

CHAPTER 895  
DAMAGES, LIABILITY, AND MISCELLANEOUS PROVISIONS  
REGARDING ACTIONS IN COURTS

SUBCHAPTER I  
DAMAGES, RECOVERY, AND MISCELLANEOUS  
PROVISIONS REGARDING ACTIONS IN COURTS

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

- (a) Causes of action to determine paternity.
- (b) Causes of action for the recovery of personal property of the unlawful withholding or conversion of personal property.
- (c) Causes of action for the recovery of the possession of real estate and for the unlawful withholding of the possession of real estate.
- (d) Causes of action for assault and battery.
- (e) Causes of action for false imprisonment.
- (f) Causes of action for invasion of privacy.
- (g) Causes of action for a violation of s. 968.31 (2m) or other damage to the person.
- (h) Causes of action for all damage done to the property rights or interests of another.

- (i) Causes of action for goods taken and carried away.
- (j) Causes of action for damages done to real or personal estate.
- (k) Equitable actions to set aside conveyances of real estate.
- (L) Equitable actions to compel a reconveyance of real estate.
- (m) Equitable actions to quiet the title to real estate.
- (n) Equitable actions for specific performance of contracts relating to real estate.
- (o) Causes of action for wrongful death, which 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:** Supp. Ct. Order, 67 Wis. 2d 585, 760 (1975), 771; 1977 c. 176; 1987 a. 399; 1993 a. 481; 1999 a. 85.

Punitive damages incident to damages for the pain and suffering of a decedent may be awarded to the estate. *Wangert 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. *Paternity of N. L. 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. Jer-rick*, 231 Wis. 2d 546, 605 N.W.2d 645 (Ct. App. 1999), 99-0787.

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.

**895.497 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.

**895.506 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.

**895.507 Notice of unauthorized acquisition of personal information. (1) DEFINITIONS.** In this section:

(a) 1. "Entity" means a person, other than an individual, that does any of the following:

- a. Conducts business in this state and maintains personal information in the ordinary course of business.
- b. Licenses personal information in this state.
- c. Maintains for a resident of this state a depository account as defined in s. 815.18 (2) (e).
- d. Lends money to a resident of this state.

2. "Entity" includes all of the following:

- a. The state and any office, department, independent agency, authority, institution, association, society, or other body in state government created or authorized to be created by the constitution or any law, including the legislature and the courts.
- b. A city, village, town, or county.

(am) "Name" means an individual's last name combined with the individual's first name or first initial.

(b) "Personal information" means an individual's last name and the individual's first name or first initial, in combination with and linked to any of the following elements, if the element is not publicly available information and is not encrypted, redacted, or altered in a manner that renders the element unreadable:

1. The individual's social security number.
2. The individual's driver's license number or state identification number.
3. The number of the individual's financial account number, including a credit or debit card account number, or any security code, access code, or password that would permit access to the individual's financial account.
4. The individual's deoxyribonucleic acid profile, as defined in s. 939.74 (2d) (a).
5. The individual's unique biometric data, including fingerprint, voice print, retina or iris image, or any other unique physical representation.

(c) "Publicly available information" means any information that an entity reasonably believes is one of the following:

1. Lawfully made widely available through any media.
2. Lawfully made available to the general public from federal, state, or local government records or disclosures to the general public that are required to be made by federal, state, or local law.

(2) NOTICE REQUIRED. (a) If an entity whose principal place of business is located in this state or an entity that maintains or licenses personal information in this state knows that personal information in the entity's possession has been acquired by a person whom the entity has not authorized to acquire the personal information, the entity shall make reasonable efforts to notify each subject of the personal information. The notice shall indicate that the entity knows of the unauthorized acquisition of personal information pertaining to the subject of the personal information.

(b) If an entity whose principal place of business is not located in this state knows that personal information pertaining to a resi-

dent of this state has been acquired by a person whom the entity has not authorized to acquire the personal information, the entity shall make reasonable efforts to notify each resident of this state who is the subject of the personal information. The notice shall indicate that the entity knows of the unauthorized acquisition of personal information pertaining to the resident of this state who is the subject of the personal information.

(bm) If a person, other than an individual, that stores personal information pertaining to a resident of this state, but does not own or license the personal information, knows that the personal information has been acquired by a person whom the person storing the personal information has not authorized to acquire the personal information, and the person storing the personal information has not entered into a contract with the person that owns or licenses the personal information, the person storing the personal information shall notify the person that owns or licenses the personal information of the acquisition as soon as practicable.

(br) If, as the result of a single incident, an entity is required under par. (a) or (b) to notify 1,000 or more individuals that personal information pertaining to the individuals has been acquired, the entity shall without unreasonable delay notify all consumer reporting agencies that compile and maintain files on consumers on a nationwide basis, as defined in 15 USC 168 1a(p), of the timing, distribution, and content of the notices sent to the individuals.

(cm) Notwithstanding pars. (a), (b), (bm), and (br), an entity is not required to provide notice of the acquisition of personal information if any of the following applies:

1. The acquisition of personal information does not create a material risk of identity theft or fraud to the subject of the personal information.

2. The personal information was acquired in good faith by an employee or agent of the entity, if the personal information is used for a lawful purpose of the entity.

(3) **TIMING AND MANNER OF NOTICE: OTHER REQUIREMENTS.** (a) Subject to sub. (5), an entity shall provide the notice required under sub. (2) within a reasonable time, not to exceed 45 days after the entity learns of the acquisition of personal information. A determination as to reasonableness under this paragraph shall include consideration of the number of notices that an entity must provide and the methods of communication available to the entity.

(b) An entity shall provide the notice required under sub. (2) by mail or by a method the entity has previously employed to communicate with the subject of the personal information. If an entity cannot with reasonable diligence determine the mailing address of the subject of the personal information, and if the entity has not previously communicated with the subject of the personal information, the entity shall provide notice by a method reasonably calculated to provide actual notice to the subject of the personal information.

(c) Upon written request by a person who has received a notice under sub. (2) (a) or (b), the entity that provided the notice shall identify the personal information that was acquired.

(3m) **REGULATED ENTITIES EXEMPT.** This section does not apply to any of the following:

(a) An entity that is subject to, and in compliance with, the privacy and security requirements of 15 USC 6801 to 6827, or a person that has a contractual obligation to such an entity, if the entity or person has in effect a policy concerning breaches of information security.

(b) An entity that is described in 45 CFR 164.104 (a), if the entity complies with the requirements of 45 CFR part 164.

(4) **EFFECT ON CIVIL CLAIMS.** Failure to comply with this section is not negligence or a breach of any duty, but may be evidence of negligence or a breach of a legal duty.

(5) **REQUEST BY LAW ENFORCEMENT NOT TO NOTIFY.** A law enforcement agency may, in order to protect an investigation or homeland security, ask an entity not to provide a notice that is otherwise required under sub. (2) for any period of time and the notification process required under sub. (2) shall begin at the end

of that time period. Notwithstanding subs. (2) and (3), if an entity receives such a request, the entity may not provide notice of or publicize an unauthorized acquisition of personal information, except as authorized by the law enforcement agency that made the request.

(6m) **LOCAL ORDINANCES OR REGULATIONS PROHIBITED.** No city, village, town, or county may enact or enforce an ordinance or regulation that relates to notice or disclosure of the unauthorized acquisition of personal information.

(7m) **EFFECT OF FEDERAL LEGISLATION.** If the joint committee on administrative rules determines that the federal government has enacted legislation that imposes notice requirements substantially similar to the requirements of this section and determines that the legislation does not preempt this section, the joint committee on administrative rules shall submit to the revisor of statutes for publication in the Wisconsin administrative register a notice of its determination. This section does not apply after publication of a notice under this subsection.

History: 2005 a. 138.

### 895.51 Civil liability exemption: food 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).

(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).

(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 or food distribution service 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.

(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.

(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.

### 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 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 or to an institution of higher education is immune