

State of Wisconsin



1995 Assembly Bill 207

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1995 WISCONSIN ACT 158

AN ACT to amend 19.32 (3), 19.35 (5), 19.37 (2) (a), 59.76 (1), 59.77 (1), 60.44 (1), 60.44 (3), 62.25 (1), 88.145, 118.26, 119.68 (2), 198.12 (2), 893.80 (1) (intro.) and 893.80 (1) (b); and to create 19.32 (1c) and (1e), 19.37 (1m), 19.37 (1n), 19.97 (5), 893.80 (8) and 893.82 (8) of the statutes; relating to: access to public records and claims against governmental bodies and their officers, employes and agents.

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

SECTION 1. 19.32 (1c) and (1e) of the statutes are created to read:

19.32 (1c) "Incarcerated person" means a person who is incarcerated in a penal facility or who is placed on probation and given confinement under s. 973.09 (4) as a condition of placement, during the period of confinement for which the person has been sentenced.

(1e) "Penal facility" means a state prison under s. 302.01, county jail, county house of correction or other state, county or municipal correctional or detention facility.

SECTION 2. 19.32 (3) of the statutes is amended to read:

19.32 (3) "Requester" means any person who requests inspection or copies of a record, except an incarcerated person, unless the person requests inspection or copies of a record that contains specific references to that person or his or her minor children for whom he or she has not been denied physical placement under ch. 767, and the record is otherwise accessible to the person by law.

SECTION 3. 19.35 (5) of the statutes is amended to read:

19.35 (5) RECORD DESTRUCTION. No authority may destroy any record at any time after the receipt of a request for inspection or copying of the record under sub. (1) until after the request is granted or until at least 60 days after the date that the request is denied or, if the requester is an incarcerated person, until at least 90 days after the date that the request is denied. If an authority receives written notice that an action is relating to a record has been commenced under s. 19.37, the ~~requested~~ record may not be destroyed until after the order of the court in relation to such record is issued and the deadline for appealing that order has passed, or, if appealed, until after the order of the court hearing the appeal is issued. If the court orders the production of any record and the order is not appealed, the ~~requested~~ record may not be destroyed until after the request for inspection or copying is granted.

SECTION 4. 19.37 (1m) of the statutes is created to read:

19.37 (1m) TIME FOR COMMENCING ACTION. No action for mandamus under sub. (1) to challenge the denial of a request for access to a record or part of a record may be commenced by any incarcerated person later than 90 days after the date that the request is denied by the authority having custody of the record or part of the record.

* Section 991.11, WISCONSIN STATUTES 1993-94: Effective date of acts. "Every act and every portion of an act enacted by the legislature over the governor's partial veto which does not expressly prescribe the time when it takes effect shall take effect on the day after its date of publication as designated" by the secretary of state [the date of publication may not be more than 10 working days after the date of enactment].

SECTION 5. 19.37 (1n) of the statutes is created to read:

19.37 (1n) NOTICE OF CLAIM. Sections 893.80 and 893.82 do not apply to actions commenced under this section.

SECTION 6. 19.37 (2) (a) of the statutes is amended to read:

19.37 (2) (a) The Except as provided in this paragraph, the court shall award reasonable attorney fees, damages of not less than \$100, and other actual costs to the requester if the requester prevails in whole or in substantial part in any action filed under sub. (1) relating to access to a record or part of a record under s. 19.35 (1) (a). If the requester is an incarcerated person, the requester is not entitled to any minimum amount of damages, but the court may award damages. Costs and fees shall be paid by the authority affected or the unit of government of which it is a part, or by the unit of government by which the legal custodian under s. 19.33 is employed and may not become a personal liability of any public official.

SECTION 7. 19.97 (5) of the statutes is created to read:

19.97 (5) Sections 893.80 and 893.82 do not apply to actions commenced under this section.

SECTION 8. 59.76 (1) of the statutes is amended to read:

59.76 (1) No action may be brought or maintained against a county upon a claim or cause of action unless the claimant complies with s. 893.80. This subsection does not apply to actions commenced under s. 19.37 or 19.97.

SECTION 9. 59.77 (1) of the statutes is amended to read:

59.77 (1) IN GENERAL. Every person, except jurors, witnesses and interpreters, and except physicians or other persons entitled to receive from the county fees for reporting to the register of deeds births or deaths, which have occurred under their care, having any claim against any county shall comply with s. 893.80. This subsection does not apply to actions commenced under s. 19.37 or 19.97.

SECTION 10. 60.44 (1) of the statutes is amended to read:

60.44 (1) GENERAL PROCEDURE. (a) Claims for money against a town or against officers, officials, agents or employes of the town arising out of acts done in their official capacity shall be filed with the town clerk as provided under s. 893.80 (1) (b). This paragraph does not apply to actions commenced under s. 19.37 or 19.97.

(b) The town board shall allow or disallow the claim. Notice of disallowance shall be made as provided under s. 893.80 (1) (b) (1g).

SECTION 11. 60.44 (3) of the statutes is amended to read:

60.44 (3) COURT ACTIONS TO RECOVER CLAIMS. Subsection (2), or an ordinance adopted under that subsection, does not affect the applicability of s. 893.80. No action may be brought or maintained against a town upon

a claim unless the claimant complies with s. 893.80. This subsection does not apply to actions commenced under s. 19.37 or 19.97.

SECTION 12. 62.25 (1) of the statutes is amended to read:

62.25 (1) CLAIMS. No action may be brought or maintained against a city upon a claim or cause of action unless the claimant complies with s. 893.80. This subsection does not apply to actions commenced under s. 19.37 or 19.97.

SECTION 13. 88.145 of the statutes is amended to read:

88.145 Limitation of damages and suits. In any action against a drainage district, drainage board, drainage board member, drainage board employe or an owner of land within the district who undertakes work approved by the drainage board, s. 893.80 is applicable and the limit on the amount recoverable by any person under s. 893.80 (3) applies to the drainage board, the members and employes of the drainage board, the drainage district and any owner of land within the district who undertakes work approved by the drainage board. This section does not apply to actions commenced under s. 19.37 or 19.97.

SECTION 14. 118.26 of the statutes is amended to read:

118.26 Claim against school district. No action may be brought or maintained against a school district upon a claim or cause of action unless the claimant complies with s. 893.80. This section does not apply to actions commenced under s. 19.37 or 19.97.

SECTION 15. 119.68 (2) of the statutes is amended to read:

119.68 (2) No action may be brought or maintained against the school upon a claim or cause of action unless the claimant complies with s. 893.80. This subsection does not apply to actions commenced under s. 19.37 or 19.97.

SECTION 16. 198.12 (2) of the statutes is amended to read:

198.12 (2) SERVICE OF PROCESS ON, PERSONAL INJURY CLAIMS, VENUE. The district shall sue or be sued in its corporate name and service of process upon the district shall be by service upon the chairperson of the board and the clerk of the district, but no action shall be brought or maintained against a district upon a claim or cause of action unless the claimant complies with s. 893.80. Compliance with s. 893.80 is not required under this subsection in actions commenced under s. 19.37 or 19.97. All actions by or against the district, except condemnation proceedings and actions to which the state or any officer or commission thereof is a party, shall be brought in the circuit court for the county in which its principal administrative office is located.

SECTION 17. 893.80 (1) (intro.) of the statutes is amended to read:

893.80 (1) (intro.) Except as provided in subs. (1g), (1m) and (1p) and (8), no action may be brought or maintained against any volunteer fire company organized under ch. 213, political corporation, governmental subdivision or agency thereof nor against any officer, official, agent or employe of the corporation, subdivision or agency for acts done in their official capacity or in the course of their agency or employment upon a claim or cause of action unless:

SECTION 18. 893.80 (1) (b) of the statutes is amended to read:

893.80 (1) (b) A claim containing the address of the claimant and an itemized statement of the relief sought is presented to the appropriate clerk or person who performs the duties of a clerk or secretary for the defendant fire company, corporation, subdivision or agency and the claim is disallowed. ~~Failure of the appropriate body to disallow within 120 days after presentation is a disallowance.~~

(1g) Notice of disallowance of the claim submitted under sub. (1) shall be served on the claimant by registered or certified mail and the receipt therefor, signed by the claimant, or the returned registered letter, shall be proof of service. Failure of the appropriate body to disallow a claim within 120 days after presentation of the written notice of the claim is a disallowance. No action on a

claim under this section against any defendant fire company, corporation, subdivision or agency nor against any defendant officer, official, agent or employe, may be brought after 6 months from the date of service of the notice of disallowance, and the notice of disallowance shall contain a statement to that effect.

SECTION 19. 893.80 (8) of the statutes is created to read:

893.80 (8) This section does not apply to actions commenced under s. 19.37 or 19.97.

SECTION 20. 893.82 (8) of the statutes is created to read:

893.82 (8) This section does not apply to actions commenced under s. 19.37 or 19.97.

SECTION 21. Initial applicability.

(1) The treatment of sections 19.32 (1c), (1e) and (3), 19.35 (5) and 19.37 (1m) and (2) (a) of the statutes first applies to records access requests made on the effective date of this subsection.

(2) The treatment of sections 19.37 (1n), 19.97 (5), 59.76 (1), 59.77 (1), 60.44 (1) and (3), 62.25 (1), 88.145, 118.26, 119.68 (2), 198.12 (2), 893.80 (1) (intro.) and (b) and (8) and 893.82 (8) of the statutes first applies to actions arising against governmental bodies, officers, agents or employes on the effective date of this subsection.