real property under common law or another statute.

History: 2011 a. 93.

Reading the phrase "other lawful occupant of real property" under sub. (1) (a) in context demonstrates that such a person must have some degree of possession or control over the property and the ability to give and withdraw consent to enter or remain on the property. Stroede v. Society Insurance, 2021 WI 43, 397 Wis. 2d 17, 959 N.W.2d 305, 18–1880.

895.53 Civil and criminal liability exemption; tests for intoxication. (1) In this section:

(a) "Conservation warden" means a person appointed as a conservation warden by the department of natural resources under s. 23.10 (1).

(b) "Traffic officer" has the meaning specified in s. 340.01 (70).

(2) Any person withdrawing blood at the request of a traffic officer, law enforcement officer or conservation warden for the purpose of determining the presence or quantity of alcohol, controlled substances, controlled substance analogs or any combination of alcohol, controlled substances and controlled substance analogs is immune from any civil or criminal liability for the act, except for civil liability for negligence in the performance of the act.

(3) Any employer of the person under sub. (2) or any hospital where blood is withdrawn by that person has the same immunity from liability under sub. (2).

History: 1983 a. 535; 1983 a. 538 s. 256; Stats. 1983 s. 895.53; 1985 a. 331; 1995 a. 448; 2005 a. 155.

895.532 Civil and criminal liability exemption; xylazine testing products. (1) In this section, "xylazine testing product" means any materials used or intended for use in testing for the presence of xylazine or a xylazine analog in a substance.

(2) Any person who distributes a xylazine testing product is immune from civil or criminal liability for the death of or injury to an individual caused by the administration of the xylazine testing product.

(3) Any person who administers a xylazine testing product according to manufacturer instructions provided with the xylazine testing product is immune from civil or criminal liability for the act, except for civil liability for negligence in the performance of the act.

History: 2023 a. 217.

895.535 Civil and criminal liability exemption; body cavity search. (1) Any physician, physician assistant, or registered nurse licensed to practice in this state conducting a body cavity search pursuant to s. 968.255 is immune from any civil or criminal liability for the act, except for civil liability for negligence in the performance of the act.

(2) Any employer of the person under sub. (1) or any health care facility where the search is conducted by that person has the same immunity from liability under sub. (1).

History: 2015 a. 238.

895.537 Liability exemption; sexual assault evidence collection. (1) In this section:

(a) "Health care professional" has the meaning given in s. 154.01 (3).

(b) "Sexual assault forensic examination" has the meaning given in s. 165.775 (1) (d).

(2) Any health care professional conducting a sexual assault forensic examination pursuant to informed consent or a court order is immune from any civil or criminal liability for the act, except for civil liability for negligence in the performance of the act.

(3) Any employer of the person under sub. (2) or any health care facility where the sexual assault forensic examination is conducted by that person has the same immunity from liability under sub. (2).

History: 2021 a. 116.

895.54 Liability exemption; notification of release. A person is immune from any liability regarding any act or omission regarding the notification of any applicable office or person under s. 51.37 (10), 304.06 (1), 971.17 (4m) or (6m) or 980.11. This section does not apply to willful or wanton acts or omissions.

History: 1991 a. 269; 1993 a. 479.

895.55 Liability exemption; oil discharge control. (1) In this section:

(a) "Damages" means those damages specified in 33 USC 2702 (b) (2) and includes the cost of assessing those damages.

(b) "Discharge" means, but is not limited to, spilling, leaking, pumping, pouring, emitting, emptying or dumping.

(c) "Federal on–scene coordinator" means the federal official designated by the federal environmental protection agency or the U.S. coast guard to coordinate and direct responses under the national contingency plan.

(d) "National contingency plan" means the plan prepared and published under 33 USC 1321 (d).

(e) "Oil" means petroleum, hydrocarbon, vegetable or mineral oil of any kind or in any form and includes oil mixed with wastes other than dredged spoil.

(f) "Person" means an individual, owner, operator, corporation, limited liability company, partnership, association, municipality, interstate agency, state agency or federal agency.

(g) "Removal" means the containment and elimination of oil from water, shorelines and beaches or the taking of other actions, including disposal, as may be necessary to minimize or mitigate damages to public health and welfare, including to fish, shellfish, wildlife and public or private property, shorelines and beaches.

(h) "Removal costs" means the costs of removal that are incurred after an oil discharge occurs or, if there is a substantial threat of an oil discharge, the costs to prevent, minimize or mitigate an oil discharge.

(i) "State contingency plan" means the plan prepared and published under s. 292.11 (5).

(2) Notwithstanding any provision of s. 93.57, 299.11, 299.13, 299.31, 299.43, 299.45, 299.51, 299.53 or 299.55, subchs. II and IV of ch. 30, ch. 29, 281, 283, 289, 291, 292, or 323 or subch. II of ch. 295, or any other provision of this chapter, a person is immune from liability for damages resulting from the person's acts or omissions and for the removal costs resulting from the person's acts or omissions if all of the following conditions are met:

(a) Those acts or omissions were taken while rendering assistance, advice or care related to the threat of an oil discharge into the navigable waters of this state or related to the removal of oil resulting from an oil discharge into the navigable waters of this state.

(b) The assistance, advice or care was consistent with the national contingency plan or the state contingency plan or was otherwise directed by the federal on–scene coordinator or the secretary of natural resources.

(3) The immunity under sub. (2) does not extend to any person:

(a) Who is required to act under s. 292.11 (3) because the person possessed or controlled the oil that was initially discharged into the navigable waters of this state or caused the initial discharge or initial threat of discharge of the oil into the navigable waters of this state.

(b) Whose act or omission involves gross negligence or reckless, wanton or intentional misconduct.

(c) Who causes personal injury or wrongful death.

(4) A person under sub. (3) (a) is liable for any damages or removal costs that another person is immune from under sub. (2).

(5) Nothing in this section affects the responsibility of a person under sub. (3) (a) to fulfill that person's requirements under s. 292.11.

History: 1995 a. 192; 1997 a. 35, 252; 2003 a. 33; 2009 a. 42.

895.555 Civil liability exemption; anhydrous ammonia. (1) LIABILITY EXEMPTION. Except as provided under sub. (2), any person who owns, maintains, or installs anhydrous ammonia equipment, as defined in s. 101.10 (1) (b), or who uses anhydrous ammonia for any legal purpose is immune from any civil liability for acts or omissions relating to the anhydrous ammonia equipment or to anhydrous ammonia that cause damage or injury to an individual, if that damage or injury occurs during the individual's violation of s. 101.10 (3) (c), (d), (e), or (f).

(2) EXCEPTION. A person is not immune from civil liability under sub. (1) if the damage or injury is caused by the person's reckless or wanton acts or omissions or by acts or omissions intended by the person to cause damage or injury.

History: 2001 a. 3; 2005 a. 14, 155.

895.56 Liability exemption; handling of petroleum−contaminated soil under contract with the department of transportation. (1) In this section:

(a) "Person" means an individual, owner, operator, corporation, limited liability company, partnership, association, municipality, interstate agency, state agency, as defined in s. 1.12 (1) (b), or federal agency.

(b) "Petroleum−contaminated soil" means soil contaminated with material derived from petroleum, natural gas or asphalt deposits, including gasoline, diesel and heating fuels, liquified petroleum gases, lubricants, waxes, greases and petrochemicals.

(2) A person is immune from liability arising under s. 292.11 and from any liability for the removal or remedying of petroleum−contaminated soil or for damages resulting from the person's actions or omissions relating to petroleum−contaminated soil if all of the following apply:

(a) The acts or omissions by the person occurred while performing a contract entered into under s. 84.06 (2), including acts or omissions by any person who has a direct contractual relationship with the prime contractor, as defined in s. 779.01 (2) (d), under a contract entered into under s. 84.06 (2) to perform labor or furnish materials.

(b) In the course of performing a contract described in par. (a), petroleum−contaminated soil was encountered on the property on which the contracted activity is taking place, and the petroleum−contaminated soil cannot be avoided in performing the contract.

(c) The acts or omissions involving petroleum−contaminated soil on the property were required by reasonably precise specifications in the contract entered into under s. 84.06 (2), and the acts or omissions conformed to those specifications, or were otherwise directed by the department of transportation or by the department of natural resources.

(3) Subsection (2) does not apply to any person to whom any of the following applies:

(a) The person brought petroleum−contaminated soil onto the property or otherwise caused the initial contamination of the property with a hazardous substance, as defined in s. 292.01 (5).

(b) The person's act or omission constitutes gross negligence or involves reckless, wanton or intentional misconduct.

(c) The person fails to warn the department of transportation or the department of natural resources about the presence of petroleum−contaminated soil encountered at the site, if the petroleum−contaminated soil was reasonably known to the person but not to the department of transportation or to the department of natural resources.

(d) The person is under a previous or separate contract with a state agency, as defined in s. 1.12 (1) (b), solely to remove or remedy petroleum−contaminated soil or hazardous substances on the property.

(e) The person causes personal injury or wrongful death.

History: 1997 a. 237.

895.57 Damages and immunity; unauthorized release of animals. (1) In this section:

(ag) "Animal" means all vertebrate and invertebrate species, including mammals, birds, fish and shellfish but excluding humans.

(am) "Humane officer" means an officer appointed under s. 173.03.

(b) "Local health officer" has the meaning given in s. 250.01 (5).

(c) "Peace officer" has the meaning given in s. 939.22 (22).

(2) A person who intentionally releases an animal that is lawfully confined for scientific, farming, companionship or protection of persons or property, recreation, restocking, research, exhibition, commercial or educational purposes, acting without the consent of the owner or custodian of the animal, is liable to the owner or custodian of the animal for damages, punitive damages, attorney fees and interest on the amount of the damages incurred at the rate of 12 percent per year from the date of the intentional release. The damages awarded shall include the costs of restoring the animal to confinement.

(3) Subsection (2) does not apply to any humane officer, local health officer, peace officer, employee of the department of natural resources while on any land licensed under s. 169.15, 169.18, or 169.19, subject to certification under s. 90.21, or designated as a wildlife refuge under s. 29.621 (1) or employee of the department of agriculture, trade and consumer protection if the officer's or employee's acts are in good faith and in an apparently authorized and reasonable fulfillment of his or her duties.

(4) (a) In this subsection, "security device" includes any of the following:

1. Any fence enumerated under s. 90.02.

2. A theft alarm signal device, a burglar alarm or any other security alarm system or device.

3. A dog.

(b) Subject to par. (d), an owner or custodian of a confined animal is immune from civil liability for any damages to a person who suffers the damages while violating or attempting to violate s. 943.75 (2) or (2m).

(c) An owner or custodian of an animal that is released in violation of s. 943.75 (2) or (2m) is immune from liability for any damages caused by that released animal.

(d) The immunity provided to an owner or custodian of a confined animal under par. (b) does not apply if the injury was caused by a security device that is intended or likely to cause death or great bodily harm, as defined in s. 939.22 (14).

History: 1991 a. 20, 269; 1993 a. 27; 1995 a. 79; 1997 a. 27, 192, 248; 1999 a. 45; 2001 a. 56.

895.58 Liability exemption; use of special waste under public works contracts. (1) In this section:

(a) "Department" means the department of natural resources.

(b) "Local governmental unit" means a political subdivision of this state, a special purpose district in this state, an agency or

corporation of such a political subdivision or special purpose district, or a combination or subunit of any of the foregoing.

(c) "Public works project" means any work done under contract to a state agency or local governmental unit.

(cr) "Solid waste" has the meaning given in s. 289.01 (33).

(d) "Special waste" means any type of solid waste for which the department has granted a waiver or an exemption under s. 289.43 (3), (4), (7), or (8) or that is exempt by rule promulgated under s. 289.05 (4).

(2) The department may characterize a special waste as suitable for beneficial use in public works projects. The department shall compile and maintain a list of special wastes that are suitable for use in specified types of public works projects in a format readily available to the general public and only those special wastes may be required by contracting agencies to be used in a public works project. The list may include conditions under which the special waste may be used in the public works project in order for subs. (3) and (4) to be applicable. The list under this subsection is not a rule under s. 227.01 (13).

(3) Special waste, when used in a public works project, is exempt from regulation as solid waste under ch. 289 if all of the applicable conditions included in the list compiled under sub. (2) are met.

(4) A person is immune from liability for the use of special waste on a public works project or for damages resulting from the person's actions or omissions relating to the use of the special waste on a public works project if all of the following apply:

(a) The acts or omissions by the person occurred while performing work under a contract for a public works project including acts or omissions by any person who has a direct contractual relationship with the prime contractor, as defined in s. 779.01 (2) (d), under a contract for a public works project to perform labor or furnish materials.

(b) The acts or omissions involving the special wastes were required or permitted in a contract for a public works project and the acts or omissions conformed to the provisions of the contract.

(5) Subsection (4) does not apply to any person to whom either of the following applies:

(a) The person's act or omission involved reckless, wanton or intentional misconduct.

(b) The person's act or omission resulted in injury or death to an individual.

History: 1999 a. 9, 185; 2003 a. 88; 2005 a. 253.

895.61 Asbestos successor corporation; limitation on liability. (1) DEFINITIONS. In this section:

(a) "Asbestos claim" means a claim for damages, losses, indemnification, contribution, or other relief arising out of or related in any way to asbestos, including all of the following:

1. A claim related to the health effects of exposure to asbestos, including a claim related to any of the following:

a. Personal injury or death.

b. Mental or emotional injury.

c. Increased risk of disease or other injury.

d. Costs of medical monitoring or surveillance.

2. A claim made by or on behalf of any person exposed to asbestos, or by a spouse, parent, child, or other relative of the person.

3. A claim related to the installation, presence, or removal of asbestos.

(b) "Corporation" means a domestic corporation for profit organized under the laws of this state or a foreign corporation for profit organized under laws other than the laws of this state.

(c) 1. "Successor asbestos–related liability" means any liability that is related to an asbestos claim and that was assumed or incurred by a corporation as a result of or in connection with any of the following:

a. A merger or consolidation with a transferor.

b. The plan of merger or consolidation with a transferor related to the merger or consolidation with or into another corporation.

c. An asbestos claim based on the exercise of control or ownership of stock or a corporation before the merger or consolidation with a transferor.

2. "Successor asbestos–related liability" includes liability that, after the time of the merger or consolidation with a transferor for which the fair market value of the total gross assets of the successor corporation was determined under sub. (4), was paid, discharged, or committed to be paid or discharged by or on behalf of the corporation, successor corporation, or transferor in connection with a settlement, judgment, or discharge in this state or in another jurisdiction.

(d) "Successor corporation" means a corporation that has assumed or incurred successor asbestos–related liabilities before January 1, 1972, or that is any of that successor corporation's successors.

(e) "Total gross assets" includes intangible assets.

(f) "Transferor" means a corporation from which a successor asbestos–related liability is or was assumed or incurred.

(2) APPLICABILITY. (a) The limitations in sub. (3) apply to any successor corporation, except as provided in par. (b).

(b) The limitations in sub. (3) do not apply to any of the following:

1. Worker's compensation benefits paid under ch. 102 or a comparable worker's compensation law of another jurisdiction.

2. Any claim against a successor corporation that does not constitute a successor asbestos–related liability.

3. Any obligation under 29 USC 151, et seq., or under any collective bargaining agreement.

4. A successor corporation that, after a merger or consolidation with a transferor, continued in the business of mining asbestos, selling or distributing asbestos fibers, or manufacturing, distributing, removing, or installing asbestos–containing products that were the same or substantially the same as those products that were previously manufactured, distributed, removed, or installed by the transferor.

(3) MEASURE OF LIABILITY. (a) Except as provided in par. (b), the cumulative successor asbestos–related liabilities of a successor corporation are limited to the fair market value of the total gross assets of the transferor determined as of the time of the merger or consolidation with the successor corporation. Subject to par. (b), the successor corporation does not have responsibility for any successor asbestos–related liabilities in excess of this limitation.

(b) If the transferor to the successor corporation had assumed or incurred successor asbestos–related liability in connection with a prior merger or consolidation with a prior transferor, then the fair market value of the total assets of the prior transferor determined as of the time of the earlier merger or consolidation is substituted for the limitation under par. (a) for purposes of determining the limitation on liability of the successor corporation.

(4) ESTABLISHING THE FAIR MARKET VALUE OF TOTAL GROSS ASSETS. (a) A successor corporation may establish the fair market value of total gross assets for purposes of the limitations under sub. (3) by any reasonable method, including any of the following:

1. By reference to the going concern value of the assets.

2. By reference to the purchase price attributable to or paid for the assets in an arms–length transaction.

3. In the absence of other readily available information from which the fair market value can be determined, by reference to the value of the assets recorded on a balance sheet.

(b) To the extent that total gross assets include liability insurance that was issued to the transferor whose assets are being valued under this subsection, the applicability, terms, conditions, and limits of the insurance are not affected by this section. This section does not affect the rights and obligations of an insurer, trans-

feror, or successor corporation under any insurance contract or related agreement, including all of the following:

1. A preenactment settlement resolving a coverage−related dispute.

2. The right of an insurer to seek payment for applicable deductibles, retrospective premiums, or self−insured retentions.

3. The right of an insurer to seek contribution from a successor corporation for an uninsured or self−insured period or for a period when insurance is uncollectible or unavailable.

(c) Subject to par. (b), to the extent that total gross assets include any liability insurance, a settlement of a dispute concerning the liability insurance coverage entered into by the transferor or successor corporation with the insurer of the transferor before August 1, 2009, shall be determinative of the total coverage of the liability insurance for inclusion in the calculation of the transferor's total gross assets.

(5) ADJUSTMENT OF FAIR MARKET VALUE. (a) Except as provided in pars. (b) to (d), the fair market value of the total gross assets at the time of the merger or consolidation with the transferor shall increase annually at a rate equal to the sum of the following:

1. The weekly prime rate for the first week of each calendar year since the merger or consolidation, as reported by the federal reserve board in federal reserve statistical release H. 15.

2. One percent.

(b) The rate under par. (a) may not be compounded.

(c) The adjustment of the fair market value of the total gross assets shall continue as provided in par. (a) until the date that the adjusted fair market value of the total gross assets is first exceeded by the cumulative amounts of successor asbestos−related liabilities paid or committed to be paid by or on behalf of the successor corporation or a predecessor of the successor corporation or by or on behalf of a transferor after the time of the merger or consolidation for which the fair market value of the total gross assets is determined.

(d) No adjustment of the fair market value of total gross assets may be applied to any liability insurance that is included in the definition of total gross assets under sub. (4) (b).

(6) LIBERAL CONSTRUCTION INTENDED. This section shall be liberally construed to effect its purposes with regard to successor corporations.

History: 2009 a. 28; 2013 a. 173 s. 33.

895.62 Use of force in response to unlawful and forcible entry into a dwelling, motor vehicle, or place of business; civil liability immunity. (1) In this section:

(a) "Actor" means a person who uses force that is intended or likely to cause death or great bodily harm to another person.

(b) "Dwelling" has the meaning given in s. 895.07 (1) (h).

(c) "Place of business" means a business that the actor owns or operates.

(2) Except as provided in sub. (4), an actor is immune from civil liability arising out of his or her use of force that is intended or likely to cause death or great bodily harm if the actor reasonably believed that the force was necessary to prevent imminent death or bodily harm to himself or herself or to another person and either of the following applies:

(a) The person against whom the force was used was in the process of unlawfully and forcibly entering the actor's dwelling, motor vehicle, or place of business, the actor was on his or her property or present in the dwelling, motor vehicle, or place of business, and the actor knew or had reason to believe that an unlawful and forcible entry was occurring.

(b) The person against whom the force was used was in the actor's dwelling, motor vehicle, or place of business after unlawfully and forcibly entering it, the actor was present in the dwelling, motor vehicle, or place of business, and the actor knew or had reason to believe that the person had unlawfully and forcibly entered the dwelling, motor vehicle, or place of business.

(3) If sub. (2) (a) or (b) applies, the finder of fact may not consider whether the actor had an opportunity to flee or retreat before he or she used force and the actor is presumed to have reasonably believed that the force was necessary to prevent imminent death or bodily harm to himself or herself or to another person.

(4) The presumption described in sub. (3) does not apply if any of the following are true:

(a) The actor was engaged in a criminal activity or was using his or her dwelling, motor vehicle, or place of business to further a criminal activity at the time he or she used the force described in sub. (2).

(b) The person against whom the force was used was a public safety worker, as defined in s. 941.375 (1) (b), who entered or attempted to enter the actor's dwelling, motor vehicle, or place of business in the performance of his or her official duties. This paragraph applies only if at least one of the following applies:

1. The public safety worker identified himself or herself to the actor before the force described in sub. (2) was used by the actor.

2. The actor knew or reasonably should have known that the person entering or attempting to enter his or her dwelling, motor vehicle, or place of business was a public safety worker.

(5) In any civil action, if a court finds that a person is immune from civil liability under sub. (2), the court shall award the person reasonable attorney fees, costs, compensation for loss of income, and other costs of the litigation reasonably incurred by the person.

(6) Nothing in this section may be construed to limit or impair any defense to civil or criminal liability otherwise available.

History: 2011 a. 94.

SUBCHAPTER III

STRUCTURED SETTLEMENT TRANSFERS

895.65 Definitions. In this subchapter:

(1) "Annuity issuer" means an insurer that has issued a contract to fund periodic payments under a structured settlement.

(2) "Business day" has the meaning given in s. 421.301 (6).

(3) "Dependents" means a payee's spouse and minor children and all other persons for whom the payee is legally obligated to provide support, maintenance, or alimony.

(4) "Discounted present value" means the present value of future payments determined by discounting the payments to the present using the applicable federal rate for determining the present value of an annuity, as most recently issued by the federal Internal Revenue Service.

(5) "Gross advance amount" means the sum payable to the payee or for the payee's account as consideration for a transfer of structured settlement payment rights before any reductions for transfer expenses or other deductions to be made from such consideration.

(6) "Independent professional advice" means advice of an attorney, certified public accountant, actuary, or other licensed professional adviser.

(7) "Interested parties" means the payee, any beneficiary irrevocably designated under the annuity contract to receive payments following the payee's death, the annuity issuer, the structured settlement obligor, and any other party that has continuing rights or obligations under a structured settlement. If the payee is a trust that names the state as a remainder beneficiary, or the payee is a trustee of such a trust, the secretary of health services is an interested party.

(8) "Net advance amount" means the gross advance amount less the aggregate amount of the actual and estimated transfer expenses required to be disclosed under s. 895.66 (5).

(9) "Payee" means an individual who is receiving tax–free payments under a structured settlement and proposes to make a transfer of the payment rights.

(10) "Periodic payments" includes both recurring payments and scheduled future lump sum payments.

(11) "Qualified assignment agreement" means an agreement providing for a qualified assignment within the meaning of section 130 of the federal Internal Revenue Code, Title 26, USC.

(12) "Settled claim" means the original tort claim resolved by a structured settlement.

(13) "Structured settlement" means an arrangement for periodic payment of damages for personal injuries or sickness established by settlement or judgment in resolution of a tort claim.

(14) "Structured settlement agreement" means the agreement, judgment, stipulation, or release embodying the terms of a structured settlement.

(15) "Structured settlement obligor" means the party that has the continuing obligation to make periodic payments to the payee under a structured settlement agreement or a qualified assignment agreement.

(16) "Structured settlement payment rights" means rights to receive periodic payments under a structured settlement if any of the following applies:

(a) The payee is domiciled in, or the domicile or principal place of business of the structured settlement obligor or the annuity issuer is located in, this state.

(b) The structured settlement agreement was approved by a court in this state.

(c) The structured settlement agreement is expressly governed by the laws of this state.

(17) "Terms of the structured settlement" means the terms or conditions of the structured settlement agreement, the annuity contract, any qualified assignment agreement, and any order or other approval of any court that authorized or approved the structured settlement.

(18) (a) "Transfer" means any sale, assignment, pledge, hypothecation, or other alienation or encumbrance of structured settlement payment rights made by a payee for consideration. Except as provided in par. (b), transfer does not include the creation or perfection of a security interest in structured settlement payment rights under a blanket security agreement entered into with an insured depository institution.

(b) "Transfer" includes the creation or perfection, by an insured depository institution, of a security interest in structured settlement payment rights if there is an action to redirect the structured settlement payments to the insured depository institution, or an agent or successor in interest thereof, or otherwise to enforce a blanket security interest against the structured settlement payment rights.

(19) "Transfer agreement" means the agreement providing for a transfer of structured settlement payment rights.

(20) "Transfer expenses" means all expenses of a transfer that are required under the transfer agreement to be paid by the payee or deducted from the gross advance amount, including court filing fees, attorney fees, escrow fees, lien recordation fees, judgment and lien search fees, finders' fees, commissions, and other payments to a broker or other intermediary. Transfer expenses do not include preexisting obligations of the payee payable for the payee's account from the proceeds of a transfer.

(21) "Transferee" means a party acquiring or proposing to acquire structured settlement payment rights through a transfer.

History: 2015 a. 94; 2017 a. 366.

895.66 Mandatory disclosures. Not less than 5 business days before a payee signs a transfer agreement, the transferee shall provide to the payee a separate disclosure statement, in bold type no smaller than 14 points, that contains all of the following:

(1) The amounts and due dates of the structured settlement payments to be transferred.

(2) The aggregate amount of the payments.

(3) The discounted present value of the payments to be transferred and the amount of the applicable federal rate used in calculating the discounted present value.

(4) The gross advance amount.

(5) An itemized listing of all applicable transfer expenses, other than attorney fees and related disbursements payable in connection with the transferee's petition for approval of the transfer, and the transferee's best estimate of the amount of any such fees and disbursements.

(6) The net advance amount.

(7) The amount of any penalties or liquidated damages payable by the payee in the event of any breach of the transfer agreement by the payee.

(8) A statement that the payee has the right to cancel the transfer agreement, without penalty or further obligation, not later than the 3rd business day after the date the agreement is signed by the payee.

(9) The effective annualized rate of interest on the net advance amount, calculated by treating the transferred structured settlement payments as if they were installment payments on a loan, with each payment applied first to accrued unpaid interest and then to principal, and written in the following format: "YOU WILL BE PAYING THE EQUIVALENT OF AN INTEREST RATE OF __% PER YEAR.".

(10) A statement that the transferee's attorney does not represent the payee in connection with the proposed transfer.

(11) A statement informing the payee that structured settlement transfers have financial consequences and advising the payee to seek independent professional advice regarding the transfer agreement.

History: 2015 a. 94; 2017 a. 365 s. 111.

895.67 Approval of transfers of structured settlement payment rights. (1) No direct or indirect transfer of structured settlement payment rights may take effect and no structured settlement obligor or annuity issuer may be required to make any payment directly or indirectly to any transferee of structured settlement payment rights unless, after the hearing required under s. 895.69 (2), the transfer has been approved in advance in a final court order based on express findings by the court that all of the following are true:

(a) The transfer is in the best interest of the payee, taking into account the welfare and support of the payee's dependents.

(b) The payee has been advised in writing by the transferee to seek independent professional advice regarding the transfer and has either received such advice or knowingly waived in writing the opportunity to seek and receive such advice.

(c) The transfer does not contravene any applicable statute or the order of any court or other government authority.

(2) A court may consider any of the following when making a determination under sub. (1) (a):

(a) Whether the payee understands the financial ramifications of the transfer agreement and is entering into the agreement voluntarily.

(b) The financial terms of the transfer agreement.

(c) Whether the payee is delinquent in the payment of taxes in this state or in any payments required to be made pursuant to a restitution order in a criminal or juvenile delinquency proceeding, or pursuant to a child support order.

(d) Any other considerations the court deems appropriate.

(3) In addition to the considerations in sub. (2), if the payee is a minor or has been adjudicated incompetent, the court shall consider all of the following when making a determination under sub. (1) (a):

(a) The physical and mental health of the payee.

(b) The payee's overall financial situation.

History: 2015 a. 94.

895.68 Effects of transfer of structured settlement payment rights. A transfer of structured settlement payment rights under this subchapter includes the following effects:

(1) The structured settlement obligor and the annuity issuer shall, as to all parties except the transferee, be discharged and released from any and all liability for the transferred payments.

(2) The transferee shall be liable to the structured settlement obligor and the annuity issuer for all of the following:

(a) Any taxes incurred by such parties as a consequence of the transfer, if the transfer contravenes the terms of the structured settlement.

(b) Any other liabilities or costs, including reasonable costs and attorney fees, arising from compliance by the parties with the order of the court or arising as a consequence of the transferee's failure to comply with this subchapter.

(3) Neither the annuity issuer nor the structured settlement obligor may be required to divide any periodic payment between the payee and any transferee or assignee or between multiple transferees or assignees.

History: 2015 a. 94.

895.69 Procedure. (1) A petition for approval of a transfer of structured settlement payment rights shall be brought by the transferee in the county in which the payee is domiciled at the time the transfer agreement is signed by the payee or, if the payee is not domiciled in this state, then in the county in this state in which the structured settlement obligor or the annuity issuer maintains its principal place of business, or in any court that approved the structured settlement agreement.

(2) A hearing must be held on a petition for approval of a transfer agreement. The payee must attend the hearing in person unless the court determines that appearance via audiovisual technology is appropriate or that good cause exists for the payee not to appear.

(3) Not less than 20 days prior to the hearing required under sub. (2), the transferee shall file with the court and serve on all interested parties a notice of the proposed transfer and the petition for its authorization, including with the notice all of the following:

(a) A copy of the transferee's petition.

(b) A copy of the transfer agreement.

(c) A copy of the disclosure statement required under s. 895.66.

(d) A listing of each of the payee's dependents, together with each dependent's age.

(e) Notification that any interested party is entitled to support, oppose, or otherwise respond to the transferee's petition, either in person or by counsel, by submitting written comments to the court or by participating in the hearing.

(f) Notification of the time and place of the hearing and notification of the manner in which and the time by which written responses to the petition must be filed in order to be considered by the court. Written responses may not be due less than 15 days after service of the notice.

(g) An affidavit from the payee stating whether the payee is delinquent in the payment of taxes in this state or in any payments required to be made pursuant to a restitution order in a criminal or juvenile delinquency proceeding, or pursuant to a child support order.

(4) Notwithstanding the general service of process requirements under s. 801.11, service by overnight mail with proof of delivery or its equivalent constitutes adequate service of process for purposes of the notice requirement under sub. (3).

History: 2015 a. 94.

895.70 General provisions. (1) The provisions of this subchapter may not be waived by any payee.

(2) Any transfer agreement entered into by a payee who resides in this state shall provide that disputes under such transfer agreement, including any claim that the payee has breached the agreement, may be determined in and under the laws of this state. No transfer agreement may authorize the transferee or any other party to confess judgment or consent to entry of judgment against the payee.

(3) No transfer of structured settlement payment rights shall extend to any payments that are life contingent unless, prior to the date on which the payee signs the transfer agreement, the transferee has established and has agreed to maintain procedures reasonably satisfactory to the annuity issuer and the structured settlement obligor for periodically confirming the payee's survival, and giving the annuity issuer and the structured settlement obligor prompt written notice in the event of the payee's death.

(4) No payee who proposes to make a transfer of structured settlement payment rights shall incur any penalty, forfeit any application fee or other payment, or otherwise incur any liability to the proposed transferee or any assignee based on any failure of such transfer to satisfy the conditions of this subchapter.

(5) This subchapter may not be construed to authorize any transfer of structured settlement payment rights in contravention of any law.

(6) Compliance with the requirements set forth in ss. 895.66 and 895.67 shall be solely the responsibility of the transferee in any transfer of structured settlement payment rights, and neither the structured settlement obligor nor the annuity issuer shall bear any responsibility for, or any liability arising from, noncompliance with such requirements or failure to fulfill such conditions.

(7) Following any transfer of structured settlement payment rights under this subchapter, any further transfer of structured settlement payment rights by the payee may be made only after compliance with all of the requirements of this subchapter, at the time of such further transfer.

History: 2015 a. 94.