CHAPTER 895

MISCELLANEOUS GENERAL PROVISIONS

895.01 What actions survive; actions not to abate. (1) In addition to the causes of action which survive at common law the following shall also survive: Causes of action for the recovery of personal property or the unlawful withholding or conversion of personal property, for the recovery of the possession of real estate and for the unlawful withholding of the possession of real estate, for assault and battery, false imprisonment, invasion of privacy, violation of s. 968.31 (2) (d) or other damage to the person, for all damage done to the property rights or interests of another, for goods taken and carried away, for damages done to real or personal estate, equitable actions to set aside conveyances of real estate, to compel a reconveyance of real estate, or to quiet the title to real estate, and for a specific performance of contracts relating to real estate. 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 W (2d) 760, 771; 1977 c. 176.

Actions for criminal conversation or alienation of affections do not survive the death of one of the parties unless the complaint includes allegations showing financial damage to the plaintiff which would pecuniarily diminish his estate. Hanson v. Valdivia, 51 W (2d) 466, 187 NW (2d) 151.

895.02 Measure of damages against executor. When any action mentioned in s. 895.01 (1) shall be prosecuted to judgment against the executor or administrator 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 W (2d) 784; 1977 c. 176.

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 the defendant shot plaintiff's husband and that the shooting was a wrongful act is not demurrable. Kelly v. Mohrhusen, 50 W (2d) 337, 184 NW (2d) 149.

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 here. The statute includes cases dealing with breach of warranty arising out of contract. Schnabl v. Ford Motor Co. 54 W (2d) 345, 195 NW (2d) 602, 198 NW (2d) 161.

895.031 Recovery from estate of wrongdoer. 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 in every such case, the wrongdoer who would have been liable if death had not ensued, although such wrongdoer shall die prior to the time of death of such injured person, shall be liable to an action for damages notwithstanding his prior death and notwithstanding the death of the person injured; provided that such action shall be brought for a death caused in this state. Any right of action which may accrue by such injury to the person of another although the death of the wrongdoer occurred prior thereto shall be enforced by bringing an action against the executor or administrator or personal representative of such deceased wrongdoer.

895.035 Parental liability for acts of minor child. (1) The parent or parents having legal custody of an unemancipated minor child, in any circumstances where he or they may not be otherwise liable under the common law, shall be held liable for damages to property or for personal injury attributable to a wilful, malicious or wanton act of the child not to exceed $1,000, in addition to taxable costs and disbursements directly attributable to any wilful, malicious or wanton act of the child.

(2) Maximum recovery from any parent or parents of any child may not exceed the limitation provided in sub. (1) for any one wilful, malicious or wanton act of such child and if 2 or more children of the same parent or parents having legal custody commit the same act the recovery may not exceed in the aggregate $1,000, in addition to taxable costs and disbursements.

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

This section does not apply to placement agencies or foster parents. 66 Atty. Gen. 164.

The constitutional validity of parental liability statutes. O'Connor, 55 MLR 584.

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, 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, 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% 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 of the deceased; if no spouse 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 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 interest in the amount recovered. If the amount allocated to any child under this subsection is less than $1,500, 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 $10,000 for loss of society and companionship, may be awarded to the spouse or unemancipated or dependent children, or parents of the deceased.

(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, grave marker and perpetual care of the lot. If a relative brings the action, the relative may recover such medical expenses, funeral expenses, including the cost of a cemetery lot, grave marker and perpetual care of the lot, on behalf of himself or herself or of any person who has paid or assumed liability for such 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 or relatives as provided in this section, such spouse 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 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 W (2d) 784; 1975 c. 94 s. 91 (3); 1975 c. 166, 199, 287, 421, 422.

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

A parent may maintain an action for loss of aid, comfort, society and companionship of an injured minor child against a negligent tort-feasor on condition that the parents' cause of action is combined with that of the child for the child's personal injuries. Callies v. Reliance Laundry Co. 188 W 376, overruled. Shockley v. Prier, 66 W (2d) 394, 225 NW (2d) 495.

In an action for wrongful death by 2 children of deceased, the plaintiffs' failure to join 3 sisters who would otherwise have been indispensable parties was not fatal to the court's subject matter jurisdiction where affidavits submitted to the trial court indicated that the 3 sisters were unavailable. Kochel v. Hartford Accident & Indemnity Co. 66 W (2d) 405, 225 NW (2d) 604.

Plaintiff had wheeled the slicer at least 52 times prior to the accident. Her opportunity to observe and discover any danger was greater than that of any of defendant's employes. Balas v. St. Sebastian's Congregation, 66 W (2d) 421, 225 NW (2d) 428.

"Judgment" under (2) means a final, not interlocutory, judgment. Collins v. Gee, 82 W (2d) 376, 263 NW (2d) 158.

Expanding and limiting damages for pecuniary injury due to wrongful death. Schoone, 1972 WBB No. 4.

Cause of action by parents sustained for loss of society and companionship of child tortiously injured. 1976 WLR 641.

895.045 Contributory negligence. Contributory negligence shall not bar recovery in an action by any person or his legal representative to recover damages for negligence resulting in death or in injury to person or property, if such 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 attributable to the person recovering.

History: 1971 c. 47.

Cross Reference: See 891.44 for conclusive presumption that child under 7 cannot be guilty of contributory negligence.

Ordinary negligence can be compared with negligence founded upon the safe-place statute, and in making such comparison in a safe-place case, violation of the statute is not to be considered necessarily as contributing more than the common-law contributory negligence. [Language in Maus v. Bloss, 265 W 627, if construed as supporting a contrary proposition, is overruled.] It is not prejudicial error not to call attention to the different standards of care in a safe-place case when instruction number 1580 is used. Lovesee v. Allied Development Corp. 45 W (2d) 340, 173 NW (2d) 196.

The court refuses to adopt the doctrine of pure comparative negligence. Vincent v. Pabst Brewing Co. 47 W (2d) 120, 177 NW (2d) 513.

A distinction between active and passive negligence as to responsibility for injury and full indemnity to the tort-feasor whose negligence was passive was rejected by the court. Pachowitz v. Milwaukee & S. Transport Corp. 56 W (2d) 383, 202 NW (2d) 268.

For the purpose of applying the comparative negligence statute, both the causes of action for medical expenses and loss of consortium shall be deemed derivative; and the causal negligence of the injured spouse shall bar or limit the recovery of the claiming spouse pursuant to the terms of the statute. White v. Lunder, 66 W (2d) 563, 225 NW (2d) 442.

The contributory negligence of the plaintiff spectator in viewing the race from the north end of the track opposite the 3rd and 4th turns was not greater than defendants' negligence as a matter of law where she did not realize that watching from the 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 was watching the race closely immediately prior to the accident. Kaiser v. Cook, 67 W (2d) 460, 227 NW (2d) 50.

The trial court's denial of defendants' motion to direct the jury to consider the employer's negligence in its special verdict was error even though the employer's liability extended only to workmen's compensation. Connar v. West Shore Equipment, 68 W (2d) 42, 227 NW (2d) 660.

The trial court's instruction to the jury to compute not all the damages plaintiff suffered but only that portion caused by defendant's negligence was erroneous, because this section requires the jury to find 100% of plaintiff's damages, which are then reduced by the amount of his contributory negligence; but the erroneous instruction was not prejudicial where nothing in the record indicates a probability of the instruction having affected the allocation of 57% negligence to plaintiff. Nimmer v. Purtell, 69 W (2d) 21, 230 NW (2d) 258.

Insufficiently guarded swimming pool may constitute attractive nuisance. McWilliams v. Gazinski, 71 W (2d)57, 237 NW (2d) 437.

When 2 grounds of negligence are alleged it does not categorically follow that the plaintiff must always elect one of the 2 grounds of negligence for submission to the jury. Negligence per se discussed. Howes v. Deere & Co. 71 W (2d) 268, 238 NW (2d) 76.

Conduct constituting implied or tacit assumption of risk is no longer bar to action for negligence. Polsky v. Levine, 73 W (2d) 547, 263 NW (2d) 204.

Record of rear-end collision case contained credible evidence that plaintiff executed maneuvers which could not be done with reasonable safety and failed to signal before executing them, which supported finding of 50% causal negligence. Thompson v. Howe, 77 W (2d) 441, 253 NW (2d) 59.

See note to 103.67, citing Tisdale v. Hasslinger, 79 W (2d) 194, 255 NW (2d) 314.

Where court grants judgment notwithstanding verdict regarding 2 of several defendants found causally negligent, and percentage of negligence reallocated affects damages but not liability, plaintiffs should be given option of proportional reduction of judgment or new trial. Chart v. Gen. Motors Corp. 80 W (2d) 91, 258 NW (2d) 680.

See note to 805.12, citing Ollinger v. Grall, 80 W (2d) 213, 258 NW (2d) 693.

Where blowing snow obstructed driver's vision, driver did not reduce speed, and parked truck on highway "loomed up" out of snow, driver was causally negligent as matter of law. Nelson v. Travelers Ins. Co. 80 W (2d) 272, 259 NW (2d) 48.

Rescue doctrine and emergency doctrine discussed. Cords v. Anderson, 80 W (2d) 525, 259 NW (2d) 672.

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

Proportioning comparative negligence-problems of theory and special verdict formulation. Aiken, 53 MLR 293.

From defect to cause to comparative fault—Rethinking some product liability concepts. Twerski, 60 MLR 297.

The problem of the insolvent contributor. Myse, 60 MLR 891.

Strict products liability in Wisconsin. 1977 WLR 227.

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% 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.

895.05 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 him 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 his 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.

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

Publishers' privileges and liabilities regarding libel discussed. Gertz v. Robert Welch, Inc. 418 US 323.

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 employes 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. All promises, agreements, notes, bills, bonds, or other contracts, mortgages, conveyances or other securities, where the whole or any part of the consideration of such 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 absolutely void; provided, however, that contracts of insurance made in good faith for the security or indemnity of the party insured shall be lawful and valid.

895.056 Recovery of money wagered. 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 with any stakeholder or 3rd person any money, property or thing in action, or shall have lost and delivered the same to any winner thereof may, within 3 months after such putting up, staking or depositing, sue for and recover the same from such stakeholder or 3rd person whether such money, property or thing in action has been lost or won or whether it has been delivered over by such stakeholder or 3rd person to the winner or not, and may, within 6 months after any such delivery by such person or stakeholder, sue for and recover such money, property or thing in action from the winner thereof if the same has been delivered over to such winner; and if he shall not so sue for and recover such money, property or thing in action within the time above limited then any other person may, in his behalf and in his name, sue for and recover the same for the use and benefit of his family or his heirs, in case of his death, from such stakeholder or 3rd person if the same is still held by him, within 6 months after such putting up, staking or depositing, or from the winner thereof within one year from the delivery thereof to such winner.

895.057 Action against judicial officer for loss caused by misconduct. Any judicial officer who causes to be brought in a court over which he presides any action or proceeding upon a claim placed in his 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.

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 his share or proportion thereof his cotenant, after making a demand in writing, may sue for and recover his share or the value thereof; and 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 such verdict.

895.14 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.

895.15 After action. A tender also may be made after an action is brought on such contract of the whole sum then due thereon, with the legal costs of suit incurred up to the time, at any time before the action is called for trial. It may be made to the plaintiff or his 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.

895.16 Proceedings on acceptance of tender. If such tender be accepted the plaintiff or his attorney shall, at the request of the defendant, sign a stipulation of discontinuance of the action for such 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; and if any further costs shall be incurred for any service made by the officer after tender accepted and before he receives notice thereof the defendant shall pay the same to the officer or the tender shall be invalid.

895.17 Involuntary trespass. A tender may also be made in all cases of involuntary trespass, except timber trespass as defined in s. 26.04, before action is commenced; and when in the opinion of the court or jury a sufficient amount was tendered to the party injured, his agent or attorney for the trespass complained of, judgment shall be entered against the plaintiff for costs; provided, that the defendant kept his tender good by paying the money into court at the trial for the use of the plaintiff.

895.171 Payment into court of tender; record of deposits. (1) When tender of payment in full is made and pleaded, the defendant shall pay the same into court before the trial of the action is commenced and notify the opposite party in writing, or be deprived of all benefit of

such tender. When the sum so tendered and paid into court shall be sufficient, the defendant shall recover the taxable costs of the action, if the tender was prior to the commencement of the action; and he shall recover such costs from the time of the tender, if the tender was after suit commenced.

(2) When any party, pursuant to an order or to law, deposits any money or property with the clerk of court, such clerk shall record in the minute book the fact of such deposit, 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 such facts to the depositor, with the volume and page of the record indorsed thereon.

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.

895.29 Process not to be served Sunday. No person shall serve or execute any civil process from midnight preceding to midnight following the first day of the week; and any such service shall be void; and any person serving or executing any such process shall be liable in damages to the party aggrieved in like manner and to the same extent as if he had not had any such process.

895.30 Nor on Saturday, when. Whenever an execution or other final process shall be issued against the property of any person who habitually observes the 7th day of the week, instead of the first, as a day of rest the officer to whom such process shall be directed shall not levy upon or sell any property of any such person on the 7th day of the week; provided, that said person shall deliver to such officer an affidavit in writing, setting forth the fact that he habitually keeps and observes the 7th day of the week instead of the first, as a day of rest, at any time before such levy or at least 2 days before such sale, as the case may be; and such sale may, at the time appointed therefor, be adjourned to any day within the life of the execution or such execution may be renewed as in other cases.

895.33 Limitation of surety's liability. Any person may limit the amount of his liability as a surety upon any bond or other obligation required by law or ordered by any court, judge, magistrate or public official for any purpose whatever. The amount of such limited liability may be recited in the body of the bond or stated in the justification of the surety thereto; and in any action brought upon such bond no judgment shall be recovered against such surety for any sum larger than the amount of his liability stated as aforesaid, together with his pro rata share of the costs of said action. And in any such action a surety may deposit in court the amount of his liability, stated as aforesaid, whereupon he shall be discharged and released from any further liability under such bond.

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.

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 he is the sole owner of the property offered by him as security and containing the following additional information:

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

(b) That he is a resident of this state.

(c) An accurate description by lot and block number, if part of a recorded 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.

Cross Reference: This section does not apply to bonds of personal representatives. See 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 W (2d) 784; 1977 c. 187 s. 135.

895.35 Expenses in actions against municipal and other officers. Whenever in any city, town, village, school district, vocational, technical and adult education district or county charges of any kind are filed or an action is brought against any officer thereof in his official capacity, or to subject any such officer, whether or not he 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 his part, is subjected to a personal liability as aforesaid, such city, town, village, school district, vocational, technical and adult education 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.

History: 1971 c. 154.

County has option to refuse payment of sheriff's criminal defense attorney's fees. Bablitch & Bablitch v. Lincoln County, 82 W (2d) 574, 263 NW (2d) 218.

A city may reimburse a commissioner of the city redevelopment authority for his legal expenses incurred where charges are filed against him in his official capacity seeking his removal from office for cause and such 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 attorneys' 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.

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

895.37 Abrogation of defenses. (1) In any action to recover damages for a personal injury sustained within this state by an employe while engaged in the line of his duty as such, 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 employe 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 employes, 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 employes, that the injury or death was caused in whole or in part by the want of ordinary care of the injured employe, where such want of ordinary care was not wilful.

(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.

Fellow servant defense is not available to farm employer of child employed in violation of child labor laws. Tisdale v. Hasslinger, 79 W (2d) 194, 255 NW (2d) 314.

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.

895.38 Surety, how discharged. (1) Any surety or the personal representative of any

surety upon the bond of any trustee, guardian, receiver, executor, or other fiduciary, may be discharged from liability as provided in this section. On 5 days' notice to the principal in such bond, application may be made to the court where it is filed, or which has jurisdiction of such fiduciary or to any judge of such court for a discharge from liability as surety, and that such principal be required to account.

(2) Notice of such application may be served personally within or without the state. If it shall satisfactorily appear to the court or the judge that personal service cannot be had with due diligence within the state, the notice may be served in such manner as the court or judge shall direct. Pending such application the principal may be restrained from acting, except to preserve the trust estate.

(3) If at the time appointed the principal shall fail to file a new bond satisfactory to the court or judge, an order shall be made requiring the principal to file a new bond within 5 days. When such new bond shall be filed, the court or judge shall make an order requiring the principal to account for all his acts to and including the date of the order, and to file such account within a time fixed not exceeding 20 days; and shall discharge the surety making such application from liability for any act or default of the principal subsequent to the date of such order.

(4) If the principal shall fail to file a new bond within the time specified, an order shall be made removing him from office, and requiring him to file his account within 20 days. If he shall fail to file his account as required, the surety may make and file such account; and upon settlement thereof and upon the trust fund or estate being found or made good and paid over or properly secured, credit shall be given for all commissions, costs, disbursements and allowances to which the principal would be entitled were he accounting.

(5) The procedure for hearing, settling and allowing such account shall be according to the practice prescribed by ch. 862 in the matter of account of executors and administrators. Upon the trust fund or estate being found or made good and paid over or properly secured, such surety shall be discharged from all liability. Upon demand by the principal, the discharged surety shall return the unearned part of the premium paid for the canceled bond.

(6) Any such fiduciary may institute and conduct proceedings for the discharge of his surety and for the filing of a new bond; and the procedure shall in all respects conform substantially to the practice prescribed by this section in cases where the proceeding is instituted by a surety, and with like effect.

895.39 Juror's oath. (1) In every case and in all courts the jurors selected to try the issues in the action or proceeding, civil or criminal, shall be sworn; and the oath may be administered in substantially the following form: Do you and each of you swear (or affirm) that you will well and truly try the issue joined between ...., plaintiff, and .... , defendant, and, unless discharged by the court, a true verdict give, according to law and the evidence given in court, so help you God.

(2) The juror's assent to the oath may be manifested by the uplifted hand.

895.40 Oath of officer in charge of jury. When the issues have been submitted to the jury the jurors shall be under the charge of a proper officer subject to the direction of the court until they agree upon a verdict or are discharged by the court; the officer shall be sworn for that purpose and the following oath may be administered to him: You do swear that you will, to the utmost of your ability, keep all jurors sworn on this trial together in some private and convenient place, subject to the direction of the court, until they have agreed on their verdict or are discharged by the court, and that you will not, before they render their verdict, communicate to any person the state of their deliberations or the verdict they have agreed upon, so help you God.

History: Sup. Ct. Order, 67 W (2d) xviii.

895.41 Employe's cash bonds to be held in trust; duty of employer; penalty. (1) Where any person requests any employe to furnish a cash bond, the cash constituting such bond shall not be mingled with the moneys or assets of such person demanding the same, but shall be deposited by such person in any bank, trust company or any savings and loan association doing business in this state whose deposits or shares are insured by a federal agency to the extent of $10,000, as a separate trust fund, and it shall be unlawful for any person to mingle such cash received as a bond with the moneys or assets of any such person, or to use the same. No employer shall deposit more than $10,000 with any one depository. The bank book, certificate of deposit or other evidence thereof shall be in the name of the employer in trust for the named employe, and shall not be withdrawn except after an accounting had between the employer and employe, said accounting to be had within 10 days from the time relationship is discontinued or the bond is sought to be appropriated by the employer. All interest or dividends earned by such sum deposited shall accrue to and belong to the employe and shall be turned over to said employe as soon as paid out by the depository. Such deposit shall at no time and in no

event be subject to withdrawal except upon the signature of both the employer and employe or upon a judgment or order of a court of record.

(2) In the event of the failure of any person, such moneys on deposit shall constitute a trust fund for the benefit of the persons who furnished such bonds and shall not become the property of the assignee, receiver or trustee of such insolvent person.

(3) In case of the death of such employe before such cash bond is withdrawn in the manner provided in sub. (1) such accounting and withdrawal may be effected not less than 5 days after such death and before the filing of a petition for letters testamentary or of administration in the matter of the decedent's estate, by the employer with the decedent's surviving spouse; and if there be no surviving spouse with his children; and if he shall leave no children, his father or mother; and if he shall leave no father or mother, his brother or sister, in the same manner and with like effect as if such accounting and withdrawal were accomplished by and between the employer and employe as provided in sub. (1). The amount of such cash bond, together with principal and interest, to which the deceased employe would have been entitled had he lived, shall, as soon as paid out by the depository, be turned over to such relative of the deceased employe effecting such accounting and withdrawal with the employer, and such turning over shall be a discharge and release of the employer to the amount of such payment. If no such relatives survive, the employer may apply such cash bond, or so much thereof as may be necessary, to paying creditors of the decedent in the order of preference prescribed in s. 859.25 for satisfaction of debts by executors and administrators and the making of payment in such manner shall be a discharge and release of the employer to the amount of such payment.

(4) Any person who violates this section shall be punished by a fine equal to the amount of the bond or by imprisonment for not less than 10 days nor more than 60 days, or both.

895.42 Deposit of undistributed money and property by administrators and others. **(1)** In case in any proceeding in any court of record it is (a) determined that moneys or other personal property in the custody of or under the control of any administrator, executor, trustee, receiver or other officer of the court, belongs to a natural person if he is alive, or to an artificial person if it is in existence and entitled to receive, otherwise to some other person, and the court or judge making such determination finds 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, or (b) in case such money or other personal property, including any legacy or share of intestate property cannot be delivered to the legatee or heir or person entitled thereto because of the fact that such 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 other similar business, then in either or any of such cases, the court or judge may direct that the officer having custody or control of such money or other personal property, deposit the same in any trust company, or any state or national bank within the state of Wisconsin authorized to exercise trust powers, taking its receipt therefor, and the said receipt shall, to the extent of the deposit so made, constitute a complete discharge of the said officer in any accounting by him made in said 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.

895.43 Claims against political corporations, governmental subdivisions or agencies and officers, agents or employes; notice of injury; limitation of damages and suits. **(1)** 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:

(a) Within 120 days after the happening of the event giving rise to the claim, written notice of the circumstances of the claim signed by the

party, agent or attorney is served on the volunteer fire company, political corporation, governmental subdivision or agency and on the officer, official, agent or employe under s. 801.11. Failure to give the requisite notice shall not bar action on the claim if the fire company, corporation, subdivision or agency had actual notice of the claim and the claimant shows to the satisfaction of the court that the delay or failure to give the requisite notice has not been prejudicial to the defendant fire company, corporation, subdivision or agency or to the defendant officer, official, agent or employe; and

(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. Notice of disallowance 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. No action on a claim 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, and the notice shall contain a statement to that effect.

(2) The claimant may accept payment of a portion of the claim without waiving the right to recover the balance. No interest may be recovered on any portion of a claim after an order is drawn and made available to the claimant. If in an action the claimant recovers a greater sum than was allowed, the claimant shall recover costs, otherwise the defendant shall recover costs.

(3) The amount recoverable by any person for any damages, injuries or death in any action founded on tort against any volunteer fire company organized under ch. 213, political corporation, governmental subdivision or agency thereof and against their officers, officials, agents or employes for acts done in their official capacity or in the course of their agency or employment, whether proceeded against jointly or severally, shall not exceed $25,000. No punitive damages may be allowed or recoverable in any such action.

(4) No suit may be brought against any volunteer fire company organized under ch. 213, political corporation, governmental subdivision or any agency thereof for the intentional torts of its officers, officials, agents or employes nor may any suit be brought against such corporation, subdivision or agency or volunteer fire company or against its officers, officials, agents or employes for acts done in the exercise of legislative, quasi-legislative, judicial or quasi-judicial functions.

(5) Except as provided in this subsection, the provisions and limitations of this section shall be exclusive and shall apply to all claims against a volunteer fire company organized under ch. 213, political corporation, governmental subdivision or agency or against any officer, official, agent or employe thereof for acts done in an official capacity or the course of his or her agency or employment. When rights or remedies are provided by any other statute against any political corporation, governmental subdivision or agency or any officer, official, agent or employe thereof for injury, damage or death, such statute shall apply and the limitations in sub. (3) shall be inapplicable.

History: Sup. Ct. Order, 67 W (2d) 784; 1975 c. 218; 1977 c. 285, 447.

A husband's action for loss of consortium is separate, has its own $25,000 limitation and is not to be reduced by his wife's negligence. Schwartz v. Milwaukee, 54 W (2d) 286, 195 NW (2d) 480.

Sub. (3) [(4)] establishes municipal immunity against actions for intentional torts of its employes, and assault and battery constitutes an intentional tort. Sub. (3) [(4)] also precludes suit against municipality for alleged failure of police and fire commission to act in removing officer, since this is a quasi-judicial function. Salerno v. Racine, 62 W (2d) 243, 214 NW (2d) 446.

Where the policy contained no language precluding the insurer from raising the limited liability defense, the $25,000 limitation was not waived. Sambs v. Brookfield, 66 W (2d) 296, 224 NW (2d) 582.

Plaintiff's complaint alleging that 2 police officers who forcibly entered his home and physically abused him were negligent inter alia in failing to identify themselves and in using excessive force, in reality alleged causes of action in trespass and assault and battery—intentional torts for which the municipality was immune from direct action under (3) [(4)], hence, the trial court should have granted defendant's demurrer to the complaint. Baranowski v. Milwaukee, 70 W (2d) 684, 235 NW (2d) 279.

Compliance with statute is a condition in fact requisite to liability, but is not a condition required for stating a cause of action. Rabe v. Outagamie County, 72 W (2d) 492, 241 NW (2d) 428.

Any duty owed by a municipality to the general public is also owed to individual members of the public. Inspection of buildings for safety and fire prevention purposes under 101.14 does not involve a quasi-judicial function within meaning of 895.43 (3) [(4)]. Coffey v. Milwaukee, 74 W (2d) 526, 247 NW (2d) 132.

Under (1), plaintiff has burden of proving the giving of notice, or actual notice and nonexistence of prejudice, but need not allege same in complaint. City is required to plead lack of compliance with statute as defense. See note to 81.15, citing Weiss v. Milwaukee, 79 W (2d) 213, 255 NW (2d) 496.

Doctrine of municipal tort immunity applied to relieve political subdivisions from liability for negligence where automobile collision occurred due to use of sewer by truck. Allstate Ins. v. Metro. Sewerage Comm. 80 W (2d) 10, 258 NW (2d) 148.

Park manager of state owned recreational area who knew that publicly used trail was inches away from 90-foot gorge and that terrain was dangerous, is liable for injuries to plaintiffs who fell into gorge, for breach of ministerial duty in failing to either place warning signs or advise superiors of condition. Cords v. Anderson, 80 W (2d) 525, 259 NW (2d) 672.

Breach of ministerial duty was inferred by complaint's allegations that defendant state employes, who set up detour route on which plaintiff was injured, failed to follow national

traffic standards, place appropriate signs, and safely construct temporary road. Pavlik v. Kinsey, 81 W (2d) 42, 259 NW (2d) 709.

State may not be sued by citizen under wrongful death statute. Pinon v. State of Wisconsin, 368 F Supp. 608.

The discretionary function exception to government tort liability. 61 MLR 163.

Several police supervisor immunities from state court suit may be doomed. Fine, 1977 WBB 9.

895.44 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 the insurer, its agent or employe 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 such services. This section shall not apply if the active negligence of the insurer, its agent or employe created the condition which was the proximate cause of injury, death or loss, nor shall it apply to such services when required to be performed under the provisions of a written service contract.

895.45 Timeliness, definition of claimant, notice and limited liability. (1) No civil action or civil proceeding may be brought against any state officer, employe or agent for or on account of any act growing out of or committed in the course of the discharge of such officer's, employe's or agent's duties, unless within 90 days of the event causing the injury, damage or death giving rise to the civil action or civil proceeding, the claimant in the action or proceeding serves upon the attorney general written notice of a claim stating the time, date, location and the circumstances of the event giving rise to the claim for the injury, damage or death and the names of persons involved, including the name of the state officer, employe or agent involved.

(2) In this section, "claimant" means the person or entity sustaining the damage or injury or his agent, attorney or personal representative.

(3) The notice under sub. (1) shall be sworn to by the claimant and shall be served upon the attorney general at his office in the capitol by certified mail. Notice shall be considered to be given upon mailing for the purpose of computing the time of giving notice.

(4) The amount recoverable by any person or entity for any damages, injuries or death in any civil action or civil proceeding against a state officer, employe or agent shall not exceed $100,000. No punitive damages may be allowed or recoverable in any such action.

History: 1973 c. 333; 1977 c. 29.

895.46 State and political subdivisions thereof to pay judgments taken against officers. (1) Where the defendant in any action or special proceeding is a public officer or employe 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 employe and the jury or the court finds that such defendant was acting within the scope of employment the judgment as to damages and costs entered against the officer or employe in excess of any insurance applicable to such officer or employe shall be paid by the state or political subdivision of which the defendant is an officer or employe. Agents of any department of the state shall be covered by this section while acting within the scope of any written agreement entered into prior to the occurrence of any act which results in any action or special proceeding. Regardless of the results of the litigation the governmental unit, when it does not provide legal counsel to the defendant officer or employe, shall pay reasonable attorney's fees and costs of defending the action, unless it is found by the court or jury that the defendant officer or employe did not act within the scope of employment. Failure by the officer or employe to give notice to his or her department head of action or special proceeding commenced against the defendant officer or employe as soon as reasonably possible shall be a bar to recovery by the officer or employe from the state or political subdivision of reasonable attorney's fees and costs of defending the action. Such attorney's fees and expenses shall not be recoverable if the state or political subdivision offers the officer or employe legal counsel and such offer is refused by the defendant officer or employe. Deputy sheriffs in those counties where they serve not at the will of the sheriff but on civil service basis shall be covered by this subsection, except that the provision relating to payment of the judgment shall be discretionary and not mandatory. In such counties the judgment as to damages and costs may be paid by the county if approved by the county board.

(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, employe or agent

while operating a state-owned vehicle for personal use in accordance with s. 20.916 (7).

History: 1973 c. 333; Sup. Ct. Order, 67 W (2d) 761; 1975 c. 81, 198, 199; 1977 c. 29.

Cross Reference: See 285.06 for special procedure applying to state law enforcement officers.

Highway commission supervisors who were 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 W (2d) 92, 203 NW (2d) 673.

"Litigation" under (1) refers only to civil proceedings. Sheriffs are not "public officers" under (1). Bablitch & Bablitch v. Lincoln County, 82 W (2d) 574, 263 NW (2d) 218.

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.

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 employes, 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 employe 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 employes as soon as reasonably possible shall bar recovery by the defendant, its members, officers or employes from the state under this section. Attorney fees and expenses may not be recovered if the state offers the member, officer or employe legal counsel and the offer is refused.

History: 1977 c. 344, 447.

895.48 Civil liability exemption: emergency care. 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. This immunity does not extend when employes 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.

History: 1977 c. 164.

895.49 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, 447.

895.50 Right of privacy. (1) The right of privacy is recognized in this state. One whose privacy is unreasonably invaded is entitled to the following relief:

(a) Equitable relief to prevent and restrain such invasion, excluding prior restraint against constitutionally protected communication privately and through the public media;

(b) Compensatory damages based either on plaintiff's loss or defendant's unjust enrichment; and

(c) A reasonable amount for attorney fees.

(2) In this section, "invasion of privacy" means any of the following:

(a) Intrusion upon the privacy of another of a nature highly offensive to a reasonable person, in a place that a reasonable person would consider private or in a manner which is actionable for trespass.

(b) The use, for advertising purposes or for purposes of trade, of the name, portrait or picture of any living person, without having first obtained the written consent of the person or, if the person is a minor, of his or her parent or guardian.

(c) Publicity given to a matter concerning the private life of another, of a kind highly offensive to a reasonable person, if the defendant has acted either unreasonably or recklessly as to whether there was a legitimate public interest in the matter involved, or with actual knowledge that none existed. It is not an invasion of privacy to communicate any information available to the public as a matter of public record.

(3) The right of privacy recognized in this section shall be interpreted in accordance with the developing common law of privacy, including defenses of absolute and qualified privilege, with due regard for maintaining freedom of

communication, privately and through the public media.

(4) Compensatory damages are not limited to damages for pecuniary loss, but shall not be presumed in the absence of proof.

(6) (a) If judgment is entered in favor of the defendant in an action for invasion of privacy, the court shall determine if the action was frivolous. If the court determines that the action was frivolous, it shall award the defendant reasonable fees and costs relating to the defense of the action.

(b) In order to find an action for invasion of privacy to be frivolous under par. (a), the court must find either of the following:

1. The action was commenced in bad faith or for harassment purposes.

2. The action was devoid of arguable basis in law or equity.

(7) No action for invasion of privacy may be maintained under this section if the claim is based on an act which is permissible under ss. 968.27 to 968.33.

History: 1977 c. 176.