CHAPTER 893

LIMITATIONS OF COMMENCEMENT OF ACTIONS AND PROCEEDINGS; PROCEDURE FOR CLAIMS AGAINST GOVERNMENTAL UNITS

NOTE: See the note at the end of this chapter containing indexes to statutes outside this chapter that impose time restrictions on asserting a claim or cause of action and statutes outside this chapter that govern claims against governmental entities.

SUBCHAPTER I

COMMENCEMENT, COMPUTATION, ACTION IN NON−WISCONSIN FORUM AND MISCELLANEOUS PROVISIONS

893.01 Civil actions; objection as to time of commencing. Civil actions may be commenced only within the periods prescribed in this chapter, except when, in special cases, a different limitation is provided by statute. An objection that the action was not commenced within the time limited may only be taken by answer or motion to dismiss under s. 802.06 (2) in proper cases.

History: Sup. Ct. Order, 67 Wis. 2d 585, 770 (1975); 1979 c. 323.

Judicial Council Committee's Note, 1979: This section remains from previous ch. 893 and is revised only for purposes of textual clarity. [Bill 326–A]

Estoppel can be invoked to preclude a defense based on a statute of limitations when a defendant has been guilty of fraudulent or inequitable conduct. The conduct need not constitute actual fraud, but may be equivalent to a representation upon which the plaintiff may have relied to the plaintiff's disadvantage by not commencing the plaintiff's action within the statutory period. That conduct must have occurred before the expiration of the limitation period with no unreasonable delay by the aggrieved party after the inducement therefor has ceased to operate. State ex rel. Susedik v. Knutson, 52 Wis. 2d 593, 191 N.W.2d 23 (1971).

A court has no authority to enlarge the time in which to file a complaint. Pulchinski v. Strnad, 88 Wis. 2d 423, 276 N.W.2d 781 (1979).

When a limitation period would otherwise expire on a legal holiday, s. 990.001 (4) (b) permits the commencement of an action on the next secular day. Cuisinier v. Sattler, 88 Wis. 2d 654, 277 N.W.2d 776 (1979).

Statutes of limitations are substantive statutes and are not given retroactive effect. Betthauser v. Medical Protective Co., 172 Wis. 2d 141, 493 N.W.2d 40 (1992).

A circuit court may use its equitable powers to set aside a statute of limitations if certain enumerated circumstances are present. Williams v. Kaerek Builders, Inc., 212 Wis. 2d 150, 568 N.W.2d 313 (Ct. App. 1997), 96–2396.

The primary reason for applying equitable estoppel to bar a defendant from asserting the statute of limitations is when the conduct and representations of the defendant were so unfair and misleading as to outbalance the public's interest in setting a limitation on bringing actions. Wosinski v. Advance Cast Stone Co., 2017 WI App 51, 377 Wis. 2d 596, 901 N.W.2d 797, 14–1961.

A defendant was estopped from pleading the statute of limitations by fraudulent conduct that prevented the plaintiff from filing a timely suit. Bell v. City of Milwaukee, 746 F.2d 1205 (1984).

Remedying the Confusion Between Statutes of Limitations and Statutes of Repose in Wisconsin—A Conceptual Guide. La Fave. 88 MLR 927 (2005).

893.02 Action, when commenced. Except as provided in s. 893.415 (3), an action is commenced, within the meaning of any provision of law which limits the time for the commencement of an action, as to each defendant, when the summons naming the defendant and the complaint are filed with the court, but no action shall be deemed commenced as to any defendant upon whom service of authenticated copies of the summons and complaint has not been made within 90 days after filing.

History: Sup. Ct. Order, 67 Wis. 2d 585, 770 (1975); 1975 c. 218; 1979 c. 323; 1997 a. 187; 2003 a. 287.

Judicial Council Committee's Note, 1979: This section is previous s. 893.39 of the statutes renumbered for more logical placement in restructured ch. 893. [Bill 326–A]

In a products liability action, a new cause of action for punitive damages brought after the statute of limitations expired related back to the date of filing the original pleading. Wussow v. Commercial Mechanisms, Inc., 97 Wis. 2d 136, 293 N.W.2d 897 (1980).

An action against an unnamed defendant under s. 807.12 that was filed on the last day of a limitation period, in which amended process naming the defendant was served within 60 days after filing, was not time barred. The relation back requirements of s. 802.09 (3) were inapplicable. Lak v. Richardson–Merrell, Inc., 100 Wis. 2d 641, 302 N.W.2d 483 (1981).

Service of process did not commence an action when the plaintiff failed to file the summons and complaint. The defendant's answer did not waive the statute of limitations defense or estop the defendant from raising it after the limitation period expired. Hester v. Williams, 117 Wis. 2d 634, 345 N.W.2d 426 (1984).

A fictitiously designated defendant's right to extinction of an action does not effectively vest until 60 days after the statute of limitations runs. Lavine v. Hartford Accident & Indemnity Co., 140 Wis. 2d 434, 410 N.W.2d 623 (Ct. App. 1987).

Timely Service Abroad in Diversity Suits. La Fave. Wis. Law. Nov. 2000.

893.03 Presenting claims. The presentation of any claim, in cases where by law such presentment is required, to the circuit court shall be deemed the commencement of an action within the meaning of any law limiting the time for the commencement of an action thereon.

History: 1977 c. 449 s. 497; 1979 c. 323.

Judicial Council Committee's Note, 1979: This section is previous s. 893.41 renumbered for more logical placement in restructured ch. 893. [Bill 326–A]

A statute of limitations is not tolled by filing an action in a court completely lacking jurisdiction and later refiling in the proper court after the statute has run. Schafer v. Wegner, 78 Wis. 2d 127, 254 N.W.2d 193 (1977).

893.04 Computation of period within which action may be commenced. Unless otherwise specifically prescribed by law, a period of limitation within which an action may be commenced is computed from the time that the cause of action accrues until the action is commenced.

History: 1979 c. 323.

Judicial Council Committee's Note, 1979: Previous section 893.48 is repealed and sections 893.04 and 893.14 created for the purpose of clarity. See Denzer v. Rouse, 48 Wis. 2d 528, 180 N.W.2d 521 (1970) for a discussion of when a cause of action accrues, citing Holifield v. Setco Industries, Inc. 42 Wis. 2d 750, 168 N.W.2d 177 (1969). [Bill 326–A]

In attorney malpractice actions, as in medical malpractice cases, when the date of the negligence and the date of injury are the same, the statute of limitations runs from that date, for that is the time when the cause of action accrues. Denzer v. Rouse, 48 Wis. 2d 528, 180 N.W.2d 521 (1970).

The loss of the right to a patent is the loss of the right to exclude others, and, therefore, the injury occurred on the date that the right to the patent was lost. Boehm v. Wheeler, 65 Wis. 2d 668, 223 N.W.2d 536 (1974).

Because s. 67.11 requires moneys in a sinking fund to remain inviolate until the bonds are retired, a cause of action regarding the fund could only accrue at retirement. Joint School District No. 1 v. City of Chilton, 78 Wis. 2d 52, 253 N.W.2d 879 (1977).

A tort claim accrues when the injury is discovered or reasonably should have been discovered. This "discovery rule" applies to all tort actions other than those governed by a statutory discovery rule. Hansen v. A.H. Robins Co., 113 Wis. 2d 550, 335 N.W.2d 578 (1983).

When the plaintiff's early subjective lay person's belief that a furnace caused the injury was contradicted by examining physicians, the cause of action against the furnace company did not accrue until the plaintiff's suspicion was confirmed by later medical diagnosis. Borello v. U.S. Oil Co., 130 Wis. 2d 397, 388 N.W.2d 140 (1986).

Claimed ignorance of, and a blatant failure to follow, applicable regulations cannot be construed as reasonable diligence in discovering an injury when following the rules would have resulted in earlier discovery. Stroh Die Casting Co. v. Monsanto Co., 177 Wis. 2d 91, 502 N.W.2d 132 (Ct. App. 1993).

The day upon which a cause of action accrues is not included in computing the period of limitation. Pufahl v. Williams, 179 Wis. 2d 104, 506 N.W.2d 747 (1993).

The discovery rule does not allow a plaintiff to delay the statute of limitations until the extent of the injury is known. The statute begins to run when the plaintiff has sufficient evidence that a wrong has been committed by an identified person. Pritzlaff v. Archdiocese of Milwaukee, 194 Wis. 2d 302, 533 N.W.2d 780 (1995).

A plaintiff can rely on the discovery rule only if the plaintiff has exercised reasonable diligence. Jacobs v. Nor–Lake, Inc., 217 Wis. 2d 625, 579 N.W.2d 254 (Ct. App. 1998), 97–1740.

The discovery rule applies to statutes of limitations that limit the time to sue from the time when the action "accrues," being the time of discovery. The discovery rule does not apply to a statute of repose, a statute that specifies the time of accrual and limits the time suit can be brought from that specified date. Tomczak v. Bailey, 218 Wis. 2d 245, 578 N.W.2d 166 (1998), 95–2733.

The discovery rule does not extend to causes of action not sounding in tort. State v. Chrysler Outboard Corp., 219 Wis. 2d 130, 580 N.W.2d 203 (1998), 96–1158.

Knowing that a particular product caused an injury, an injured party cannot extend the accrual date for a cause of action against the product's manufacturer due to the subsequent discovery of possible connections between that product and another manufacturer's product in causing the injury. Baldwin v. Badger Mining Corp., 2003 WI App 95, 264 Wis. 2d 301, 663 N.W.2d 382, 02–1197.

The discovery rule permits the accrual of both survival claims and wrongful death claims to occur after the date of the decedent's death. In the absence of a legislatively created rule to the contrary, these claims accrue when there is a claim capable of present enforcement, a suable party against whom it may be enforced, and a party who has a present right to enforce it. Christ v. Exxon Mobil Corp., 2015 WI 58, 362 Wis. 2d 668, 866 N.W.2d 602, 12–1493.

Discovery occurs when the plaintiff has information that would constitute the basis for an objective belief as to the plaintiff's injury and its cause. The degree of certainty that constitutes sufficient knowledge is variable, depending on the particular facts and circumstances of the plaintiff. With corporate players, a different quantum of expertise and knowledge is in play. Wisconsin courts have recognized that ignorance is a less compelling excuse for corporate enterprises in the context of the discovery rule. KDC Foods, Inc. v. Gray, Plant, Mooty, Mooty & Bennett, P.A., 763 F.3d 743 (2014).

Computing Time in Tort Statutes of Limitation. Ghiardi. 64 MLR 575 (1981).

Computing Time in Statutes of Limitation. Ghiardi. Wis. Law. Mar. 1993.

893.05 Relation of statute of limitations to right and remedy. When the period within which an action may be commenced on a Wisconsin cause of action has expired, the right is extinguished as well as the remedy.

History: 1979 c. 323.

Judicial Council Committee's Note, 1979: This new section is a codification of Wisconsin case law. See Maryland Casualty Company v. Beleznay, 245 Wis. 390, 14 N.W.2d 177 (1944), in which it is stated at page 393: "In Wisconsin the running of the statute of limitations absolutely extinguishes the cause of action for in Wisconsin limitations are not treated as statutes of repose. The limitation of actions is a right as well as a remedy, extinguishing the right on one side and creating a right on the other, which is as of high dignity as regards judicial remedies as any other right and it is a right which enjoys constitutional protection". [Bill 326–A]

The expiration of the limitations period extinguishes the cause of action of the potential plaintiff and it also creates a right enjoyed by the would–be defendant to insist on that statutory bar. A defendant, having acquired a right to assert the statute of limitations bar by operation of law, would suffer plain legal prejudice if a plaintiff's motion for voluntary dismissal were granted. Wojtas v. Capital Guardian Trust Co., 477 F.3d 924 (2007).

893.07 Application of foreign statutes of limitation. (1) If an action is brought in this state on a foreign cause of action

and the foreign period of limitation which applies has expired, no action may be maintained in this state.

(2) If an action is brought in this state on a foreign cause of action and the foreign period of limitation which applies to that action has not expired, but the applicable Wisconsin period of limitation has expired, no action may be maintained in this state.

History: 1979 c. 323.

Judicial Council Committee's Note, 1979: Sub. (1) applies the provision of s. 893.05 that the running of a statute of limitations extinguishes the right as well as the remedy to a foreign cause of action on which an action is attempted to be brought in Wisconsin in a situation where the foreign period has expired. Sub. (1) changes the law of prior s. 893.205 (1), which provided that a resident of Wisconsin could sue in this state on a foreign cause of action to recover damages for injury to the person even if the foreign period of limitation had expired.

Sub. (2) applies the Wisconsin statute of limitations to a foreign cause of action if the Wisconsin period is shorter than the foreign period and the Wisconsin period has run. [Bill 326−A]

The borrowing statute was properly applied to an injury received outside of this state. A conflict of laws analysis was not appropriate. Guertin v. Harbour Assurance Co. of Bermuda, 141 Wis. 2d 622, 415 N.W.2d 831 (1987).

Section 893.16 (1) is effective to toll the running of the statute of limitations, even when under this section the plaintiff would be barred from bringing suit under applicable foreign law. Scott v. First State Insurance Co., 155 Wis. 2d 608, 456 N.W.2d 152 (1990).

This section does not borrow foreign tolling statutes. Johnson v. Johnson, 179 Wis. 2d 574, 508 N.W.2d 19 (Ct. App. 1993).

This section is applicable to actions on contracts. A claim is foreign when the final significant event giving rise to a suable event, the alleged breach, occurs outside the state. Abraham v. General Casualty Co. of Wisconsin, 217 Wis. 2d 294, 576 N.W.2d 46 (1998), 95−2918.

Sub. (1) refers to "the period of limitation," as defined by the foreign jurisdiction, that governs the case in the foreign state. Application of this rule includes a limitation period that operates as a statute of repose. Wenke v. Gehl Co., 2004 WI 103, 274 Wis. 2d 220, 682 N.W.2d 405, 01−2649.

In medical malpractice cases involving a negligent misdiagnosis that results in a latent, though continuous, injury, whether the action is "foreign" for purposes of Wisconsin's borrowing statute is determined by whether the plaintiff's first injury occurred outside of Wisconsin. When the plaintiff's place of first injury is unknowable but could have occurred within or outside of this state, the borrowing statute does not apply. Paynter v. ProAssurance Wisconsin Insurance Co., 2019 WI 65, 387 Wis. 2d 278, 929 N.W.2d 113, 17−0739.

A cause of action is foreign for purposes of the borrowing statute if the plaintiff's injury occurred outside of this state. An injury occurs where it is felt rather than where it originates. To the extent the physician in this case violated the plaintiff's right to informed consent, that injury was felt in Michigan because the plaintiff was in Michigan when the physician allegedly informed the plaintiff that his growth was not malignant and needed no further treatment. Paynter v. ProAssurance Wisconsin Insurance Co., 2019 WI 65, 387 Wis. 2d 278, 929 N.W.2d 113, 17−0739.

A tort action based on an injury received outside of this state was "foreign." Johnson v. Deltadynamics, Inc., 813 F.2d 944 (1987).

Under this section, a foreign jurisdiction's period of limitations is borrowed, but not its period of repose. Beard v. J.I. Case Co., 823 F.2d 1095 (1987).

It is a quirk of libel law that a plaintiff is generally considered to be injured wherever the defamatory writing is published. Therefore, a multistate defamation case in which at least some injury occurs within the borders of this state does not constitute a foreign cause of action for purposes of the borrowing statute. Faigin v. Doubleday Dell Publishing Group, Inc., 98 F.3d 268 (1996).

This section directs courts to apply the shortest limitation period possible to foreign causes of action, whether the applicable statute is a statute of limitations or a statute of repose. Merner v. Deere & Co., 176 F. Supp. 2d 882 (2001).

Wisconsin's Borrowing Statute: Did We Shortchange Ourselves? Endreson. 70 MLR 120 (1986).

Interpreting Wisconsin's Borrowing Statute. Wiegand. Wis. Law. May 2001.

SUBCHAPTER II

LIMITATIONS TOLLED OR EXTENDED

893.10 Actions, time for commencing. The period within which an action may be commenced shall not be considered to have expired when the court before which the action is pending is satisfied that the person originally served knowingly gave false information to the officer with intent to mislead the officer in the performance of his or her duty in the service of any summons or civil process. If the court so finds, the period of limitation is extended for one year.

History: 1979 c. 323.

Judicial Council Committee's Note, 1979: This section is previous s. 893.14 renumbered for more logical placement in restructured ch. 893. [Bill 326−A]

Many Wisconsin statutes of limitations use commencement of "an action" to set the time by which a claimant must act to timely preserve a claim. A party can possess a claim without it commencing an action, but a party cannot properly commence an action without it asserting at least one valid claim. Because a claim provides the basis for an action, a claim necessarily exists before an action is brought, and what matters for limitations purposes is whether an action is timely commenced asserting that claim. The legislative choice to refer to an "action" reflects these basic principles. Town of Burnside v. City of Independence, 2016 WI App 94, 372 Wis. 2d 802, 889 N.W.2d 186, 16−0034.

893.11 Extension of time if no person to sue. The fact that there is no person in existence who is authorized to bring an action on a cause of action at the time it accrues shall not extend the time within which, according to this chapter, an action may be commenced upon the cause of action to more than double the period otherwise prescribed by law.

History: 1979 c. 323.

Judicial Council Committee's Note, 1979: This section is previous s. 893.50 renumbered for more logical placement in restructured ch. 893 and revised for the purpose of textual clarity only. [Bill 326−A]

893.12 Advance payment of damages; limitation extended. The period fixed for the limitation for the commencement of actions, if a payment is made as described in s. 885.285 (1), shall be either the period of time remaining under the original statute of limitations or 3 years from the date of the last payment made under s. 885.285 (1), whichever is greater.

History: 1979 c. 323.

Judicial Council Committee's Note, 1979: This section is created to place the statute extending statute of limitations when there has been a settlement and advance payment of claim for damages into the subchapter of chapter 893 on extension of statute of limitations. The provisions of prior s. 885.285 (4) are contained without change in newly created s. 893.12. [Bill 326−A]

Any payment made in advance or settlement of either personal injury or property damage claims, when the plaintiff has both, extends the limitation for a personal injury claim, if it is made within the three−year limit period of s. 893.54 (1). Abraham v. Milwaukee Mutual Insurance Co., 115 Wis. 2d 678, 341 N.W.2d 414 (Ct. App. 1983).

This section does not apply to foreign causes of action. Section 893.07 (1) prevents this section from extending foreign statutes of limitations. Thimm v. Automatic Sprinkler Corp. of America, 148 Wis. 2d 332, 434 N.W.2d 842 (Ct. App. 1988).

The tolling provision applies only to the party that received a settlement or advance payment under s. 885.285. It does not apply to a stranger to the settlement. Riley v. Doe, 152 Wis. 2d 766, 449 N.W.2d 83 (Ct. App. 1989).

For a period of limitations to be extended under this section as the result of a "payment" by check, the check must be accepted and negotiated. Parr v. Milwaukee Building & Construction Trades, 177 Wis. 2d 140, 501 N.W.2d 858 (Ct. App. 1993).

To be a payment under s. 885.285 that will toll or extend the statute of limitations, a payment must be related to fault or liability. Gurney v. Heritage Mutual Insurance Co., 188 Wis. 2d 68, 523 N.W.2d 193 (Ct. App. 1994).

The waiver by the defendant medical provider in a medical malpractice action of the copayment portion of the amount due for the plaintiff's medical treatment did not constitute a payment under this section or s. 885.285. Young v. Aurora Medical Center of Washington County, Inc., 2004 WI App 71, 272 Wis. 2d 300, 679 N.W.2d 549, 03−0224.

893.13 Tolling of statutes of limitation. (1) In this section and ss. 893.14 and 893.15 "final disposition" means the end of the period in which an appeal may be taken from a final order or judgment of the trial court, the end of the period within which an order for rehearing can be made in the highest appellate court to which an appeal is taken, or the final order or judgment of the court to which remand from an appellate court is made, whichever is latest.

(2) A law limiting the time for commencement of an action is tolled by the commencement of the action to enforce the cause of action to which the period of limitation applies. The law limiting the time for commencement of the action is tolled for the period from the commencement of the action until the final disposition of the action.

(3) If a period of limitation is tolled under sub. (2) by the commencement of an action and the time remaining after final disposition in which an action may be commenced is less than 30 days, the period within which the action may be commenced is extended to 30 days from the date of final disposition.

History: 1979 c. 323.

Judicial Council Committee's Note, 1979: Section 893.35 is repealed and this section created to clarify the ending of the tolled period of a statute of limitations in the various situations which can arise when an appeal is taken.

Sub. (3) would apply when, for example, an action was commenced when the period of limitation has only 5 days left to run. The running of the period of limitation is tolled for the period from commencement of the action until the day of its final disposition, such as dismissal of the action based on the pleadings. A 30−day period is then provided (rather than the 5 days left on the original period of limitation) in order to provide a reasonable time for a party to consider whether to recommence the action. [Bill 326−A]

This section does not toll the statute to allow an independent claim by an insurer. It simply insures that the joinder of constituent parts of a cause of action during the pendency of the action is not frustrated by the application of the appropriate statute of limitations. Aetna Casualty & Surety Co. v. Owen, 191 Wis. 2d 744, 530 N.W.2d 51 (Ct. App. 1995).

The filing of an action, subsequently voluntarily dismissed, tolls the statute of limitations under sub. (2) for the period specified in sub. (1) for cases in which no appeal

is taken. Johnson v. County of Crawford, 195 Wis. 2d 374, 536 N.W.2d 167 (Ct. App. 1995), 95–0144.

A suit filed prior to the expiration of the 120–day period for a denial of claim under s. 893.80 is not truly commenced and does not toll the statute of limitations when filed. Colby v. Columbia County, 202 Wis. 2d 342, 550 N.W.2d 124 (1996), 93–3348.

To interpret this statute to mean that a plaintiff's timely lawsuit tolled the statute of limitations as to all other possible victims would abrogate the statute of limitations. Such an interpretation would lead to absurd results and render meaningless the statute of limitations in multiple–victim cases. Barnes v. WISCO Hotel Group, 2009 WI App 72, 318 Wis. 2d 537, 767 N.W.2d 352, 08–1884.

Aetna, 191 Wis. 2d 744 (1995), does not establish that whenever a person intervenes in a pending lawsuit, asserting claims identical to, although not constituent of, those of the original parties, the intervenor receives the benefit of tolling under sub. (2). Only a person having one of the three "constituent parts" of an original, timely cause of action under s. 803.03 (2) (a), i.e., subrogation, derivation, or assignment, may successfully intervene in a pending action without regard to the statute of limitations. Town of Burnside v. City of Independence, 2016 WI App 94, 372 Wis. 2d 802, 889 N.W.2d 186, 16–0034.

893.135 Tolling of statute of limitations for marital property agreements. Any statute of limitations applicable to an action to enforce a marital property agreement under ch. 766 is tolled as provided under s. 766.58 (13).

History: 1985 a. 37; 1987 a. 393.

893.137 Tolling of statute of limitations for certain time–share actions. Any statute of limitations affecting the right of an association organized under s. 707.30 (2) or a time–share owner, as defined in s. 707.02 (31), against a developer, as defined in s. 707.02 (11), is tolled as provided in s. 707.34 (1) (bm).

History: 1987 a. 399.

893.14 Limitation on use of a right of action as a defense or counterclaim. Unless otherwise specifically prescribed by law, the period within which a cause of action may be used as a defense or counterclaim is computed from the time of the accrual of the cause of action until the time that the plaintiff commences the action in which the defense or counterclaim is made. A law limiting the time for commencement of an action is tolled by the assertion of the defense or the commencement of the counterclaim until final disposition of the defense or counterclaim. If a period of limitation is tolled under this section and the time remaining after final disposition in which an action may be commenced is less than 30 days, the period within which the action may be commenced is extended to 30 days from the date of final disposition.

History: 1979 c. 323.

Judicial Council Committee's Note, 1979: This section is based upon previous ss. 893.48 and 893.49. The section provides, however, that a statute of limitations is tolled only from the assertion of the defense or counterclaim until the final disposition of the defense or counterclaim. Under previous s. 893.49 a statute of limitations was tolled from the commencement of the action in which the defense or counterclaim was asserted until the termination of the action. [Bill 326–A]

When an action to recover damages for injuries to the person is commenced as a counterclaim pursuant to this section, the statute of limitations established by s. 893.54 applies. The tolling of the statute of limitations under this section begins on the date the defendant files the counterclaim. The phrase "unless otherwise specifically prescribed by law" applies to counterclaims that were already barred at the time the plaintiff filed the claim; such claims are not resurrected by the plaintiff's filing. Donaldson v. West Bend Mutual Insurance Co., 2009 WI App 134, 321 Wis. 2d 244, 773 N.W.2d 470, 08–2289.

In determining whether a client exercised reasonable diligence to discover a claim against its attorney, the existence of a fiduciary relationship, rather than excusing a client entirely from its obligation to investigate, is merely one factor to be considered. Under the circumstances of this case, although a fiduciary relationship existed, the client was a sophisticated corporate actor and its president and chief executive officer harbored suspicions about the attorney's conduct for approximately one year before the transaction in question closed. Those facts gave rise to a duty to investigate, regardless of the fiduciary relationship. Sands v. Menard, 2016 WI App 76, 372 Wis. 2d 126, 887 N.W.2d 94, 12–2377.
Affirmed on other grounds. 2017 WI 110, 379 Wis. 2d 1, 904 N.W.2d 789, 12–2377.

893.15 Effect of an action in a non–Wisconsin forum on a Wisconsin cause of action. (1) In this section "a non–Wisconsin forum" means all courts, state and federal, in states other than this state and federal courts in this state.

(2) In a non–Wisconsin forum, the time of commencement or final disposition of an action is determined by the local law of the forum.

(3) A Wisconsin law limiting the time for commencement of an action on a Wisconsin cause of action is tolled from the period of commencement of the action in a non–Wisconsin forum until the time of its final disposition in that forum.

(4) Subsection (3) does not apply to an action commenced on a Wisconsin cause of action in a non–Wisconsin forum after the time when the action is barred by a law of the forum limiting the time for commencement of an action.

(5) If an action is commenced in a non–Wisconsin forum on a Wisconsin cause of action after the time when the Wisconsin period of limitation has expired but before the foreign period of limitation has expired, the action in the non–Wisconsin forum has no effect on the Wisconsin period of limitation.

History: 1979 c. 323.

Judicial Council Committee's Note, 1979: Sub. (1) defines the term "a non–Wisconsin forum". "State" is defined in s. 990.01 (40) to include the District of Columbia, Puerto Rico, and territories of the United States.

Sub. (2) determines the commencement and termination of an action in a non–Wisconsin forum by the law of that forum. "Local law" is referred to so that the non–Wisconsin court determining the commencement of an action in, for example, Illinois will use Illinois law, not including any other law which an Illinois court might use under a choice of law theory.

Sub. (3) applies the tolling effect of Wisconsin statutes to actions on Wisconsin causes of action brought in federal courts in Wisconsin and to all other courts, state and federal, in the United States.

Sub. (4) prevents the commencement of an action in a forum whose statute of limitations has run from extending the Wisconsin tolling period.

Sub. (5) prevents the maintenance of an action in a non–Wisconsin forum from extending a Wisconsin statute of limitations. [Bill 326–A]

A voluntarily dismissed federal action does not toll the Wisconsin statute of limitations. A voluntarily dismissed federal action is a nullity, having no effect on a statute of limitations. Culbert v. Ciresi, 2003 WI App 158, 266 Wis. 2d 189, 667 N.W.2d 825, 02–3320.

893.16 Person under disability. (1) If a person entitled to bring an action is, at the time the cause of action accrues, either under the age of 18 years, except for actions against health care providers; or mentally ill, the action may be commenced within 2 years after the disability ceases, except that where the disability is due to mental illness, the period of limitation prescribed in this chapter may not be extended for more than 5 years.

(2) Subsection (1) does not shorten a period of limitation otherwise prescribed.

(3) A disability does not exist, for the purposes of this section, unless it existed when the cause of action accrues.

(4) When 2 or more disabilities coexist at the time the cause of action accrues, the 2–year period specified in sub. (1) does not begin until they all are removed.

(5) This section applies only to statutes in this chapter limiting the time for commencement of an action or assertion of a defense or counterclaim except it does not apply to:

(a) Actions for the recovery of a penalty or forfeiture or against a sheriff or other officer for escape;

(b) Extend the time limited by s. 893.33, 893.41, 893.59, 893.62, 893.73 to 893.76, 893.77 (3), 893.86 or 893.91 or subch. VIII for commencement of an action or assertion of a defense or counterclaim; or

(c) A cause of action which accrues prior to July 1, 1980.

History: 1979 c. 323; 1997 a. 133.

Judicial Council Committee's Note, 1979: This section is based on present ss. 893.135, 893.33, 893.37 and 893.38. Previous ss. 893.135 and 893.33 stated that the time of disability is not counted as the running of a statute of limitation and further stated that an action could be brought within a specified time after the disability ceased. This is inherently inconsistent and is replaced in s. 893.16 by the simple provision that the action may be commenced within 2 years after the disability ceases. Changes from previous s. 893.135 are:

(a) The period within which to sue after the period of disability ends is reduced from 5 years to 2 years.

(b) The maximum extension time available to those under disability of insanity or imprisonment is limited to 5 years. This means that such individuals must sue within 5 years after the basic applicable statute of limitations would have run against one not under disability, or within 2 years after the disability ends, whichever period is shorter.

(c) The phrase in previous s. 893.135, "at the time such title shall first descend or accrue" is changed to "at the time the cause of action accrues," and this is reinforced by subsection (3). Despite appearances, this represents no change in substance because of the decision in Swearingen v. Roberts, 39 Wis. 462 (1876).

Other changes include:

(a) A specific provision provides that no limitation period is shortened by the application of this section. This represents no substantive change.

(b) In view of the 5−year extension provision reasons for excluding those imprisoned for life from the benefits of the disability provision disappear and the exclusion has been dropped.

(c) The period within which to sue provided in previous s. 893.33 has been increased from one year to 2 years.

To illustrate some of the effects of these revisions:

(a) If a statute of limitation has run on a cause of action of a minor for a personal injury the minor would have one year to commence an action after attaining age 18 under previous s. 893.33. Under s. 893.16 the minor has 2 years to commence an action after attaining age 18.

(b) If a minor has a cause of action affecting title to real estate and the statute of limitation has run the minor has 5 years to commence an action after attaining age 18 under previous s. 893.135. Under s. 893.16 the minor has 2 years to commence the action. [Bill 326−A]

Sub. (1) is effective to toll the running of a statute of limitations even when, under s. 893.07, the plaintiff would be barred from bringing suit under applicable foreign law. Scott v. First State Insurance Co., 155 Wis. 2d 608, 456 N.W.2d 152 (1990).

If a party wishes the benefit of the disability tolling statute, then the party does not get the benefit of the discovery rule. Kilaab v. Prudential Insurance Co. of America, 198 Wis. 2d 699, 543 N.W.2d 538 (Ct. App. 1995).

Injury from intentional acts of sexual assault against minors and the cause of any injury should have been discovered, as a matter of law, at the time of the assaults. A claim of repressed memory does not indefinitely toll the statute of limitations regardless of the victim's minority or the position of trust occupied by the alleged perpetrator. Doe v. Archdiocese of Milwaukee, 211 Wis. 2d 312, 565 N.W.2d 94 (1997), 94−0423.

Parents' claims for injury resulting from the sexual assault of their child accrue when the child's claims accrue, regardless of when the parents learn of their claim. Joseph W. v. Catholic Diocese of Madison, 212 Wis. 2d 925, 569 N.W.2d 795 (Ct. App. 1997), 96−2220.

Under sub. (1), "mental illness" is a mental condition that renders a person functionally unable to understand or appreciate the situation giving rise to the legal claim so that the person can assert legal rights or functionally unable to understand legal rights and appreciate the need to assert them. Legal consultation and filings are probative of a plaintiff's mental health and functional ability to appreciate and act upon the plaintiff's legal rights. Storm v. Legion Insurance Co., 2003 WI 120, 265 Wis. 2d 169, 665 N.W.2d 353, 01−1139.

Death constitutes a cessation of disability under this section. Walberg v. St. Francis Home, Inc., 2005 WI 64, 281 Wis. 2d 99, 697 N.W.2d 36, 03−2164.

This section does not apply to a negligence claim alleging injury to a developmentally disabled child caused by a health care provider. The legislature has not provided a statute of limitations for claims against health care providers alleging injury to a developmentally disabled child. Haferman v. St. Clare Healthcare Foundation, Inc., 2005 WI 171, 286 Wis. 2d 621, 707 N.W.2d 853, 03−1307.

Storm, 2003 WI 120, does not stand for the proposition that sub. (1) tolls the three−year period of limitation under s. 893.555 (2) (a) when a claimant survives one month after an injury. Rather, the *Storm* court's use of the term "toll" reflects the practical effect of sub. (1) under circumstances in which a claimant's disability never ceases. In that event, a period of limitation is never triggered by the cessation of the claimant's disability, and the underlying period of limitation can be effectively "tolled" for up to five years. In contrast, in this case in which the decedent's disability ceased upon death one month after the injury, the two−year period of limitation in sub. (1) was not triggered, and, pursuant to sub. (2), the otherwise applicable three−year period of limitation in s. 893.555 (2) (a) applied and was not tolled. Estate of Cohen v. Trinity Health Management, LLC, 2022 WI App 26, 402 Wis. 2d 220, 975 N.W.2d 293, 21−1195.

A prisoner is entitled to the tolling provision under sub. (1) when bringing a 42 USC 1983 action. Hardin v. Straub, 490 U.S. 536, 109 S. Ct. 1998, 104 L. Ed. 2d 582 (1989).

893.17 Transition; limitation if disability exists; temporary. (1) This section does not apply to a cause of action which accrues on or after July 1, 1980.

(2) Except as provided in sub. (2m), if a person entitled to commence any action for the recovery of real property or to make an entry or defense founded on the title to real property or to rents or services out of the real property is, at the time the title shall first descend or accrue, under any of the following disabilities, the time during which the disability continues is not a part of the time limited by this chapter for the commencement of the action or the making of the entry or defense:

(a) The person is under the age of 18 years.

(b) The person is insane.

(c) The person is imprisoned on a criminal charge or in execution upon conviction of a criminal offense, for a term less than for life.

(2m) An action under sub. (2) may be commenced or entry or defense made, after the time limited and within 5 years after the disability ceases or the person entitled dies, if the person dies while under the disability, but the action shall not be commenced or entry or defense made after that period.

(3) This section shall not operate to extend the time for commencing any action or assertion of a defense or counterclaim with respect to which a limitation period established in s. 893.33 has expired and does not apply to s. 893.41, 893.59, 893.62, 893.73 to 893.76, 893.77 (3), 893.86 or 893.91 or subch. VIII.

History: 1971 c. 213 s. 5; 1979 c. 323; 1999 a. 85.

Judicial Council Committee's Note, 1979: This section is previous s. 893.135 of the statutes renumbered for more logical placement into restructured ch. 893 and amended to make its disability provisions applicable only to a cause of action for recovery of real property or to make an entry or defense founded on the title to real property or to its rents or services which accrues prior to July 1, 1980. The general disability provisions in s. 893.16 applicable to all statutes of limitation in ch. 893 apply to all causes of action which accrue on or after July 1, 1980. [Bill 326−A]

893.18 Transition; persons under disability. (1) This section does not apply to a cause of action which accrues on or after July 1, 1980 or to s. 893.41, 893.59, 893.62, 893.73 to 893.76, 893.77 (3), 893.86 or 893.91 or subch. VIII.

(2) Except as provided in sub. (2m), and except in actions for the recovery of a penalty or forfeiture, actions against a sheriff or other officer for an escape, or actions for the recovery or possession of real property, if a person entitled to bring an action mentioned in this chapter was at the time the cause of action accrued under any of the following disabilities, the time of the disability is not a part of the time limited for the commencement of the action:

(a) The person is under the age of 18 years, except for actions against health care providers.

(b) The person is insane.

(c) The person is imprisoned on a criminal charge or in execution under sentence of a criminal court for a term less than life.

(2m) The period within which an action must be brought cannot be extended under sub. (2) more than 5 years by any disability, except infancy, nor can that period be so extended, in any case, longer than one year after the disability ceases.

(3) A disability does not exist, for the purpose of this section, unless it existed when the cause of action accrued.

(4) When 2 or more disabilities coexist at the time the cause of action accrues the period of limitation does not attach until they all are removed.

History: 1971 c. 213 s. 5; 1977 c. 390; 1979 c. 323; 1981 c. 314; 1999 a. 85.

Judicial Council Committee's Note, 1979: This section is previous s. 893.33 of the statutes renumbered for more logical placement in restructured ch. 893 and amended to make its disability provisions applicable only to a cause of action which accrues prior to July 1, 1980. The general disability provisions in s. 893.16 applicable to all statutes of limitation in ch. 893 apply to all causes of action which occur on or after July 1, 1980. [Bill 326−A]

Because the parents' claim arising from injury to their minor child was filed along with the child's claim within the time period for the child's claim, the parents' claim was not barred by s. 893.54. Korth v. American Family Insurance Co., 115 Wis. 2d 326, 340 N.W.2d 494 (1983).

An estate's survival claim under s. 895.01 is not tolled by sub. (2) if the only beneficiaries of the estate are minors. Lord v. Hubbell, Inc., 210 Wis. 2d 150, 563 N.W.2d 913 (Ct. App. 1997), 96−1031.

A parent's claim for negligent infliction of emotional distress arising from the same act as the child's injury benefits from the child's tolling period. Carlson v. Tschopp−Durch−Camastral Co., 755 F. Supp. 847 (1991).

893.19 Limitation when person out of state. (1) If a person is out of this state when the cause of action accrues against the person an action may be commenced within the terms of this chapter respectively limited after the person returns or removes to this state. But the foregoing provision shall not apply to any case where, at the time the cause of action accrues, neither the party against nor the party in favor of whom the same accrues is a resident of this state; and if, after a cause of action accrues against any person, he or she departs from and resides out of this state the time of absence is not any part of the time limited for the commencement of an action; provided, that no foreign corporation which files with the department of financial institutions, or any other state official or body, pursuant to the requirements of any applicable statute of this state, an instrument appointing a registered agent as provided in ch. 180, a resident or any state official or body of this state, its attorney or agent, on whom, pursuant to such instrument or any applicable statute, service of process may be made in connection with such cause of action, is deemed a person out of this state within the meaning of this section for the period during which such appointment is effective, excluding from such period the time of absence from this state of any registered agent, resident

agent or attorney so appointed who departs from and resides outside of this state.

(2) This section shall not apply to any person who, while out of this state, may be subjected to personal jurisdiction in the courts of this state on any of the grounds specified in s. 801.05.

History: 1971 c. 154; 1977 c. 176; 1979 c. 323; 1995 a. 27.

Judicial Council Committee's Note, 1979: This section is previous s. 893.30 renumbered for more logical placement in restructured ch. 893 and revised for purposes of clarity only. [Bill 326–A]

The validity of the defense that a North Carolina limitation statute barred the action was determined in light of analysis of North Carolina products liability case law. Central Mutual Insurance Co. v. H.O., Inc., 63 Wis. 2d 54, 216 N.W.2d 239 (1974).

893.20 Application to alien enemy. When a person is an alien subject or citizen of a country at war with the United States the time of the continuance of the war is not a part of the time limited for the commencement of the action.

History: 1979 c. 323.

Judicial Council Committee's Note, 1979: This section is previous s. 893.31 renumbered for more logical placement in restructured ch. 893. [Bill 326–A]

893.21 Effect of military exemption from civil process. The time during which any resident of this state has been exempt from the service of civil process on account of being in the military service of the United States or of this state, shall not be taken as any part of the time limited by law for the commencement of any civil action in favor of or against such person.

History: 1979 c. 323.

Judicial Council Committee's Note, 1979: This section is previous s. 893.32 renumbered for more logical placement in restructured ch. 893. [Bill 326–A]

893.22 Limitation in case of death. If a person entitled to bring an action dies before the expiration of the time limited for the commencement of the action and the cause of action survives, an action may be commenced by the person's representatives after the expiration of that time and within one year from the person's death. If a person against whom an action may be brought dies before the expiration of the time limited for the commencement of the action and the cause of action survives, an action may be commenced after the expiration of that time and within one year after the issuing, within this state, of letters testamentary or other letters authorizing the administration of the decedent's estate.

History: 1979 c. 323; 2001 a. 102.

Judicial Council Committee's Note, 1979: This section is previous s. 893.34 renumbered for more logical placement in restructured ch. 893 and revised for the purpose of clarity only. [Bill 326–A]

This section does not provide a one–year extension of the statute of limitations from when a creditor, or another, petitions for probate of the decedent's estate under s. 856.07. This section only applies when a person entitled to bring the action dies with an existing claim that has less than one year remaining on the period of limitations. In such cases, the period of limitations is extended for one year, which begins to run upon the person's death. Kurt Van Engel Commission Co. v. Zingale, 2005 WI App 82, 280 Wis. 2d 777, 696 N.W.2d 280, 04–1900. See also Walberg v. St. Francis Home, Inc., 2005 WI 64, 281 Wis. 2d 99, 697 N.W.2d 36, 03–2164.

893.23 When action stayed. When the commencement of an action is stayed by injunction or statutory prohibition the time of the continuance of the injunction or prohibition is not part of the time limited for the commencement of the action.

History: 1979 c. 323.

Judicial Council Committee's Note, 1979: This section is previous s. 893.36 renumbered for more logical placement in restructured ch. 893. [Bill 326–A]

The interplay between this section and s. 893.80 creates a statute of limitations equal to three years and 120 days when filing a claim under s. 893.80. Colby v. Columbia County, 202 Wis. 2d 342, 550 N.W.2d 124 (1996), 93–3348.

SUBCHAPTER III

ACTIONS CONCERNING REAL OR PERSONAL PROPERTY

Judicial Council Committee's Note, 1979: This subchapter assembles sections affecting real or personal property in a single location in ch. 893. It revises some present provisions; rearranges others; adds a 7–year limitation statute under certain circumstances and a codification of case–law relating to obtaining prescriptive rights by adverse user; and deletes several present sections considered unnecessary.

Notes following the sections of the subchapter explain the rearrangements, changes, and additions. However, specific discussion of those sections eliminated follows:

(1) Previous ss. 893.02 and 893.03 were judged duplicative of the principal operative sections and possibly confusing. Nelson v. Jacobs, 99 Wis. 547, 75 N.W. 406 (1898), appears to rely in part on these sections for the proposition that one who has adversely possessed for 20 years has marketable title which can be forced on a vendee who objects, even though not established of record. This is undesirable and contrary to current understanding; see Baldwin v. Anderson, 40 Wis. 2d 33, 161 N.W.2d 553 (1968). In addition, Zellmer v. Martin, 157 Wis. 341, 147 N.W. 371 (1914) suggests that these sections may mean that 20 years of continuous disseisin of a true owner may bar that owner even if the claiming adverse possessor has not possessed in one of the ways required by previous s. 893.09. This may be confusing, since the language of previous s. 893.09 precluded other forms of possession under the 20–year statute. Other than as here noted, ss. 893.02 and 893.03 have been rarely cited and are not significant. In view of the presumption of possession by the true owner provided by previous s. 893.05, which this subchapter retains, previous ss. 893.02 and 893.03 contributed no needed substance to the subchapter.

(2) Previous s. 893.075 was enacted as a companion to s. 700.30, which was held unconstitutional in Chicago & N.W. Transportation Co. v. Pedersen, 80 Wis. 2d 566, 259 N.W.2d 316 (1977). No new s. 700.30 has been enacted. Therefore, s. 893.075 is surplusage and repealed.

(3) The ancient doctrine of "descent cast" is no longer of practical importance, especially since the passage of the new probate code in 1971. Therefore, the need for a response to that doctrine in previous s. 893.13 has disappeared, and the section has been repealed.

(4) Previous s. 893.18 (7) limited the time within which title to real estate could be attacked based on a defect in the jurisdiction of a court of record which entered a judgment affecting the title. That section is repealed as its application is preempted by s. 706.09 (1) (g). [Bill 326–A]

893.24 Adverse possession; section lines. (1) A written instrument or judgment that declares the boundaries of real estate adversely possessed under s. 893.29, 1995 stats., or s. 893.25, 893.26 or 893.27 does not affect any section line or any section subdivision line established by the United States public land survey or any section or section subdivision line based upon it.

(2) Occupation lines that the court declares to be property lines by adverse possession under s. 893.29, 1995 stats., or s. 893.25, 893.26 or 893.27 shall, by order of the court, be described by a retraceable description providing definite and unequivocal identification of the lines or boundaries. The description shall contain data of dimensions sufficient to enable the description to be mapped and retraced and shall describe the land by government lot, recorded private claim, quarter–quarter section, section, township, range and county, and by metes and bounds commencing with a corner marked and established by the United States public land survey or a corner of the private claim.

History: 1985 a. 247; 1997 a. 108.

In the absence of an express provision to the contrary, one who adversely possesses under an earlier version of the adverse possession statute may continue possession under the terms of that statute even after its repeal and re–creation. DNR v. Building & All Related or Attached Structures, 2011 WI App 119, 336 Wis. 2d 642, 803 N.W.2d 86, 10–2076.

Hey! That's my land! Understanding Adverse Possession. Shrestha. Wis. Law. Mar. 2010.

893.25 Adverse possession, not founded on written instrument. (1) An action for the recovery or the possession of real estate and a defense or counterclaim based on title to real estate are barred by uninterrupted adverse possession of 20 years, except as provided by s. 893.14 and 893.29. A person who, in connection with his or her predecessors in interest, is in uninterrupted adverse possession of real estate for 20 years, except as provided by s. 893.29, may commence an action to establish title under ch. 841.

(2) Real estate is possessed adversely under this section:

(a) Only if the person possessing it, in connection with his or her predecessors in interest, is in actual continued occupation under claim of title, exclusive of any other right; and

(b) Only to the extent that it is actually occupied and:

1. Protected by a substantial enclosure; or

2. Usually cultivated or improved.

History: 1979 c. 323.

Judicial Council Committee's Note, 1979: This provision collects in one section all material relating to 20–year adverse possession, without change in substance. Previous ss. 893.08 and 893.09, together with part of previous s. 893.10, are integrated here. The words "and a defense or counterclaim based on title to real estate" are added in subsection (1) to assure that deletion of present section 893.03 results in no loss of substance. This section covers the substance of previous s. 893.02, also deleted. Reference to ch. 843 describes the action which an adverse possessor may bring to establish title. The words "in connection with his or her predecessors in interest" are intended to express, but not change, the well–established common law doctrine of "tacking" together periods of possession by adverse possessors in privity with each other. The word "interest" has been substituted for "title" used in previous s. 893.10 (2) because it more accurately expresses the nature of an adverse possessor's rights until the 20–year period has run, and better reflects the substance of the privity

required for tacking between successive adverse possessors. There is no requirement of good faith entry under this section. Entry, for example, under a deed known by the adverse possessor to be fraudulent would start this 20−year period running, but not the 10−year period provided by s. 893.26. [Bill 326−A]

A grantor can assert adverse possession against a grantee. Lindl v. Ozanne, 85 Wis. 2d 424, 270 N.W.2d 249 (Ct. App. 1978). See also Keller v. Morfeld, 222 Wis. 2d 413, 588 N.W.2d 79 (Ct. App. 1998), 97−3443.

Where a survey established that disputed lands were not within the calls of the possessor's deed, the possessor's claim to property was not under color of title by a written instrument. Beasley v. Konczal, 87 Wis. 2d 233, 275 N.W.2d 634 (1979).

Acts that are consistent with sporadic trespass are insufficient to apprise the owner of an adverse claim. Pierz v. Gorski, 88 Wis. 2d 131, 276 N.W.2d 352 (Ct. App. 1979).

When evidence is presented as to the extent of occupancy of only a portion of land, only that portion may be awarded in adverse possession proceedings. Droege v. Daymaker Cranberries, Inc., 88 Wis. 2d 140, 276 N.W.2d 356 (Ct. App. 1979).

A judgment under s. 75.521 to foreclose a tax lien extinguishes all right, title, and interest in the foreclosed property, including claims based on adverse possession. Published notice was sufficient. Leciejewski v. Sedlak, 116 Wis. 2d 629, 342 N.W.2d 734 (1984).

A railroad right−of−way is subject to adverse possession, the same as other lands. Meiers v. Wang, 192 Wis. 2d 115, 531 N.W.2d 54 (1995).

Land may be acquired by adverse possession, without adverse intent, when the true owner acquiesces in another's possession for 20 years. If adjoining owners take from a common grantor by lot number, but the grantees purchased with reference to a boundary actually marked on the ground, the marked boundary, regardless of time, controls. Arnold v. Robbins, 209 Wis. 2d 428, 563 N.W.2d 178 (Ct. App. 1997), 96−0570.

The 20−year period under this section need not be the 20 years immediately preceding the filing of the court action. Harwick v. Black, 217 Wis. 2d 691, 580 N.W.2d 354 (Ct. App. 1998), 97−1108.

The use of a surveyor is not required to establish the boundaries of the contested property as long as there is evidence that provides a reasonably accurate basis for the circuit court to know what property is in dispute. Camacho v. Trimble Irrevocable Trust, 2008 WI App 112, 313 Wis. 2d 272, 756 N.W.2d 596, 07−1472.

If the claimant's use gives the titleholder reasonable notice that the claimant is asserting ownership and the titleholder does nothing, that failure to respond may result in losing title. However, in the absence of such use by the claimant, the titleholder is not obligated to do anything in order to retain title. Peter H. & Barbara J. Steuck Living Trust v. Easley, 2010 WI App 74, 325 Wis. 2d 455, 785 N.W.2d 631, 09−0757.

The regular use of a disputed area for hunting, placement of deer stands, and the making of a dirt road to a lake did not constitute open, notorious, visible, exclusive, and hostile use. The sound of gunshots does not gives a reasonably diligent titleholder notice of adverse possession. Gunshots would have been consistent with trespassers, as would portable deer stands, some kept in place all year. The dirt road and the trail continuing on to the lake were consistent with an easement to the lake rather than adverse possession of the entire disputed parcel. Peter H. & Barbara J. Steuck Living Trust v. Easley, 2010 WI App 74, 325 Wis. 2d 455, 785 N.W.2d 631, 09−0757.

In the absence of an express provision to the contrary, one who adversely possesses under an earlier version of the adverse possession statute may continue possession under the terms of that statute even after its repeal and re−creation. DNR v. Building & All Related or Attached Structures, 2011 WI App 119, 336 Wis. 2d 642, 803 N.W.2d 86, 10−2076.

The "claim of title" requirement in this section is the statutory equivalent of the common law "hostility" requirement. The plain meaning of "claim of title" is that a possessor must subjectively intend to claim ownership of the disputed property. Although the "claim of title" requirement is presumed when all other elements of adverse possession are established, this presumption may be rebutted with evidence that a party never intended to assert ownership over the property. A party who expressly disclaims ownership of property and seeks permission for its use is not "claiming title" to the property. Wilcox v. Estate of Hines, 2014 WI 60, 355 Wis. 2d 1, 849 N.W.2d 280, 12−1869.

The true owner's casual reentry upon property does not defeat the continuity or exclusivity of an adverse claimant's possession. The true owner's reentry should be a substantial and material interruption and a notorious reentry for the purpose of dispossessing the adverse occupant. The claimant's possession need not be absolutely exclusive of all individuals, and need only be a type of possession that would characterize an owner's use of the property. Kruckenberg v. Krukar, 2017 WI App 70, 378 Wis. 2d 318, 903 N.W.2d 164, 17−0124.

The "substantial enclosure" requirement is flexible and subject to no precise rule in all cases as so much depends upon the nature and situation of the property. All that is required is some indication of the boundaries of the adverse possession to give notice and need only be reasonably sufficient to attract the attention of the true owner and put the true owner on inquiry as to the nature and extent of the invasion of the true owner's rights. A fence is universally recognized as a way to indicate a boundary line. Kruckenberg v. Krukar, 2017 WI App 70, 378 Wis. 2d 318, 903 N.W.2d 164, 17−0124.

Hey! That's my land! Understanding Adverse Possession. Shrestha. Wis. Law. Mar. 2010.

Wait! Is That *My* Land? More On Adverse Possession. Shrestha. Wis. Law. July/Aug. 2015.

893.26 Adverse possession, founded on recorded written instrument. (1) An action for the recovery or the possession of real estate and a defense or counterclaim based upon title to real estate are barred by uninterrupted adverse possession of 10 years, except as provided by s. 893.14 and 893.29. A person who in connection with his or her predecessors in interest is in uninterrupted adverse possession of real estate for 10 years, except as provided by s. 893.29, may commence an action to establish title under ch. 841.

(2) Real estate is held adversely under this section or s. 893.27 only if:

(a) The person possessing the real estate or his or her predecessor in interest, originally entered into possession of the real estate under a good faith claim of title, exclusive of any other right, founded upon a written instrument as a conveyance of the real estate or upon a judgment of a competent court;

(b) The written instrument or judgment under which entry was made is recorded within 30 days of entry with the register of deeds of the county where the real estate lies; and

(c) The person possessing the real estate, in connection with his or her predecessors in interest, is in actual continued occupation of all or a material portion of the real estate described in the written instrument or judgment after the original entry as provided by par. (a), under claim of title, exclusive of any other right.

(3) If sub. (2) is satisfied all real estate included in the written instrument or judgment upon which the entry is based is adversely possessed and occupied under this section, except if the real estate consists of a tract divided into lots the possession of one lot does not constitute the possession of any other lot of the same tract.

(4) Facts which constitute possession and occupation of real estate under this section and s. 893.27 include, but are not limited to, the following:

(a) Where it has been usually cultivated or improved;

(b) Where it has been protected by a substantial enclosure;

(c) Where, although not enclosed, it has been used for the supply of fuel or of fencing timber for the purpose of husbandry or for the ordinary use of the occupant; or

(d) Where a known farm or single lot has been partly improved the portion of the farm or lot that is left not cleared or not enclosed, according to the usual course and custom of the adjoining country, is considered to have been occupied for the same length of time as the part improved or cultivated.

(5) For the purpose of this section and s. 893.27 it is presumed, unless rebutted, that entry and claim of title are made in good faith.

History: 1979 c. 323; 1981 c. 314; 1997 a. 254.

Judicial Council Committee's Note, 1979: This section collects in one place all material relating to 10−year adverse possession, integrating previous ss. 893.06 and 893.07, together with part of previous s. 893.10. Several language changes are the same as in s. 893.25, and the comments in the note following that section apply here. Three changes may work some change in substance, and should be particularly noted:

Sub. (2) (a) requires original entry on the adversely possessed premises to be "in good faith," language not included in the previous s. 893.06. The addition is designed to make clear that one who enters under a deed, for example, knowing it to be forged or given by one not the owner, should not have the benefit of the 10−year statute. Some Wisconsin case law (contrary to the nationwide weight of authority) suggests otherwise, and the change is intended to reverse these cases. See Polanski v. Town of Eagle Point, 30 Wis. 2d 507, 141 N.W.2d 281 (1966); Peters v. Kell, 12 Wis. 2d 32, 106 N.W.2d 407 (1960); McCann v. Welch, 106 Wis. 142, 81 N.W. 996 (1900). Note, however, that good faith is required only at the time of entry, and need not continue for the full 10 years of adverse possession.

Sub. (2) (b) adds a requirement not contained in previous s. 893.10 that the written instrument or judgment under which original entry is made must be recorded within 30 days after the entry.

Sub. (2) (c) adds the requirement that the adverse possession be of all or "a material portion" of the premises described in the written instrument or judgment, replacing "some part" found in previous s. 893.06. This probably represents no change in present law, but is intended to make clear that possession of an insubstantial fragment of land described in a written instrument will not suffice as constructive possession of all the land described. [Bill 326−A]

When a deed granted a right−of−way but the claimed use was of a different strip, no right based on use for ten years was created. New v. Stock, 49 Wis. 2d 469, 182 N.W.2d 276 (1971).

The doctrine of "tacking" allows an adverse possession claimant to add the claimant's time of possession to that of a prior adverse possessor if the claimant is in privity with the prior adverse possessor. Discussing adverse possession of land uncovered by the recession of a body of water. Perpignani v. Vonasek, 139 Wis. 2d 695, 408 N.W.2d 1 (1987).

For purposes of determining a "claim of title," a deed based on a recorded official government survey meets the requirements of this statute. Ivalis v. Curtis, 173 Wis. 2d 751, 496 N.W.2d 690 (Ct. App. 1993).

If the claimant's use gives the titleholder reasonable notice that the claimant is asserting ownership and the titleholder does nothing, that failure to respond may result in losing title. However, in the absence of such use by the claimant, the titleholder is not obligated to do anything in order to retain title. Peter H. & Barbara J. Steuck Living Trust v. Easley, 2010 WI App 74, 325 Wis. 2d 455, 785 N.W.2d 631, 09−0757.

The regular use of a disputed area for hunting, placement of deer stands, and the making of a dirt road to a lake did not constitute open, notorious, visible, exclusive, and hostile use. The sound of gunshots does not gives a reasonably diligent titleholder notice of adverse possession. Gunshots would have been consistent with tres-

passers, as would portable deer stands, some kept in place all year. The dirt road and the trail continuing on to the lake were consistent with an easement to the lake rather than adverse possession of the entire disputed parcel. Peter H. & Barbara J. Steuck Living Trust v. Easley, 2010 WI App 74, 325 Wis. 2d 455, 785 N.W.2d 631, 09–0757.

In the absence of an express provision to the contrary, one who adversely possesses under an earlier version of the adverse possession statute may continue possession under the terms of that statute even after its repeal and re–creation. DNR v. Building & All Related or Attached Structures, 2011 WI App 119, 336 Wis. 2d 642, 803 N.W.2d 86, 10–2076.

Hey! That's my land! Understanding Adverse Possession. Shrestha. Wis. Law. Mar. 2010.

893.27 Adverse possession; founded on recorded title claim and payment of taxes. (1) An action for the recovery or the possession of real estate and a defense or counterclaim based upon title to real estate are barred by uninterrupted adverse possession of 7 years, except as provided by s. 893.14 or 893.29. A person who in connection with his or her predecessors in interest is in uninterrupted adverse possession of real estate for 7 years, except as provided by s. 893.29, may commence an action to establish title under ch. 841.

(2) Real estate is possessed adversely under this section as provided by s. 893.26 (2) to (5) and only if:

(a) Any conveyance of the interest evidenced by the written instrument or judgment under which the original entry was made is recorded with the register of deeds of the county in which the real estate lies within 30 days after execution; and

(b) The person possessing it or his or her predecessor in interest pays all real estate taxes, or other taxes levied, or payments required, in lieu of real estate taxes for the 7–year period after the original entry.

History: 1979 c. 323.

Judicial Council Committee's Note, 1979: This section is new. It provides a 7–year limitation period in favor of an adverse possessor who has met all the requirements for the 10–year provision and who also has a recorded chain of title and paid the property taxes for the full 7 years. Many states provide similar or shorter periods under the same circumstances, while Wisconsin has given no statutory recognition to the importance of paying the taxes. One valuable role of adverse possession statutes is in title clearance. When a party enters in good faith, maintains possession, records all conveyances within 30 days and pays taxes for 7 years, the likelihood of genuine competing claims is small, and the gains in assurance of title from this section may well be significant. Some language from ss. 893.25 and 893.26 is repeated here; see notes to those sections for explanation. [Bill 326–A]

In the absence of an express provision to the contrary, one who adversely possesses under an earlier version of the adverse possession statute may continue possession under the terms of that statute even after its repeal and re–creation. DNR v. Building & All Related or Attached Structures, 2011 WI App 119, 336 Wis. 2d 642, 803 N.W.2d 86, 10–2076.

Hey! That's my land! Understanding Adverse Possession. Shrestha. Wis. Law. Mar. 2010.

893.28 Prescriptive rights by adverse user. (1) Continuous adverse use of rights in real estate of another for at least 20 years, except as provided in s. 893.29 establishes the prescriptive right to continue the use. Any person who in connection with his or her predecessor in interest has made continuous adverse use of rights in the land of another for 20 years, except as provided by s. 893.29, may commence an action to establish prescriptive rights under ch. 843.

(2) Continuous use of rights in real estate of another for at least 10 years by a domestic corporation organized to furnish telegraph or telecommunications service or transmit heat, power or electric current to the public or for public purposes, by a cooperative association organized under ch. 185 or 193 to furnish telegraph or telecommunications service, or by a cooperative organized under ch. 185 to transmit heat, power or electric current to its members, establishes the prescriptive right to continue the use, except as provided by s. 893.29. A person who has established a prescriptive right under this subsection may commence an action to establish prescriptive rights under ch. 843.

(3) The mere use of a way over unenclosed land is presumed to be permissive and not adverse.

History: 1979 c. 323; 1985 a. 297 s. 76; 2005 a. 441.

Once the right to a prescriptive easement has accrued by virtue of compliance with sub. (1) for the requisite 20–year period, the holder of the prescriptive easement must comply with the recording requirements within 30 years under s. 893.33 (2) or lose the right to continued use. Schauer v. Baker, 2004 WI App 41, 270 Wis. 2d 714, 678 N.W.2d 258, 02–1674.

As sub. (1) is written, it is more natural to read "of another" to modify "real estate," rather than "rights." That is, by continuous use, one may gain a prescriptive right in another's real estate. The real estate in which a right is gained must belong to another person. A setback restriction in an owner's deed was not a "right in real estate" belonging to "another" that the owner could use adversely by continually violating the setback. Hall v. Liebovich Living Trust, 2007 WI App 112, 300 Wis. 2d 725, 731 N.W.2d 649, 06–0040.

Sub. (2) applies to permissive uses. An agreement that permitted an electric utility to construct and maintain electrical poles and transmission lines on a landowner's property that was revocable upon 30 days' written notice gave the utility "rights in real estate of another" under sub. (2). Use of the property for more than ten years by the utility established the prescriptive right to continue the use. Williams v. American Transmission Co., 2007 WI App 246, 306 Wis. 2d 181, 742 N.W.2d 882, 07–0052.

Under the common law, a party's use of another's real property becomes a prescriptive right upon: 1) an adverse use; 2) that is visible, open, and notorious; 3) under an open claim of right; and 4) continuous for 20 years. With respect to public utilities, sub. (2) displaces the common–law adversity requirement, reduces the vesting period from 20 to ten years, and abrogates the claim–of–right requirement. Bauer v. Wisconsin Energy Corp., 2022 WI 11, 400 Wis. 2d 592, 970 N.W.2d 243, 19–2090.

A continuous use is one that is neither voluntarily abandoned by the party claiming a prescriptive right nor interrupted by an act of the landowner or a third party. A use remains continuous even when the user takes measures reasonably necessary to maintain or improve the use, so long as those measures are not inconsistent with the use's original nature and character nor more burdensome on the landowner. In this case, the public utility's periodic repairs to its natural–gas line, which included replacing 84 feet of the line by splicing new pipe of the same diameter and material into the existing line, constituted reasonable maintenance to continue its initial purpose, not an interruption or voluntary abandonment. Bauer v. Wisconsin Energy Corp., 2022 WI 11, 400 Wis. 2d 592, 970 N.W.2d 243, 19–2090.

893.29 No adverse possession by or against the state or political subdivisions. (1) Except as provided in sub. (2) (b), no title to or interest in real property belonging to the state or a city, village, town, county, school district, sewerage commission, sewerage district or any other unit of government within this state may be obtained by adverse possession under s. 893.25, 893.26, or 893.27 or by continuous adverse use under s. 893.28.

(1m) Except as provided in sub. (2) (d), no city, village, town, county, school district, sewerage commission, sewerage district, or any other unit of government within this state may obtain title to private property, as defined in s. 943.13 (1e) (e), by adverse possession under s. 893.25, 893.26, or 893.27.

(2) (a) Subsection (1) applies to a claim of title to or interest in real property based on adverse possession or continuous adverse use that began on or after March 3, 1996.

(b) Subsection (1) does not affect title to or interest in real property obtained on or before March 3, 2016, by adverse possession under s. 893.25, 893.26, or 893.27 or by continuous adverse use under s. 893.28.

(c) 1. Subsection (1m) applies to a claim of title to real property based on adverse possession under s. 893.25 that began after March 3, 1996.

2. Subsection (1m) applies to a claim of title to real property based on adverse possession under s. 893.26 that began after March 3, 2006.

3. Subsection (1m) applies to a claim of title to real property based on adverse possession under s. 893.27 that began after March 3, 2009.

(d) Subsection (1m) does not affect title to real property obtained on or before March 3, 2016, by adverse possession under s. 893.25, 893.26, or 893.27.

History: 1979 c. 323; 1983 a. 178; 1983 a. 189 s. 329 (16); 1997 a. 108; 2015 a. 219.

This section does not apply to a railroad. A railroad right–of–way is subject to adverse possession, the same as other lands. Meiers v. Wang, 192 Wis. 2d 115, 531 N.W.2d 54 (1995).

In the absence of an express provision to the contrary, one who adversely possesses under an earlier version of the adverse possession statute may continue possession under the terms of that statute even after its repeal and re–creation. DNR v. Building & All Related or Attached Structures, 2011 WI App 119, 336 Wis. 2d 642, 803 N.W.2d 86, 10–2076.

Under former sub. (2) (c), 1987 stats., the claimant was barred from adversely possessing any real property of a highway, including property held by the town for highway purposes. The parcel in question, although not improved as a highway, was dedicated as a street on a subdivision plat that was recorded in 1986. As such, under s. 236.29 (1), the recorded subdivision plat vested fee simple ownership of the disputed parcel in the town, which held that parcel in trust for use as a street. Under those circumstances, the disputed parcel was held by the town for highway purposes and was not subject to adverse possession. Casa De Calvo v. Town of Hudson, 2020 WI App 67, 394 Wis. 2d 342, 950 N.W.2d 939, 19–1851.

893.30 Presumption from legal title. In every action to recover or for the possession of real property, and in every defense based on legal title, the person establishing a legal title to the

premises is presumed to have been in possession of the premises within the time required by law, and the occupation of such premises by another person shall be deemed to have been under and in subordination to the legal title unless it appears that such premises have been held and possessed adversely to the legal title for 7 years under s. 893.27, 10 years under s. 893.26 or 20 years under s. 893.25, before the commencement of the action.

History: 1979 c. 323.

Judicial Council Committee's Note, 1979: This section is based on previous s. 893.05. The last sentence is expanded to recognize the new 7−year statute in s. 893.27. The words "and in every defense based on legal title" are added to make clear that the presumption of this section applies whether the holder of legal title is suing to recover the land, or a claiming adverse possessor is suing to establish title to it. [Bill 326−A]

The lowest burden of proof applies in adverse possession cases. Kruse v. Horlamus Industries, Inc., 130 Wis. 2d 357, 387 N.W.2d 64 (1986).

893.305 Affidavit of interruption; adverse possession and prescriptive use. (1) DEFINITIONS. In this section:

(a) "Affidavit of interruption" means an affidavit that satisfies the requirements under sub. (3).

(b) "Neighbor" means a person who holds record title to real estate abutting the record title holder's real estate.

(c) "Survey" means a property survey that complies with ch. A−E 7, Wis. Adm. Code, and that contains a certification by a professional land surveyor that the survey shows all visible encroachments on the surveyed land.

(2) INTERRUPTION BY AFFIDAVIT. A record title holder may interrupt adverse possession of real estate under s. 893.25, 893.26, 893.27, or 893.29 and adverse use of real estate under s. 893.28 (1) by doing all of the following:

(a) Recording, in the office of the register of deeds for the county in which the record title holder's parcel is located, an affidavit of interruption along with a survey of the record title holder's parcel that was certified no earlier than 5 years before the date of recording.

(b) Providing notice of the recorded affidavit of interruption in accordance with sub. (4).

(c) Recording proof that notice was provided in accordance with sub. (4) in the office of the register of deeds for the county in which the record title holder's parcel is located.

(d) If notice is provided under sub. (4) (a), recording on the neighbor's abutting parcel, within 90 days of the date the neighbor received the notice, a notice of the recorded affidavit of interruption that includes a copy of the recorded affidavit of interruption, including the attached survey. A notice of the recorded affidavit under this paragraph shall include a legal description of the neighbor's abutting parcel and of the record title holder's parcel.

(3) AFFIDAVIT OF INTERRUPTION. A record title holder shall include in an affidavit to interrupt adverse possession of real estate under s. 893.25, 893.26, 893.27, or 893.29 or adverse use of real estate under s. 893.28 (1) at least all of the following:

(a) A legal description of the parcel of land that contains the real estate that is being adversely possessed or adversely used, as described in par. (c).

(b) A statement that the person executing the affidavit is the record title holder of the parcel.

(c) A general description of the adverse possession or adverse use that the record title holder intends to interrupt by recording the affidavit.

(d) A statement that the adverse possession or adverse use of real estate described in par. (c) is interrupted and that a new period of adverse possession or adverse use may begin the day after the affidavit is recorded.

(e) A statement that the record title holder will provide notice as required under sub. (4).

(4) NOTICE. (a) If the record title holder knows, or has reason to believe, that the person who is adversely possessing or adversely using the record title holder's real estate is a neighbor, the record title holder shall provide notice to the neighbor by sending all of the following by certified mail, return receipt requested, to the neighbor's address, as listed on the tax roll:

1. A copy of the recorded affidavit of interruption, including the attached survey.

2. A notice of the record title holder's intent to, within 90 days of the date the notice is received, record a notice of the affidavit of interruption on the neighbor's real estate that abuts the record title holder's parcel. Notice under this subdivision shall include a reference to this section.

(b) If the record title holder knows the identity of the person who is adversely possessing or adversely using the record title holder's real estate and the person is not a neighbor, the record title holder shall provide notice to the person by sending the person a copy of the recorded affidavit of interruption, including the attached survey, by certified mail, return receipt requested, to the person's last−known address. Notice provided under this paragraph shall include a reference to this section.

(c) If the person who is adversely possessing or adversely using the record title holder's real estate is unknown to the record title holder at the time the affidavit of interruption is recorded, the record title holder shall provide notice by publishing a class 1 notice under ch. 985 in the official newspaper of the county in which the record title holder recorded the affidavit of interruption. The published notice shall include all of the following:

1. A statement that the record title holder recorded an affidavit of interruption.

2. The recording information for the recorded affidavit of interruption.

3. The street or physical address for the parcel on which the affidavit of interruption was recorded.

4. A reference to this section.

(d) If certified mail sent by a record title holder under par. (a) or (b) is returned to the record title holder as undeliverable, the record title holder shall provide notice by publication under par. (c).

(5) EFFECT OF RECORD. If a record title holder complies with sub. (2), any period of uninterrupted adverse possession under s. 893.25, 893.26, 893.27, or 893.29 of real estate described in the affidavit of interruption and any period of continuous adverse use under s. 893.28 (1) of real estate described in the affidavit of interruption are interrupted on the date on which the affidavit of interruption is recorded on the record title holder's parcel, as required under sub. (2) (a). A new period of adverse possession or continuous adverse use may begin after the date on which the affidavit of interruption is recorded on the record title holder's parcel.

(6) ENTITLED TO RECORD. The register of deeds shall record affidavits of interruption, proofs of notice under sub. (2) (c), and notices of affidavits of interruption under sub. (2) (d) in the index maintained under s. 59.43 (9).

(7) CONSTRUCTION. (a) An affidavit of interruption recorded under this section may not be construed as an admission by the record title holder that the real estate is being possessed adversely, as defined under s. 893.25, 893.26, 893.27, or 893.29, or is being used adversely under s. 893.28 (1).

(b) An affidavit of interruption under this section is not evidence that a person's possession or use of the record title holder's real estate is adverse to the record title holder.

(8) OTHER PROCEDURES. The procedure for interrupting adverse possession or adverse use set forth in this section is not exclusive.

History: 2015 a. 200.

893.31 Tenant's possession that of landlord. Whenever the relation of landlord and tenant exists between any persons the possession of the tenant is the possession of the landlord until the expiration of 10 years from the termination of the tenancy; or if there is no written lease until the expiration of 10 years from the time of the last payment of rent, notwithstanding that the tenant may have acquired another title or may have claimed to hold

adversely to his or her landlord. The period of limitation provided by s. 893.25, 893.26 or 893.27 shall not commence until the period provided in this section expires.

History: 1979 c. 323.

Judicial Council Committee's Note, 1979: This is present s. 893.11 renumbered for more logical placement and revised slightly for the purpose of textual clarity only. It complements and supplements s. 893.30 (previous s. 893.05). The 10–year period is retained as the period during which adverse possession (for any statutory period) cannot begin to run in favor of a tenant. Adoption of a 7–year statute in s. 893.27 does not affect the policy of this section. [Bill 326–A]

893.32 Entry upon real estate, when valid as interruption of adverse possession. No entry upon real estate is sufficient or valid as an interruption of adverse possession of the real estate unless an action is commenced against the adverse possessor within one year after the entry and before the applicable adverse possession period of limitation specified in this subchapter has run, or unless the entry in fact terminates the adverse possession and is followed by possession by the person making the entry.

History: 1979 c. 323.

Judicial Council Committee's Note, 1979: This section replaces previous s. 893.04, which was very difficult to interpret with certainty. No change in substance is intended from the most reasonable probable interpretation of s. 893.04; indeed, the intention is to articulate that policy with greater clarity, consistent with the one decided case applying that section, Brockman v. Brandenburg, 197 Wis. 51, 221 N.W. 397 (1928). [Bill 326–A]

893.33 Action concerning real estate. (1) In this section "purchaser" means a person to whom an estate, mortgage, lease or other interest in real estate is conveyed, assigned or leased for a valuable consideration.

(2) Except as provided in subs. (5) to (9), no action affecting the possession or title of any real estate may be commenced, and no defense or counterclaim may be asserted, by any person, the state, or a political subdivision or municipal corporation of the state after January 1, 1943, that is founded upon any unrecorded instrument executed more than 30 years prior to the date of commencement of the action, or upon any instrument recorded more than 30 years prior to the date of commencement of the action, or upon any transaction or event occurring more than 30 years prior to the date of commencement of the action, unless within 30 years after the execution of the unrecorded instrument or within 30 years after the date of recording of the recorded instrument, or within 30 years after the date of the transaction or event, there is recorded in the office of the register of deeds of the county in which the real estate is located some instrument expressly referring to the existence of the claim or defense, or a notice setting forth the name of the claimant, a statement of the claims made, a description of the real estate affected and of the instrument or transaction or event on which the claim or defense is founded, and, if the claim or defense is founded on a recorded instrument, the date the instrument was recorded, the document number of the instrument, and, if the instrument is assigned a volume and page number, the volume and page where the instrument is recorded. This notice may be discharged the same as a notice of pendency of action. Such notice or instrument recorded after the expiration of 30 years shall be likewise effective, except as to the rights of a purchaser of the real estate or any interest in the real estate that may have arisen after the expiration of the 30 years and prior to the recording.

(3) The recording of a notice under sub. (2), or of an instrument expressly referring to the existence of the claim, extends for 30 years from the date of recording the time in which any action, defense or counterclaim founded upon the written instrument or transaction or event referred to in the notice or recorded instrument may be commenced or asserted. Like notices or instruments may thereafter be recorded with the same effect before the expiration of each successive 30–year period.

(4) This section does not extend the right to commence any action or assert any defense or counterclaim beyond the date at which the right would be extinguished by any other statute.

(4r) This section applies to liens of the department of health services on real property under s. 46.27 (7g), 2017 stats., and ss. 49.496, 49.682, and 49.849.

(5) This section bars all claims to an interest in real property, whether rights based on marriage, remainders, reversions and reverter clauses in covenants restricting the use of real estate, mortgage liens, old tax deeds, death and income or franchise tax liens, rights as heirs or under will, or any claim of any nature, however denominated, and whether such claims are asserted by a person sui juris or under disability, whether such person is within or without the state, and whether such person is natural or corporate, or private or governmental, unless within the 30–year period provided by sub. (2) there has been recorded in the office of the register of deeds some instrument expressly referring to the existence of the claim, or a notice pursuant to this section. This section does not apply to any action commenced or any defense or counterclaim asserted, by any person who is in possession of the real estate involved as owner at the time the action is commenced. This section does not apply to any real estate or interest in real estate while the record title to the real estate or interest in real estate remains in a railroad corporation, a public service corporation as defined in s. 201.01, an electric cooperative organized and operating on a nonprofit basis under ch. 185, a natural gas company, as defined in 15 USC 717a (6), or any trustee or receiver of a railroad corporation, a public service corporation, an electric cooperative, or a natural gas company, or to claims or actions founded upon mortgages or trust deeds executed by that cooperative, corporation, company, or trustees or receivers of that cooperative, corporation, or company. This section also does not apply to real estate or an interest in real estate while the record title to the real estate or interest in real estate remains in the state or a political subdivision or municipal corporation of this state.

(6) Actions to enforce easements, or covenants restricting the use of real estate, set forth in any recorded instrument shall not be barred by this section for a period of 40 years after the date of recording such instrument, and the timely recording of an instrument expressly referring to the easements or covenants or of notices pursuant to this section shall extend such time for 40–year periods from the recording.

(6m) This section does not apply to an interest in any of the following:

(a) A conservation easement under s. 700.40.

NOTE: See note following s. 700.40.

(b) An easement set forth in a recorded instrument that allows a person to travel across another's land to reach a location or for another specified purpose if any of the following applies:

1. The instrument is recorded on or after January 1, 1960.

2. An instrument is recorded before January 1, 1960, and a notice, the instrument, or an instrument expressly referring to the easement is recorded on or after January 1, 1960, and before the property is sold or transferred.

3. The instrument or instruments expressly referring to the easement were recorded before January 1, 1960, and it is apparent from or can be proved from physical evidence of its use at such time when a person acquired the real estate subject to the easement.

(7) Only the following may assert this section as a defense or in an action to establish title:

(a) A purchaser of real estate; or

(b) A successor of a purchaser of real estate, if the time for commencement of an action or assertion of a defense or counterclaim under this section had expired at the time the rights of the purchaser in the real estate arose.

(8) If a period of limitation prescribed in s. 893.15 (5), 1977 stats., has begun to run prior to July 1, 1980, an action shall be commenced within the period prescribed by s. 893.15, 1977 stats., or 40 years after July 1, 1980, whichever first terminates.

(9) Section 893.15, 1977 stats., does not apply to extend the time for commencement of an action or assertion of a defense or counterclaim with respect to an instrument or notice recorded on or after July 1, 1980. If a cause of action is subject to sub. (8) the recording of an instrument or notice as provided by this section after July 1, 1980 extends the time for commencement of an action or assertion of a defense or counterclaim as provided in this section, except that the time within which the notice or instrument must be recorded if the time is to be extended as to purchasers is the time limited by sub. (8).

History: 1979 c. 323; 1981 c. 261; 1985 a. 135; 1987 a. 27, 330; 1991 a. 39; 1997 a. 140; 1999 a. 150; 2009 a. 378, 379; 2013 a. 20, 92; 2017 a. 102; 2019 a. 9; 2021 a. 174; 2021 a. 239 s. 74.

Judicial Council Committee's Note, 1979 [deleted in part]: This section is based primarily on previous 893.15. That section, an interesting combination of limitations statute and marketable title statute, was of significant help to real estate titles since enactment in 1941. The beneficial effects were strengthened and expanded by enactment of s. 706.09 in 1967. This draft preserves the useful essence of previous s. 893.15, while updating some language. Changes which affect substance are:

(1) The 60−year provision relating to easements and covenants is reduced to 40 years.

(2) New subs. (8) and (9) are transitional provisions applying to limitation periods already running the period specified in previous s. 893.15, or the period in this statute, whichever is shorter.

(5) This draft makes explicit that only those who purchase for valuable consideration after the period of limitation has run or their successors may avail themselves of the benefits of this statute. There is no requirement that the purchaser be without notice, which is to be contrasted with s. 706.09 of the statutes where periods far shorter than 30 years are specified in many subsections. [Bill 326−A]

"Transaction or event" as applied to adverse possession means adverse possession for the time period necessary to obtain title. Upon expiration of this period, the limitation period begins running. Leimert v. McCann, 79 Wis. 2d 289, 255 N.W.2d 526 (1977).

This section protects purchasers only. State v. Barkdoll, 99 Wis. 2d 163, 298 N.W.2d 539 (1980).

A public entity landowner was not protected from a claim that was older than 30 years. State Historical Society v. Village of Maple Bluff, 112 Wis. 2d 246, 332 N.W.2d 792 (1983).

Hunting and fishing rights are an easement under sub. (6). There is no distinction between a profit and an easement. Figliuzzi v. Carcajou Shooting Club, 184 Wis. 2d 572, 516 N.W.2d 410 (1994).

If a nuisance is continuing, a nuisance claim is not barred by the statute of limitations; but if it is permanent, it must be brought within the applicable statute period. A nuisance is continuing if it is ongoing or repeated but can be abated. A permanent nuisance is one act that causes permanent injury. Sunnyside Feed Co. v. City of Portage, 222 Wis. 2d 461, 588 N.W.2d 278 (Ct. App. 1998), 98−0709.

The sub. (5) owner−in−possession exception to the sub. (2) 30−year recording requirement applies to adverse possession claims. O'Neill v. Reemer, 2003 WI 13, 259 Wis. 2d 544, 657 N.W.2d 403, 01−2402. See also O'Kon v. Laude, 2004 WI App 200, 276 Wis. 2d 666, 688 N.W.2d 747, 03−2819.

The owner−in−possession exception found in sub. (5) does not apply to holders of a prescriptive easement because such holders are not owners. Once the right to a prescriptive easement has accrued by virtue of compliance with s. 893.28 (1) for the requisite 20−year period, the holder of the prescriptive easement must comply with the recording requirements within 30 years under sub. (2) or lose the right to continued use. Schauer v. Baker, 2004 WI App 41, 270 Wis. 2d 714, 678 N.W.2d 258, 02−1674.

More specific statutes govern a municipality's interest in an unrecorded highway and therefore the 30−year recording requirement under this section does not apply to a municipality's interest in an unrecorded highway. City of Prescott v. Holmgren, 2006 WI App 172, 295 Wis. 2d 627, 721 N.W.2d 153, 05−2673.

An easement continuously recorded since 1936 for which no efforts were made to establish and use it until the 1990's was not abandoned. Spencer v. Kosir, 2007 WI App 135, 301 Wis. 2d 521, 733 N.W.2d 921, 06−1691.

The label of the documents here—"access easement agreement"—and the fact that each was signed by both parties did not transform the grants of easement into contracts subject to contract law. The plaintiffs alleged that a driveway could not be built on the easements described in the agreements because of a wetland delineation and sought a modification of the easements. This claim for relief was an action to enforce the recorded easements, albeit a modified version, and was therefore governed by sub. (6), not the contract statute, s. 893.43. Mnuk v. Harmony Homes, Inc., 2010 WI App 102, 329 Wis. 2d 182, 790 N.W.2d 514, 09−1178.

An owner−in−possession exception to the statute of limitations applies to owners by adverse possession. The party who initially adversely possessed land for the necessary period of time is not required to continue to "adversely" possess the disputed property to benefit from the exception. At the end of the applicable adverse possession period, title vests in the adverse possessor and the record owner's title is extinguished. Engel v. Parker, 2012 WI App 18, 339 Wis. 2d 208, 810 N.W.2d 861, 11−0025.

This section provides no exception to the limitations period under sub. (6) for enforcement of an easement against a purchaser who had actual notice of the easement. TJ Auto LLC v. Mr. Twist Holdings LLC, 2014 WI App 81, 355 Wis. 2d 517, 851 N.W.2d 831, 13−2119.

A survey map filed in the office of register of deeds was not a "recording" that renews the limitations period under sub. (6). To record an instrument, s. 59.43 (1) (e) and (f) require the register of deeds to endorse upon it a certificate of the date and time when it was received as well as a number consecutive to the number assigned to the immediately previously recorded or filed instrument. Without those marks of recording by the register of deeds, there is no basis from which a court can presume that the survey map was recorded. TJ Auto LLC v. Mr. Twist Holdings LLC, 2014 WI App 81, 355 Wis. 2d 517, 851 N.W.2d 831, 13−2119.

893.34 Immunity for property owners. No suit may be brought against any property owner who, in good faith, terminates a tenancy as the result of receiving a notice from a law enforcement agency under s. 704.17 (1p) (c), (2) (c) or (3) (b).

History: 1993 a. 139; 2017 a. 317, s. 54.

893.35 Action to recover personal property. An action to recover personal property shall be commenced within 6 years after the cause of action accrues or be barred. The cause of action accrues at the time the wrongful taking or conversion occurs, or the wrongful detention begins. An action for damage for wrongful taking, conversion or detention of personal property shall be commenced within the time limited by s. 893.51.

History: 1979 c. 323.

Judicial Council Committee's Note, 1979: This section is based on previous s. 893.19 (6), without change in substance, but with some expansion of language to make clear that accrual of the cause of action is not delayed until the person bringing the action learns of the wrongful taking or detention. The limitation with respect to an action for damages is contained in s. 893.51. [Bill 326−A]

A wrongful detention claim is separate from a conversion claim. A wrongful detention claim may arise against a possessor of previously converted or wrongfully taken property. Under those facts, a wrongful detention claim is available and, for purposes of this section and s. 893.51 (1), accrues at the time the property is obtained. No demand is necessary. Mueller v. TL90108, LLC, 2020 WI 7, 390 Wis. 2d 34, 938 N.W.2d 566, 17−1962.

This section and s. 893.51 (1) are statutes of repose, not statutes of limitation. A statute of repose provides that a cause of action must be commenced within a specified amount of time after the defendant's action that allegedly led to injury, regardless of whether the plaintiff has discovered the injury or wrongdoing. With regard to a wrongful detention claim, the statutes focus on when the wrongful detention begins, not when the property owner discovers or knows of the detention. Mueller v. TL90108, LLC, 2020 WI 7, 390 Wis. 2d 34, 938 N.W.2d 566, 17−1962.

893.36 Secured livestock. (1g) In this section:

(a) "Buyer in ordinary course of business" has the meaning provided by s. 401.201 (2) (em).

(b) "Collateral" has the meaning provided by s. 409.102 (1) (cs).

(c) "Debtor" has the meaning provided by s. 409.102 (1) (gs).

(d) "Market agency" means a person regularly engaged in the business of receiving, buying or selling livestock whether on a commission basis or otherwise.

(e) "Secured party" has the meaning provided by s. 409.102 (1) (rs).

(f) "Security agreement" has the meaning provided by s. 409.102 (1) (s).

(1m) An action by a secured party to recover damages or property, based upon the sale of livestock which when sold is the secured party's collateral, against the market agency which in the ordinary course of business conducts the auction of the livestock, or against a buyer in ordinary course of business shall be commenced within 2 years after the date of sale of the livestock, or be barred, if:

(a) The debtor signs or endorses any writing arising from the transaction, including a check or draft, which states that the sale of the livestock is permitted by the secured party; and

(b) The secured party does not commence an action, within 2 years after the date of sale of the livestock against the debtor for purposes of enforcing rights under the security agreement or an obligation secured by the security agreement.

(2) This section does not apply to actions based upon a sale of livestock occurring prior to April 3, 1980, nor to an action by a secured party against its debtor. Section 893.35 or 893.51 applies to any action described in sub. (1m) if the limitation described in sub. (1m) is not applicable.

History: 1979 c. 221 ss. 837m, 2204 (33) (b); 1983 a. 189 s. 329 (24); 2001 a. 103; 2009 a. 320.

893.37 Survey. No action may be brought against an engineer or any professional land surveyor, as defined in s. 443.01 (7m), to recover damages for negligence, errors, or omission in the making of any survey nor for contribution or indemnity related to such

negligence, errors, or omissions more than 6 years after the completion of a survey.

History: 1979 c. 323 s. 3; Stats. 1979 s. 893.36; 1979 c. 355 s. 228; Stats. 1979 s. 893.37; 2013 a. 358.

The discovery rule applies to statutes of limitations that limit the time to sue from the time when the action "accrues," being the time of discovery. The discovery rule does not apply to this section because it is a statute of repose, a statute that specifies the time of accrual—in this statute the time when the injury occurred—and limits the time suit can be brought from that specified date. Tomczak v. Bailey, 218 Wis. 2d 245, 578 N.W.2d 166 (1998), 95–2733.

893.38 Extension of certain approvals. (1) DEFINITIONS. In this section:

(a) "Challenged permit" means a permit or other approval to which all of the following apply:

1. The permit or other approval authorizes a construction project.

2. The application for the permit or other approval includes a description of the construction project.

3. The permit or other approval was issued by a governmental unit and becomes or remains subject to administrative, judicial, or appellate proceedings, whether or not any proceeding reversed the permit or other approval.

4. The permit or other approval has or had a finite term or duration, and the term or duration has not expired.

5. The permit or other approval is the subject of administrative, judicial, or appellate proceedings that may result in the invalidation, reconsideration, or modification of the permit or approval, provided that the proceedings or, if the proceedings are reviewing another decision, the proceedings originating the review proceedings were initiated by a person other than the holder of the permit or approval.

(b) "Challenged plat or survey" means a plat or certified survey map approval that is the subject of administrative, judicial, or appellate proceedings that may result in the invalidation, reconsideration, or modification of the approval, provided that the proceedings, or, if the proceedings are reviewing another decision, the proceedings originating the review proceedings were initiated by a person other than the holder of the approval.

(c) "Construction project" means organized improvements to real property that include the construction or redevelopment of at least one building for occupancy.

(d) "Covered approval" means a challenged permit or challenged plat or survey.

(e) "Governmental unit" means the department of natural resources, the department of transportation, a city, a village, a town, a county, or a special purpose district.

(2) AUTOMATIC EXTENSION. A person who has received a covered approval shall obtain an automatic extension of the covered approval by notifying the governmental unit that issued the covered approval of the person's decision to exercise the extension not more than 90 days nor less than 30 days before the expiration of the unextended term or duration of the covered approval. A notification under this subsection shall be in writing and shall specify the covered approval extended. This subsection does not apply to a covered approval for which an automatic extension is not allowed under applicable federal law.

(3) TERM OF EXTENSION. The term or duration of a covered approval extended under sub. (2) is an amount of time equal to 36 months plus the duration of the administrative, judicial, or appellate proceedings to which the covered approval is subject. For purposes of calculating the duration of administrative, judicial, or appellate proceedings under this subsection, proceedings begin on the date of the initial filing of the proceedings, or, if the proceedings are reviewing another decision, the proceedings originating the review proceedings and end on the date of the final order disposing of all proceedings.

(4) EFFECT OF ORDERS. A covered approval extended under sub. (2) is subject to any order concerning the covered approval that is issued in an administrative, judicial, or appellate proceeding, including a suspension, injunction, restraining order, invalidation, reconsideration, or modification.

(5) CHANGE OF LAW. Except as provided in s. 66.10015, the laws, regulations, ordinances, rules, or other properly adopted requirements that were in effect at the time the covered approval was issued shall apply to the construction project, plat, or certified survey map during the period of extension. This subsection does not apply to the extent that a governmental unit demonstrates that the application of this subsection will create an immediate threat to public health or safety.

(6) REGULATION OF SAFETY AND SANITATION. This section does not limit any state or local unit of government from requiring that property be maintained and secured in a safe and sanitary condition in compliance with applicable laws, administrative rules, or ordinances.

(7) EXCEPTIONS. This section does not apply to any of the following:

(a) A covered approval under any programmatic, regional, or nationwide general permit issued by the U.S. army corps of engineers.

(b) A covered approval that authorizes a water pollutant discharge under s. 283.31, 283.33, or 283.35 or construction or operation of a stationary source under s. 285.60.

(c) The holder of a covered approval who is determined by the issuing governmental unit to be in significant noncompliance with the conditions of the covered approval as evidenced by written notice of violation or the initiation of a formal enforcement action.

History: 2021 a. 80; 2021 a. 240 s. 30.

SUBCHAPTER IV

ACTIONS RELATING TO CONTRACTS AND COURT JUDGMENTS

893.40 Action on judgment or decree; court of record. Except as provided in ss. 846.04 (2) and (3) and 893.415, action upon a judgment or decree of a court of record of any state or of the United States shall be commenced within 20 years after the judgment or decree is entered or be barred.

History: 1979 c. 323; 1997 a. 27; 2003 a. 287.

Judicial Council Committee's Note, 1979: This section has been created to combine the provisions of repealed ss. 893.16 (1) and 893.18 (1). A substantive change from prior law results as the time period for an action upon a judgment of a court of record sitting without this state is increased from 10 years to 20 years and runs from the time of entry of a judgment. The separate statute of limitations for an action upon a sealed instrument is repealed as unnecessary. [Bill 326–A]

The defendant was prejudiced by an unreasonable 16–year delay in bringing suit; thus laches barred suit even though the applicable limitation period did not. Schafer v. Wegner, 78 Wis. 2d 127, 254 N.W.2d 193 (1977).

A request by the state or an offender to correct a clerical error in the sentence portion of a written judgment to reflect accurately an oral pronouncement of sentence is not an "action upon a judgment" under this section. State v. Prihoda, 2000 WI 123, 239 Wis. 2d 244, 618 N.W.2d 857, 98–2263.

This section clearly and unambiguously specifies that the date when a cause of action to collect past–due child support payments begins to run is the date when a judgment ordering payments is entered. State v. Hamilton, 2003 WI 50, 261 Wis. 2d 458, 661 N.W.2d 832, 01–1014.

Under the circumstances present in this case in which a statute precluded a provision in a judgment, the statute of repose could not begin to run as to that provision until the legislature changed the law such that the provision could be carried out. Johnson v. Masters, 2013 WI 43, 347 Wis. 2d 238, 830 N.W.2d 647, 11–1240.

This section did not bar an action to enforce a divorce judgment that required a party to divide the party's pension only "when and if" the pension became "available" to the party because it was impossible to judicially enforce that requirement during the first 21 years after the divorce judgment. Schwab v. Schwab, 2021 WI 67, 397 Wis. 2d 820, 961 N.W.2d 56, 19–1200.

893.41 Breach of contract to marry; action to recover property. An action to recover property procured by fraud by a party in representing that he or she intended to marry the party providing the property and not breach the contract to marry, to which s. 768.06 applies, shall be commenced within one year after the breach of the contract to marry.

History: 1979 c. 323; 1981 c. 314 s. 146.

Judicial Council Committee's Note, 1979: This section has been created to place into ch. 893 the statute of limitations for an action to recover property for an alleged breach of a contract to marry. See also note following s. 768.06. [Bill 326–A]

893.415 Action to collect support. (1) In this section, "action" means any proceeding brought before a court, whether commenced by a petition, motion, order to show cause, or other pleading.

(2) An action to collect child or family support owed under a judgment or order entered under ch. 767, or to collect child support owed under a judgment or order entered under s. 48.355 (2) (b) 4. or (4g) (a), 48.357 (5m) (a), 48.363 (2), 938.183 (4), 938.355 (2) (b) 4. or (4g) (a), 938.357 (5m) (a), 938.363 (2), or 948.22 (7), shall be commenced within 20 years after the youngest child for whom the support was ordered under the judgment or order reaches the age of 18 or, if the child is enrolled full−time in high school or its equivalent, reaches the age of 19.

(3) An action under this section is commenced when the petition, motion, order to show cause, or other pleading commencing the action is filed with the court, except that an action under this section is not commenced if proper notice of the action, as required by law or by the court, has not been provided to the respondent in the action within 90 days after the petition, motion, order to show cause, or other pleading is filed.

History: 2003 a. 287; 2015 a. 373.

893.42 Action on a judgment of court not of record. An action upon a judgment of a court not of record shall be commenced within 6 years of entry of judgment or be barred.

History: 1979 c. 323.

Judicial Council Committee's Note, 1979: This section is previous s. 893.19 (1) renumbered for more logical placement in restructured ch. 893. [Bill 326−A]

893.425 Fraudulent transfers. An action with respect to a fraudulent transfer or obligation under ch. 242 shall be barred unless the action is commenced:

(1) Under s. 242.04 (1) (a), within 4 years after the transfer is made or the obligation is incurred or, if later, within one year after the transfer or obligation is or could reasonably have been discovered by the claimant.

(2) Under s. 242.04 (1) (b) or 242.05 (1), within 4 years after the transfer is made or the obligation is incurred.

(3) Under s. 242.05 (2), within one year after the transfer is made or the obligation is incurred.

History: 1987 a. 192.

Sub. (1) sets a one−year statute of limitations from the point at which the claimant discovers or reasonably could have discovered the fraudulent nature of the transfer or obligation. The statute of limitations test is not based on discovery of the transfer; it is based on discovery of the fraudulent nature of the transfer. Official Committee of Unsecured Creditors of Great Lakes Quick Lube LP v. Theisen, 2018 WI App 70, 384 Wis. 2d 580, 920 N.W.2d 356, 18−0333.

893.43 Action on contract. (1) Except as provided in sub. (2), an action upon any contract, obligation, or liability, express or implied, including an action to recover fees for professional services, except those mentioned in s. 893.40, shall be commenced within 6 years after the cause of action accrues or be barred.

(2) An action upon a motor vehicle insurance policy described in s. 632.32 (1) shall be commenced within 3 years after the cause of action accrues or be barred. A cause of action involving underinsured motorist coverage, as defined in s. 632.32 (2) (d), or uninsured motorist coverage, as defined in s. 632.32 (2) (f), accrues on the date there is final resolution of the underlying cause of action by the injured party against the tortfeasor.

History: 1979 c. 323; 2015 a. 133.

Judicial Council Committee's Note, 1979: This section is previous s. 893.19 (3) renumbered for more logical placement in restructured ch. 893. [Bill 326−A]

A bonus plan to compensate for increased profits is a contract. Younger v. Rosenow Paper & Supply Co., 51 Wis. 2d 619, 188 N.W.2d 507 (1971).

An action to recover benefits under a pension plan is an action to enforce a contract, not an action for wages. Estate of Schroeder v. Gateway Transportation Co., 53 Wis. 2d 59, 191 N.W.2d 860 (1971).

An action for personal injuries resulting from medical malpractice, although based on contract, is subject to the three−year limitation for injuries to the person. Estate of Kohls v. Brah, 57 Wis. 2d 141, 203 N.W.2d 666 (1973).

An action by an insured against an insurance agent for failing to procure requested coverage is not an action against the insurer on the policy, but is an action resting upon the agent's contract with the insured to procure the insurance coverage agreed upon subject to the statute of limitations for contract. Estate of Ensz v. Brown Insurance Agency, Inc., 66 Wis. 2d 193, 223 N.W.2d 903 (1974).

A cause of action for contribution is based upon a contract implied by law and must be brought within six years after one joint tortfeasor has paid more than the tortfeasor's share. Hartford Fire Insurance Co. v. Osborn Plumbing & Heating, Inc., 66 Wis. 2d 454, 225 N.W.2d 628 (1975).

When an employer deducted a "hypothetical tax factor" from salaries of its overseas employees so as to equalize compensation of its employees worldwide, an action to recover amounts so deducted had to be brought within the limitation period on wage claims, and not the period on other contract claims. Sussmann v. Gleisner, 80 Wis. 2d 435, 259 N.W.2d 114 (1977).

If the object of a disputed contract is the end product or fruit of human labor rather than the labor per se, s. 893.19 (3) [now this section] applies rather than s. 893.21 (5) [now s. 893.44]. Rupp v. O'Connor, 81 Wis. 2d 436, 261 N.W.2d 815 (1978).

Partial payment of an obligation made prior to the running of the statute of limitations tolls the statute and sets it running from the date of payment. St. Mary's Hospital Medical Center v. Tarkenton, 103 Wis. 2d 422, 309 N.W.2d 14 (Ct. App. 1981).

A breach of a roofing contract occurred when the faulty roof was completed, not when the building was completed. State v. Holland Plastics Co., 111 Wis. 2d 497, 331 N.W.2d 320 (1983).

An unjust enrichment claim accrues when a cohabitational relationship terminates. The court does not determine what statute of limitations, if any, applies. Watts v. Watts, 152 Wis. 2d 370, 448 N.W.2d 292 (Ct. App. 1989).

A contract cause of action accrues at the time of the breach. The discovery rule is inapplicable. CLL Associates v. Arrowhead Pacific Corp., 174 Wis. 2d 604, 497 N.W.2d 115 (1993).

This section applies to actions for the recovery of sales commissions. Erdman v. Jovoco, Inc., 181 Wis. 2d 736, 512 N.W.2d 487 (1994).

A party's deficient performance of a contract does not give rise to a tort claim. There must be a duty independent of the contract for a cause of action in tort. Atkinson v. Everbrite, Inc., 224 Wis. 2d 724, 592 N.W.2d 299 (Ct. App. 1999), 98−1806.

For actions seeking coverage under an underinsured motorist policy, the statute of limitations begins to run from the date of loss, which is the date on which a final resolution is reached in the underlying claim against the tortfeasor, be it through denial of that claim, settlement, judgment, execution of releases, or other form of resolution, whichever is the latest. Yocherer v. Farmers Insurance Exchange, 2002 WI 41, 252 Wis. 2d 114, 643 N.W.2d 457, 00−0944.

The label of the documents here—"access easement agreement"—and the fact that each was signed by both parties did not transform the grants of easement into contracts subject to contract law. The plaintiffs alleged that a driveway could not be built on the easements described in the agreements because of a wetland delineation and sought a modification of the easements. This claim for relief was an action to enforce the recorded easements, albeit a modified version, and was therefore governed by s. 893.33 (6), not the contract statute, this section. Mnuk v. Harmony Homes, Inc., 2010 WI App 102, 329 Wis. 2d 182, 790 N.W.2d 514, 09−1178.

The running of the six−year statute of limitations under this section [now sub. (1)] that applies to enforcement of a note does not prevent timely foreclosure of the mortgage that secures the note. Bank of New York Mellon v. Klomsten, 2018 WI App 25, 381 Wis. 2d 218, 911 N.W.2d 364, 17−0405.

The statute of limitations for a subrogated claim is the same as the statute of limitations that would apply to the claim if it had not been subrogated. In this case, the plaintiff insurance company was subrogated to the insured's contract claim that the defendant insurance company breached its duty to defend the insured. Because subrogation does not change the identity of the cause of action, the plaintiff's claim was also for breach of contract. Claims for breach of contract have a six−year statute of limitations under sub. (1). Steadfast Insurance Co. v. Greenwich Insurance Co., 2019 WI 6, 385 Wis. 2d 213, 922 N.W.2d 71, 16−1631.

Nothing in the plain language of sub. (1) limits its application to actions seeking damages, as opposed to injunctive relief. Wascher v. ABC Insurance Co., 2022 WI App 10, 401 Wis. 2d 94, 972 N.W.2d 162, 20−1961.

Rescission is not an "action upon the contract," as that phrase is used in this section. CMFG Life Insurance Co. v. RBS Securities, Inc., 799 F.3d 729 (2015).

A claim for unjust enrichment is a quasi−contractual claim. Accordingly, Wisconsin courts have applied sub. (1)'s six−year limitations period for contract−based claims to quasi−contractual claims. Smith v. RecordQuest, LLC, 989 F.3d 513 (2021).

An unconscionability of contract claim is governed by this section. Dairyland Power Cooperative v. Amax Inc., 700 F. Supp. 979 (1986).

893.44 Compensation for personal service. (1) Any action to recover unpaid salary, wages or other compensation for personal services, except actions to recover fees for professional services and except as provided in sub. (2), shall be commenced within 2 years after the cause of action accrues or be barred.

(2) An action to recover wages under s. 109.09 shall be commenced within 2 years after the claim is filed with the department of workforce development or be barred.

History: 1979 c. 323; 1985 a. 220; 1995 a. 27 s. 9130 (4); 1997 a. 3.

Judicial Council Committee's Note, 1979: This section is previous s. 893.21 (5) renumbered for more logical placement in restructured ch. 893. Actions to collect fees for professional services are brought under s. 893.43. [Bill 326−A]

A stock−purchase plan as a reward for increased profits is not subject to s. 893.21 (5) [now this section]. Younger v. Rosenow Paper & Supply Co., 51 Wis. 2d 619, 188 N.W.2d 507 (1971).

Professional services by a physician or attorney, although not customarily performed in the profession, may be classified as professional if requested by reason of the professional's expertise and training, if the professional then utilizes that knowledge and training. If the services are so classified depends upon the facts of the particular employment. Lorenz v. Dreske, 62 Wis. 2d 273, 214 N.W.2d 753 (1974).

Section 893.21 (5) [now this section] does not apply unless services are actually rendered. Yanta v. Montgomery Ward & Co., 66 Wis. 2d 53, 224 N.W.2d 389 (1974).

If the object of a disputed contract is the end product or fruit of human labor rather than the labor per se, s. 893.19 (3) [now s. 893.43] applies rather than s. 893.21 (5) [now this section]. Rupp v. O'Connor, 81 Wis. 2d 436, 261 N.W.2d 815 (1978).

An unjust enrichment claim accrues when a cohabitational relationship terminates. The court does not determine which statute of limitations, if any, applies. Watts v. Watts, 152 Wis. 2d 370, 448 N.W.2d 292 (Ct. App. 1989).

This section applies only to actions for wages already earned. Lovett v. Mt. Senario College, Inc., 154 Wis. 2d 831, 454 N.W.2d 356 (Ct. App. 1990).

This section does not apply to actions for the recovery of sales commissions. Erdman v. Jovoco, Inc., 181 Wis. 2d 736, 512 N.W.2d 487 (1994).

The distinguishing feature of personal services under this section is whether the human labor itself is sought and is the object of the compensation or whether the end–product of the service is purchased. Paulson v. Shapiro, 490 F.2d 1 (1973).

893.45 Acknowledgment or new promise. No acknowledgment or promise shall be sufficient evidence of a new or continuing contract, whereby to take the cause out of the operation of this chapter, unless the same be contained in some writing signed by the party to be charged thereby.

History: 1979 c. 323.

Judicial Council Committee's Note, 1979: This section is previous s. 893.42 renumbered for more logical placement in restructured ch. 893. [Bill 326–A]

893.46 Acknowledgment, who not bound by. If there are 2 or more joint contractors or joint personal representatives of any contractor, no such joint contractor or joint personal representative shall lose the benefit of this chapter so as to be chargeable by reason only of any acknowledgment or promise made by any other of them.

History: 1979 c. 323; 2001 a. 102.

Judicial Council Committee's Note, 1979: This section is previous s. 893.43 renumbered for more logical placement in restructured ch. 893. [Bill 326–A]

893.47 Actions against parties jointly liable. In actions commenced against 2 or more joint contractors or joint personal representatives of any contractors, if it shall appear, on the trial or otherwise, that the plaintiff is barred by this chapter as to one or more of the defendants but is entitled to recover against any other or others of them by virtue of a new acknowledgment or promise or otherwise, judgment shall be given for the plaintiff as to any of the defendants against whom the plaintiff is entitled to recover and for the other defendant or defendants against the plaintiff.

History: 1979 c. 323; 2001 a. 102.

Judicial Council Committee's Note, 1979: This section is previous s. 893.44 renumbered for more logical placement in restructured ch. 893. [Bill 326–A]

893.48 Payment, effect of, not altered. Nothing contained in ss. 893.44 to 893.47 shall alter, take away or lessen the effect of a payment of any principal or interest made by any person, but no endorsement or memorandum of any such payment, written or made upon any promissory note, bill of exchange or other writing, by or on behalf of the party to whom the payment is made or purports to be made, is sufficient proof of the payment so as to take the case out of the operation of this chapter.

History: Sup. Ct. Order, 67 Wis. 2d 585, 784 (1975); 1979 c. 323.

Judicial Council Committee's Note, 1979: This section is previous s. 893.46 renumbered for more logical placement in restructured ch. 893. [Bill 326–A]

893.49 Payment by one not to affect others. If there are 2 or more joint contractors or joint personal representatives of any contractor, no one of them shall lose the benefit of this chapter so as to be chargeable by reason only of any payment made by any other of them.

History: 1979 c. 323; 2001 a. 102.

Judicial Council Committee's Note, 1979: This section is previous s. 893.47 renumbered for more logical placement in restructured ch. 893. [Bill 326–A]

893.50 Other actions. All personal actions on any contract not limited by this chapter or any other law of this state shall be brought within 10 years after the accruing of the cause of action.

History: 1979 c. 323.

Judicial Council Committee's Note, 1979: This section is previous s. 893.26 renumbered for more logical placement in restructured ch. 893. [Bill 326–A]

SUBCHAPTER V

TORT ACTIONS

893.51 Action for wrongful taking of personal property. (1) Except as provided in sub. (2), an action to recover damages for the wrongful taking, conversion or detention of personal property shall be commenced within 6 years after the cause of action accrues or be barred. The cause of action accrues at the time the wrongful taking or conversion occurs, or the wrongful detention begins.

(2) An action under s. 134.90 shall be commenced within 3 years after the misappropriation of a trade secret is discovered or should have been discovered by the exercise of reasonable diligence. A continuing misappropriation constitutes a single claim.

History: 1979 c. 323; 1985 a. 236.

Judicial Council Committee's Note, 1979: This section is based on previous s. 893.19 (6), without change in substance, but with some expansion of language to make clear that accrual of the cause of action is not delayed until the person bringing the action learns of the wrongful taking or detention. An action for recovery of the personal property is subject to s. 893.35 which is also based on previous s. 893.19 (6). [Bill 326–A]

A wrongful detention claim is separate from a conversion claim. A wrongful detention claim may arise against a possessor of previously converted or wrongfully taken property. Under those facts, a wrongful detention claim is available and, for purposes of sub. (1) and s. 893.35, accrues at the time the property is obtained. No demand is necessary. Mueller v. TL90108, LLC, 2020 WI 7, 390 Wis. 2d 34, 938 N.W.2d 566, 17–1962.

Sub. (1) and s. 893.35 are statutes of repose, not statutes of limitation. A statute of repose provides that a cause of action must be commenced within a specified amount of time after the defendant's action that allegedly led to injury, regardless of whether the plaintiff has discovered the injury or wrongdoing. With regard to a wrongful detention claim, the statutes focus on when the wrongful detention begins, not when the property owner discovers or knows of the detention. Mueller v. TL90108, LLC, 2020 WI 7, 390 Wis. 2d 34, 938 N.W.2d 566, 17–1962.

893.52 Action for damages for injury to property. (1) Except as provided in sub. (2) and in any other case where a different period is expressly prescribed, an action, not arising on contract, to recover damages for an injury to real or personal property shall be commenced within 6 years after the cause of action accrues or be barred.

(2) An action, not arising on contract, to recover damages for an injury to real or personal property that are caused or sustained by, or that arise from, an accident involving a motor vehicle shall be commenced within 3 years after the cause of action accrues or be barred.

History: 1979 c. 323; 2015 a. 133.

Judicial Council Committee's Note, 1979: This section is based upon previous s. 893.19 (5) which is split into 2 separate provisions. See s. 893.53 for the other provision. [Bill 326–A]

Section 893.19 (5) [now this section] applies to actions based on negligent construction of dwellings. The statute begins to run when the plaintiff suffers injury. Abramowski v. Wm. Kilps Sons Realty, Inc., 80 Wis. 2d 468, 259 N.W.2d 306 (1977).

The limitation period begins when evidence of resultant injury is sufficiently significant to alert the injured party to the possibility of a defect. Tallmadge v. Skyline Construction, Inc., 86 Wis. 2d 356, 272 N.W.2d 404 (Ct. App. 1978).

In actions for legal malpractice, the date of injury, rather than the date of the negligent act, commences the period of limitations. Auric v. Continental Casualty Co., 111 Wis. 2d 507, 331 N.W.2d 325 (1983).

A cause of action accrues when the negligent act occurs, or the last in a continuum of negligent acts occur, and the plaintiff has a basis for objectively concluding that the defendant caused injuries and damages. Kolpin v. Pioneer Power & Light Co., 162 Wis. 2d 1, 469 N.W.2d 595 (1991).

This section permits parties to contract for lesser limitations periods and to specify the day the period begins to run, in which case the "discovery rule" does not apply. Keiting v. Skauge, 198 Wis. 2d 887, 543 N.W.2d 565 (Ct. App. 1995), 95–2259.

A claim for asbestos property damage accrues when the plaintiff is informed of the presence of asbestos and that precautions are necessary. Banc One Building Management Corp. v. W.R. Grace Co., 210 Wis. 2d 62, 565 N.W.2d 154 (Ct. App. 1997), 95–3193.

In the case of a claim for faulty workmanship, a builder's representation can result in a justifiable delay in discovering the cause of an injury. Whether the plaintiff's course of conduct is reasonable is a question of fact. Williams v. Kaerek Builders, Inc., 212 Wis. 2d 150, 568 N.W.2d 313 (Ct. App. 1997), 96–2396.

A plaintiff can rely on the discovery rule only if the plaintiff has exercised reasonable diligence. Jacobs v. Nor–Lake, Inc., 217 Wis. 2d 625, 579 N.W.2d 254 (Ct. App. 1998), 97–1740.

A party's deficient performance of a contract does not give rise to a tort claim. There must be a duty independent of the contract for a cause of action in tort. Atkinson v. Everbrite, Inc., 224 Wis. 2d 724, 592 N.W.2d 299 (Ct. App. 1999), 98–1806.

The accrual of a stray voltage claim is governed by the discovery rule. When the defendant utility went to the farm three times and found no problem, the plaintiff could not be faulted for accepting the results of the utility's testing and continuing to search for other possible sources of the problem. Allen v. Wisconsin Public Service Corp., 2005 WI App 40, 279 Wis. 2d 488, 694 N.W.2d 420, 03–2690.

Section 893.57, and not this section, applies to a claim alleging intentional trespass. Because the existence of damages for injury to real property is not necessary to maintain a claim for intentional trespass, sub. (1) cannot govern an intentional trespass

claim. Munger v. Seehafer, 2016 WI App 89, 372 Wis. 2d 749, 890 N.W.2d 22, 14−2594.

An action for a permanent nuisance must be filed within the applicable statutes of limitations, but an action for a continuing nuisance may be maintained beyond the ordinary statutes of limitations. The appropriate factors to consider in deciding whether a nuisance is continuing are: 1) whether it constitutes an ongoing or repeated disturbance or harm; and 2) whether it can be discontinued or abated. If both factors are present, a nuisance is deemed to be continuing. In this case, claims for nuisance based on property damage that related to disrupted "views and vistas" accrued when wind turbines were erected, and those claims were for permanent nuisances, not continuing nuisances. Therefore, the claims were subject to sub. (1). Enz v. Duke Energy Renewable Services, Inc., 2023 WI App 24, 407 Wis. 2d 728, 991 N.W.2d 423, 21−0989.

893.53 Action for injury to character or other rights.

An action to recover damages for an injury to the character or rights of another, not arising on contract, shall be commenced within 3 years after the cause of action accrues, except where a different period is expressly prescribed, or be barred.

History: 1979 c. 323; 2017 a. 235.

Judicial Council Committee's Note, 1979: This section is based upon previous s. 893.19 (5) which is split into 2 provisions. See s. 893.52 for the other provision. [Bill 326]

This section applies to legal malpractice actions that sound in tort. Acharya v. Carroll, 152 Wis. 2d 330, 448 N.W.2d 275 (Ct. App. 1989).

Discussing the application of the discovery rule to legal malpractice actions. Hennekens v. Hoerl, 160 Wis. 2d 144, 465 N.W.2d 812 (1991).

This section and the discovery rule apply to engineering malpractice actions. Milwaukee Partners v. Collins Engineers, Inc., 169 Wis. 2d 355, 485 N.W.2d 274 (Ct. App. 1992).

This section is the state's general and residual personal injury statute of limitations and is applicable to 42 USC 1983 actions. Hemberger v. Bitzer, 216 Wis. 2d 509, 574 N.W.2d 656 (1998), 96−2973.

A party's deficient performance of a contract does not give rise to a tort claim. There must be a duty independent of the contract for a cause of action in tort. Atkinson v. Everbrite, Inc., 224 Wis. 2d 724, 592 N.W.2d 299 (Ct. App. 1999), 98−1806.

Even though a plaintiff might plead and testify to having suffered emotional distress on account of a lawyer's malpractice, that fact does not convert the claim into one seeking redress for injuries to the person. The underlying injuries in a legal malpractice claim are to rights and interests of a plaintiff that go beyond, or at least are different from, injuries to the plaintiff's person under s. 893.54. Hicks v. Nunnery, 2002 WI App 87, 253 Wis. 2d 721, 643 N.W.2d 809, 01−0751.

The residual or general personal injury statute of limitations applies to 42 USC 1983 actions. Owens v. Okure, 488 U.S. 235, 109 S. Ct. 573, 102 L. Ed. 2d 594 (1989).

While the court borrows the state's limitations period for an action under 42 USC 1983, federal law determines the action's accrual date. Because habeas corpus is the exclusive remedy for a state prisoner who challenges the fact or duration of the prisoner's confinement and seeks immediate or speedier release, any section 1983 action challenging the fact or length of confinement does not accrue until the underlying confinement has been invalidated through a direct appeal, post−conviction relief, or some other means. Huber v. Anderson, 909 F.3d 201 (2018).

This section applies to actions under Title II of the federal Americans with Disabilities Act. Doe v. County of Milwaukee, 871 F. Supp. 1072 (1995).

Cross−reference: See also the notes to s. 893.54 for additional treatments of 42 USC 1983.

893.54 Injury to the person.

(1m) Except as provided in sub. (2m), the following actions shall be commenced within 3 years or be barred:

(a) An action to recover damages for injuries to the person, including an action to recover damages for injuries to the person caused or sustained by or arising from an accident involving a motor vehicle.

(b) An action brought to recover damages for death caused by the wrongful act, neglect or default of another.

(2m) An action brought to recover damages for death caused by the wrongful act, neglect, or default of another and arising from an accident involving a motor vehicle shall be commenced within 2 years after the cause of action accrues or be barred.

History: 1979 c. 323; 2015 a. 133.

Judicial Council Committee's Note, 1979: This section is derived from previous s. 893.205 but was amended to eliminate language now covered by newly created s. 893.07. (See note to s. 893.07). [Bill 326−A]

Because the parents' claim arising from an injury to their minor child was filed along with the child's claim within the time period for the child's claim under s. 893.18, the parents' claim was not barred by this section. Korth v. American Family Insurance Co., 115 Wis. 2d 326, 340 N.W.2d 494 (1983).

This section and s. 893.80 both apply to personal injury actions against governmental entities. Schwetz v. Employers Insurance of Wausau, 126 Wis. 2d 32, 374 N.W.2d 241 (Ct. App. 1985).

When a plaintiff's early subjective lay person's belief that a furnace caused the injury was contradicted by examining physicians, the cause of action against the furnace company did not accrue until the plaintiff's suspicion was confirmed by later medical diagnosis. Borello v. U.S. Oil Co., 130 Wis. 2d 397, 388 N.W.2d 140 (1986).

While adoptive parents were aware of the possibility that their child might develop a disease in the future, a cause of action did not accrue until the child was diagnosed as having the disease. Meracle v. Children's Service Society of Wisconsin, 149 Wis. 2d 19, 437 N.W.2d 532 (1989).

When a doctor initially diagnosed a defective prosthesis, but advised surgery as the only way to determine what exactly was wrong, the plaintiff's cause of action against the prosthesis manufacturer accrued when the diagnosis was confirmed by surgery. S.J.D. v. Mentor Corp., 159 Wis. 2d 261, 463 N.W.2d 873 (Ct. App. 1990).

The brain damaged accident victim's cause of action accrued when the victim discovered, or when a person of the same degree of mental and physical handicap under the same or similar circumstances should have discovered, the injury, its cause and nature, and the defendants' identities. Carlson v. Pepin County, 167 Wis. 2d 345, 481 N.W.2d 498 (Ct. App. 1992).

Claimed ignorance of, and a blatant failure to follow, applicable regulations cannot be construed as reasonable diligence in discovering an injury when following the rule would have resulted in earlier discovery. Stroh Die Casting Co. v. Monsanto Co., 177 Wis. 2d 91, 502 N.W.2d 132 (Ct. App. 1993).

The discovery rule does not allow a plaintiff to delay the statute of limitations until the extent of the injury is known. The statute begins to run when the plaintiff has sufficient evidence that a wrong has been committed by an identified person. Pritzlaff v. Archdiocese of Milwaukee, 194 Wis. 2d 302, 533 N.W.2d 780 (1995).

A claim of repressed memory does not indefinitely toll the statute of limitations nor delay the accrual of a cause of action, regardless of the victim's minority or the position of trust occupied by the alleged perpetrator. Doe v. Archdiocese of Milwaukee, 211 Wis. 2d 312, 565 N.W.2d 94 (1997), 94−0423.

Parents' claims for injury resulting from the sexual assault of their child accrue when the child's claims accrue, regardless of when the parents learn of their claims. Joseph W. v. Catholic Diocese of Madison, 212 Wis. 2d 925, 569 N.W.2d 795 (Ct. App. 1997), 96−2220.

Section 893.53 is the state's general and residual personal injury statute of limitations and is applicable to 42 USC 1983 actions. Hemberger v. Bitzer, 216 Wis. 2d 509, 574 N.W.2d 656 (1998), 96−2973.

The diagnosis of a non−malignant asbestos−related lung pathology did not trigger the statute of limitations with respect to a later−diagnosed, distinct malignant asbestos−related condition. Because the malignancy could not have been predicted when an earlier action relating to the non−malignant condition was dismissed on the merits, the doctrine of claim preclusion was not applied to bar the plaintiff's action. Sopha v. Owens−Corning Fiberglas Corp., 230 Wis. 2d 212, 601 N.W.2d 627 (1999), 98−1343.

The statute of limitations for subrogation claims is the statute of limitations on the underlying tort. Schwittay v. Sheboygan Falls Mutual Ins. Co., 2001 WI App 140, 246 Wis. 2d 385, 630 N.W.2d 772, 00−2445.

Even though a plaintiff might plead and testify to having suffered emotional distress on account of a lawyer's malpractice, that fact does not convert the claim into one seeking redress for injuries to the person. The underlying injuries in a legal malpractice claim are to rights and interests of a plaintiff that go beyond, or at least are different from, injuries to the plaintiff's person under this section. Hicks v. Nunnery, 2002 WI App 87, 253 Wis. 2d 721, 643 N.W.2d 809, 01−0751.

Knowing that a particular product caused an injury, an injured party cannot extend the accrual date for a cause of action against the product's manufacturer due to the subsequent discovery of possible connections between that product and another manufacturer's product in causing the injury. Baldwin v. Badger Mining Corp., 2003 WI App 95, 264 Wis. 2d 301, 663 N.W.2d 382, 02−1197.

Claims of negligent supervision made against an archdiocese for injuries caused by sexual assaults by priests are derivative of the underlying sexual molestations by the priests. As claims for injuries resulting from sexual assault accrue by the time of the last incident of sexual assault, the derivative claims accrue, as a matter of law, by the time of the last incident of sexual assault. Doe v. Archdiocese of Milwaukee, 2007 WI 95, 303 Wis. 2d 34, 734 N.W.2d 827, 05−1945.

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

When an action to recover damages for injuries to the person is commenced as a counterclaim pursuant to s. 893.14, the statute of limitations established by this section applies. Donaldson v. West Bend Mutual Insurance Co., 2009 WI App 134, 321 Wis. 2d 244, 773 N.W.2d 470, 08−2289.

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

An action for a permanent nuisance must be filed within the applicable statutes of limitations, but an action for a continuing nuisance may be maintained beyond the ordinary statutes of limitations. The appropriate factors to consider in deciding whether a nuisance is continuing are: 1) whether it constitutes an ongoing or repeated disturbance or harm; and 2) whether it can be discontinued or abated. If both factors are present, a nuisance is deemed to be continuing. In this case, the plaintiffs' claims for nuisance based on personal injury were barred by sub. (1m) (a) because the wind turbines alleged to have caused their injuries were no longer causing ongoing or repeated disturbance or harm after the plaintiffs moved out of their homes and their physical symptoms ceased and therefore did not constitute a continuous nuisance. Enz v. Duke Energy Renewable Services, Inc., 2023 WI App 24, 407 Wis. 2d 728, 991 N.W.2d 423, 21−0989.

Federal civil rights actions under 42 USC 1983 are best characterized as personal injury actions. Wilson v. Garcia, 471 U.S. 261, 105 S. Ct. 1938, 85 L. Ed. 2d 254 (1985).

The residual or general personal injury statute of limitations applies to 42 USC 1983 actions. Owens v. Okure, 488 U.S. 235, 109 S. Ct. 573, 102 L. Ed. 2d 594 (1989).

Cross−reference: See also the notes to s. 893.53 for additional treatments of 42 USC 1983.

893.55 Medical malpractice; limitation of actions; limitation of damages; itemization of damages. (1d) (a) The objective of the treatment of this section is to ensure affordable and accessible health care for all of the citizens of Wisconsin while providing adequate compensation to the victims of medical malpractice. Achieving this objective requires a balancing of many interests. Based upon documentary evidence, testimony received at legislative hearings, and other relevant information, the legislature finds that a limitation on the amount of noneconomic damages recoverable by a claimant or plaintiff for acts or omissions of a health care provider, together with mandatory liability coverage for health care providers and mandatory participation in the injured patients and families compensation fund by health care providers, while compensating victims of medical malpractice in appropriate circumstances by the availability of unlimited economic damages, ensures that these objectives are achieved. Establishing a limitation on noneconomic damage awards accomplishes the objective by doing all of the following:

1. Protecting access to health care services across the state and across medical specialties by limiting the disincentives for physicians to practice medicine in Wisconsin, such as the unavailability of professional liability insurance coverage, the high cost of insurance premiums, large fund assessments, and unpredictable or large noneconomic damage awards, as recognized by a 2003 U.S. congress joint economic committee report, a 2003 federal department of health and human services study, and a 2004 office of the commissioner of insurance report.

2. Helping contain health care costs by limiting the incentive to practice defensive medicine, which increases the cost of patient care, as recognized by a 2002 federal department of health and human services study, a 2003 U.S. congress joint economic committee report, a 2003 federal government accounting office study, and a 2005 office of the commissioner of insurance report.

3. Helping contain health care costs by providing more predictability in noneconomic damage awards, allowing insurers to set insurance premiums that better reflect such insurers' financial risk, as recognized by a 2003 federal department of health and human services study.

4. Helping contain health care costs by providing more predictability in noneconomic damage awards in order to protect the financial integrity of the fund and allow the fund's board of governors to approve reasonable assessments for health care providers, as recognized by a 2005 legislative fiscal bureau memo, a 2001 legislative audit bureau report, and a 2005 office of commissioner of insurance report.

(b) The legislature further finds that the limitation of $750,000 represents an appropriate balance between providing reasonable compensation for noneconomic damages associated with medical malpractice and ensuring affordable and accessible health care. This finding is based on actuarial studies provided to the legislature, the experiences of other states with and without limitations on noneconomic damages associated with medical malpractice, the testimony of experts, and other documentary evidence presented to the legislature.

(c) Based on actuarial studies, documentary evidence, testimony, and the experiences of other states, the legislature concludes there is a dollar figure so low as to deprive the injured victim of reasonable noneconomic damages, and there is a dollar figure at which the cap number is so high that it fails to accomplish the goals of affordable and accessible health care. The legislature concludes that the number chosen is neither too high nor too low to accomplish the goals of affordable and accessible health care, is a reasonable and rational response to the current medical liability situation, and is reasonably and rationally supported by the legislative record.

(1m) Except as provided by subs. (2) and (3), an action to recover damages for injury arising from any treatment or operation performed by, or from any omission by, a person who is a health care provider, regardless of the theory on which the action is based, shall be commenced within the later of:

(a) Three years from the date of the injury, or

(b) One year from the date the injury was discovered or, in the exercise of reasonable diligence should have been discovered, except that an action may not be commenced under this paragraph more than 5 years from the date of the act or omission.

(2) If a health care provider conceals from a patient a prior act or omission of the provider which has resulted in injury to the patient, an action shall be commenced within one year from the date the patient discovers the concealment or, in the exercise of reasonable diligence, should have discovered the concealment or within the time limitation provided by sub. (1m), whichever is later.

(3) When a foreign object which has no therapeutic or diagnostic purpose or effect has been left in a patient's body, an action shall be commenced within one year after the patient is aware or, in the exercise of reasonable care, should have been aware of the presence of the object or within the time limitation provided by sub. (1m), whichever is later.

(4) (a) In this subsection, "noneconomic damages" means moneys intended to compensate for pain and suffering; humiliation; embarrassment; worry; mental distress; noneconomic effects of disability including loss of enjoyment of the normal activities, benefits and pleasures of life and loss of mental or physical health, well−being or bodily functions; loss of consortium, society and companionship; or loss of love and affection.

(b) The total noneconomic damages recoverable for bodily injury, including any action or proceeding based on contribution or indemnification and any action for a claim by a person other than the injured person for noneconomic damages recoverable for bodily injury, may not exceed the limit under par. (d) for each occurrence on or after April 6, 2006, from all health care providers and all employees of health care providers acting within the scope of their employment and providing health care services who are found negligent and from the injured patients and families compensation fund.

(c) A court in an action tried without a jury shall make a finding as to noneconomic damages without regard to the limit under par. (d). If noneconomic damages in excess of the limit are found, the court shall make any reduction required under s. 895.045 and shall award as noneconomic damages the lesser of the reduced amount or the limit. If an action is before a jury, the jury shall make a finding as to noneconomic damages without regard to the limit under par. (d). If the jury finds that noneconomic damages exceed the limit, the jury shall make any reduction required under s. 895.045 and the court shall award as noneconomic damages the lesser of the reduced amount or the limit.

(d) 1. The limit on total noneconomic damages for each occurrence under par. (b) on or after April 6, 2006, shall be $750,000.

2. The board of governors created under s. 619.04 (3) shall submit a report to the legislature as provided under s. 13.172 (2) by January 1 of every odd numbered year of any recommended changes to the limits on noneconomic damages established in subd. 1. The report shall include the reasons why the changes are necessary to meet the intent of the legislative findings under sub. (1d).

(e) Economic damages recovered under ch. 655 for bodily injury or death, including any action or proceeding based on contribution or indemnification, shall be determined for the period during which the damages are expected to accrue, taking into account the estimated life expectancy of the person, then reduced to present value, taking into account the effects of inflation.

(f) Notwithstanding the limits on noneconomic damages under this subsection, damages recoverable against health care providers and an employee of a health care provider, acting within the

scope of his or her employment and providing health care services, for wrongful death are subject to the limit under s. 895.04 (4). If damages in excess of the limit under s. 895.04 (4) are found, the court shall make any reduction required under s. 895.045 and shall award the lesser of the reduced amount or the limit under s. 895.04 (4).

(5) Every award of damages under ch. 655 shall specify the sum of money, if any, awarded for each of the following for each claimant for the period from the date of injury to the date of award and for the period after the date of award, without regard to the limit under sub. (4) (d):

(a) Pain, suffering and noneconomic effects of disability.

(b) Loss of consortium, society and companionship or loss of love and affection.

(c) Loss of earnings or earning capacity.

(d) Each element of medical expenses.

(e) Other economic injuries and damages.

(6) Damages recoverable under this section against health care providers and an employee of a health care provider, acting within the scope of his or her employment and providing health care services, are subject to the provisions of s. 895.045.

(7) Evidence of any compensation for bodily injury received from sources other than the defendant to compensate the claimant for the injury is admissible in an action to recover damages for medical malpractice. This section does not limit the substantive or procedural rights of persons who have claims based upon subrogation.

History: 1979 c. 323; 1985 a. 340; 1995 a. 10; 2003 a. 111; 2005 a. 183; 2007 a. 96.

Judicial Council Committee's Note, 1979: This section has been created to precisely set out the time periods within which an action to recover damages for medical malpractice must be commenced. The time provisions apply to any health care provider in Wisconsin.

Sub. (1) [now sub. (1m)] contains the general time limitations for commencing a malpractice action. The subsection requires that such an action be commenced not later than 3 years from the event constituting the malpractice or not more than one year from the time the malpractice is discovered by the patient or should have been discovered by the patient. The patient has either the 3−year general time period or the one−year time period from the date of discovery, whichever is later. Subsection (1) further provides that in no event may a malpractice action be commenced later than 6 [5] years from the time of the alleged act or omission.

Subs. (2) and (3) provide 2 exceptions to the one−, three−, and six−year time limitations contained in subsection (1) [now sub. (1m)]. Subsection (2) provides that when a health care provider becomes aware of an act or omission constituting possible malpractice and intentionally conceals the act or omission from the patient, the patient has one year from the time he or she discovers the concealment or should have discovered the concealment to commence a malpractice action.

Sub. (3) gives a patient one year from the time of discovery of a foreign object left in the patient's body or the time in which discovery should have occurred to commence a malpractice action. The subsection also contains a definition of a foreign object similar to the definition recently enacted by the state of California. [Bill 326−A]

The "continuum of negligent treatment" doctrine is not limited to a single negligent actor. Robinson v. Mount Sinai Medical Center, 137 Wis. 2d 1, 402 N.W.2d 711 (1987).

While an unsubstantiated lay belief of an injury is not sufficient for discovery under sub. (1) (b) [now sub. (1m) (b)], if the plaintiff has information that constitutes a basis for an objective belief of the injury and its cause, whether or not that belief resulted from "official" diagnosis from an expert, the injury and its cause are discovered. Clark v. Erdmann, 161 Wis. 2d 428, 468 N.W.2d 18 (1991).

A podiatrist is a "health care provider" under this section. Clark v. Erdmann, 161 Wis. 2d 428, 468 N.W.2d 18 (1991).

A physician's intentional improper sexual touching of a patient was subject to s. 893.57 governing intentional torts, not this section governing medical malpractice. Deborah S.S. v. Yogesh N.G., 175 Wis. 2d 436, 499 N.W.2d 272 (Ct. App. 1993).

A blood bank is not a "health care provider." Doe v. American National Red Cross, 176 Wis. 2d 610, 500 N.W.2d 264 (1993).

Parents who did not obtain a medical opinion until more than three years after their child's death did not exercise reasonable diligence as required by the discovery rule under sub. (1) (b) [now sub. (1m) (b)]. Awve v. Physicians Insurance Co. of Wisconsin, 181 Wis. 2d 815, 512 N.W.2d 216 (Ct. App. 1994).

Minors may bring separate actions for loss of companionship when malpractice causes a parent's death, including when the decedent is survived by a spouse. Jelinek v. St. Paul Fire & Casualty Insurance Co., 182 Wis. 2d 1, 512 N.W.2d 764 (1994).

When continuous negligent treatment occurs, the statute begins to run from the date of last negligent conduct. The amount of time that passes between each allegedly negligent act is a primary factor in determining whether there has been a continuum of negligent care. Westphal v. E.I. du Pont de Nemours & Co., 192 Wis. 2d 347, 531 N.W.2d 386 (Ct. App. 1995).

Punitive damages in malpractice actions are not authorized by sub. (5) (e). Lund v. Kokemoore, 195 Wis. 2d 727, 537 N.W.2d 21 (Ct. App. 1995), 95−0453.

Dentists are health care providers under this section. Ritt v. Dental Care Associates, S.C., 199 Wis. 2d 48, 543 N.W.2d 852 (Ct. App. 1995), 94−3344.

Once a person discovers or should have discovered an injury, nothing, including a misleading legal opinion, can cause the injury to become "undiscovered." Claypool v. Levin, 209 Wis. 2d 284, 562 N.W.2d 584 (1997), 94−2457.

The date of injury under sub. (1) (a) [now sub. (1m) (a)] from a failed tubal ligation was the date on which the plaintiff became pregnant. Fojut v. Stafl, 212 Wis. 2d 827, 569 N.W.2d 737 (Ct. App. 1997), 96−1676.

This section applies to persons who are licensed by a state examining board and are involved in the diagnosis, treatment, or care of patients. Chiropractors fall within this definition. Arenz v. Bronston, 224 Wis. 2d 507, 592 N.W.2d 295 (Ct. App. 1999), 98−1357.

Optometrists are health care providers under this section. The coverage of this section is not restricted to those included under s. 655.002, but applies to all who provide medical care and are required to be licensed. Webb v. Ocularra Holding, Inc., 2000 WI App 25, 232 Wis. 2d 495, 606 N.W.2d 552, 99−0979.

Sub. (4) (f) makes the limits on damages applicable to medical malpractice death cases, but does not incorporate classification of wrongful death claimants entitled to bring such actions, which is controlled by s. 655.007. As such, adult children do not have standing to bring such an action. The exclusion of adult children does not violate the guarantee of equal protection. Czapinski v. St. Francis Hospital, Inc., 2000 WI 80, 236 Wis. 2d 316, 613 N.W.2d 120, 98−2437.

Sub. (1) (b) [now sub. (1m) (b)] does not violate article I, section 9, of the Wisconsin Constitution, the right to remedy clause, nor does it offend equal protection or procedural due process principles. Aicher v. Wisconsin Patients Compensation Fund, 2000 WI 98, 237 Wis. 2d 99, 613 N.W.2d 849, 98−2955.

A misdiagnosis, in and of itself, is not, and cannot be, an actionable injury. The injury arises when the misdiagnosis causes a greater harm than existed at the time of the misdiagnosis. The misdiagnosis may or may not result in the injury, and the injury may occur concurrently or there may be a delay between the misdiagnosis and the injury. Paul v. Skemp, 2001 WI 42, 242 Wis. 2d 507, 625 N.W.2d 860, 99−1810.

The limitation periods under sub. (1) (a) and (b) [now sub. (1m) (a) and (b)] are both tolled by the filing of a request for mediation under s. 655.44 (4). Landis v. Physicians Insurance Co. of Wisconsin, 2001 WI 86, 245 Wis. 2d 1, 628 N.W.2d 893, 00−0330.

Wrongful death claims caused by medical malpractice are subject to the statute of limitations concerning medical malpractice in sub. (1) [now sub. (1m)]. Estate of Hegarty v. Beauchaine, 2001 WI App 300, 249 Wis. 2d 142, 638 N.W.2d 355, 00−2144.

Under sub. (1) (b) [now sub. (1m) (b)], the five−year repose period applies only to actions brought pursuant to the discovery rule in sub. (1) (b) [now sub. (1m) (b)]. Sub. (1) (b) [now sub. (1m) (b)] is an alternative limitations period to that in sub. (1) (a) [now sub. (1m) (a)]. Storm v. Legion Insurance Co., 2003 WI 120, 265 Wis. 2d 169, 665 N.W.2d 353, 01−1139.

Section 893.16 tolls the period of limitations in sub. (1) (a) [now sub. (1m) (a)] for medical malpractice actions involving qualified claimants, extending the three−year limitations period up to five additional years. Storm v. Legion Insurance Co., 2003 WI 120, 265 Wis. 2d 169, 665 N.W.2d 353, 01−1139.

For purposes of determining when a cause accrues for negligently prescribing medication, a physician's duty to monitor a patient after a final visit does not continue through some vague and indefinite period during which prescriptions may or may not be filled. Any claim of an omission is for an omission that occurred in the distinct time frame the doctor either intentionally or unintentionally did not require follow−up when giving the prescription or seeing the patient. Wiegert v. Goldberg, 2004 WI App 28, 269 Wis. 2d 695, 676 N.W.2d 522, 03−0891.

A mother who suffers the stillbirth of her infant as a result of medical malpractice has a personal injury claim involving negligent infliction of emotional distress, which includes the distress arising from the injuries and stillbirth of her daughter, in addition to her derivative claim for wrongful death of the infant. That the sources of the mother's emotional injuries cannot be segregated does not mean that there is a single claim of medical malpractice subject to the single cap for noneconomic damages. Pierce v. Physicians Insurance Co. of Wisconsin, 2005 WI 14, 278 Wis. 2d 82, 692 N.W.2d 558, 01−2710.

First−year medical residents who have their M.D. degrees but are not yet licensed are not health care providers under this section and not subject to the limitations on the recovery of noneconomic damages in subs. (4) and (5). Phelps v. Physicians Insurance Co. of Wisconsin, 2005 WI 85, 282 Wis. 2d 69, 698 N.W.2d 643, 03−0580.

Sub. (7) explicitly allows evidence of collateral source payments to be introduced in medical malpractice actions. If evidence of collateral source payments from sources including Medicare, other state or federal government programs, medical insurance or write−offs, and discounted or free medical services is presented to the fact−finder, the parties must be allowed to furnish the jury with evidence of any potential obligations of subrogation or reimbursement. The circuit court must instruct the fact−finder that it must not reduce the reasonable value of medical services on the basis of the collateral source payments. Lagerstrom v. Myrtle Werth Hospital−Mayo Health System, 2005 WI 124, 285 Wis. 2d 1, 700 N.W.2d 201, 03−2027.

This section does not apply to a negligence claim alleging injury to a developmentally disabled child caused by a health care provider. The legislature has not provided a statute of limitations for claims against health care providers alleging injury to a developmentally disabled child. Haferman v. St. Clare Healthcare Foundation, Inc., 2005 WI 171, 286 Wis. 2d 621, 707 N.W.2d 853, 03−1307.

The jury award of noneconomic damages for pre−death pain and suffering, and the jury award for pre−death loss of society and companionship are governed by the cap set forth in the medical malpractice statutes, this section, and not the wrongful death statute, s. 895.04. Bartholomew v. Wisconsin Patients Compensation Fund, 2006 WI 91, 293 Wis. 2d 38, 717 N.W.2d 216, 04−2592.

When the applicability of sub. (7) to one of the physicians whose negligence caused the patient's injuries and death is unknown, the fact that the other causally negligent physician was an undisputed ch. 655 health care provider dictates the application of sub. (7). Estate of Hegarty v. Beauchaine, 2006 WI App 248, 297 Wis. 2d 70, 727 N.W.2d 857, 04−3252.

When negligent acts of malpractice are continuous and the cause of action is not complete until the last date on which the malpractice occurs, the entire course of negligent malpractice is within the court's jurisdiction. A plaintiff must show four elements for this "continuum of negligent treatment" doctrine to apply: 1) a continuum of care; 2) a continuum of negligent care; 3) the care is related to a single condition; and 4) the precipitating factor in the continuum is the original negligent act. Forbes v. Stoeckl, 2007 WI App 151, 303 Wis. 2d 425, 735 N.W.2d 536, 06−1654.

The five–year limit in sub. (1) (b) [now sub. (1m) (b)] applies only to claims brought under the "discovery rule" of sub. (1) (b) [now sub. (1m) (b)] and not to claims brought under the "injury rule of accrual" in sub. (1) (a) [now sub. (1m) (a)]. The continuum of negligent treatment doctrine modifies the three–year limit of sub. (1) (a) [now sub. (1m) (a)] and is unaffected by sub. (1) (b) [now sub. (1m) (b)], which comes into play only when a plaintiff claims that, because of a delayed discovery of an injury, the plaintiff is entitled to file an action beyond the three–year time limit in sub. (1) (a) [now sub. (1m) (a)]. Forbes v. Stoeckl, 2007 WI App 151, 303 Wis. 2d 425, 735 N.W.2d 536, 06–1654.

Neither *Fojut*, 212 Wis. 2d 827 (1997), or *Paul*, 2001 WI 42, concludes that an injury must be untreatable or irreversible to trigger the limitations period imposed by sub. (1m) (a). The determination of a "physical injurious change" (when the negligent act or omission causes a greater harm than that which existed at the time of the negligent act or omission) is the appropriate benchmark for establishing the date of injury. A later injury from the same tortious act does not restart the running of the statute of limitations. Estate of Genrich v. OHIC Insurance Co., 2009 WI 67, 318 Wis. 2d 553, 769 N.W.2d 481, 07–0541.

Because an unlicensed first–year resident physician was a borrowed employee of the hospital where the resident allegedly performed negligent acts, the relation of employer and employee existed between the resident and hospital, and accordingly, the resident was an employee of a health care provider within the meaning of ch. 655 and sub. (4). Phelps v. Physicians Insurance Co. of Wisconsin, 2009 WI 74, 319 Wis. 2d 1, 768 N.W.2d 615, 06–2599.

A fact finder cannot reasonably infer concealment under sub. (2) when a defendant has no contact with the plaintiff after an alleged negligent act or omission. Pagoudis v. Korkos, 2010 WI App 83, 326 Wis. 2d 234, 784 N.W.2d 740, 09–2965.

Evidence of collateral source payments is admissible under sub. (7) only if the evidence is relevant. In a medical malpractice action, evidence of collateral source payments is relevant if it is probative of any fact that is of consequence to the determination of damages. Weborg v. Jenny, 2012 WI 67, 341 Wis. 2d 668, 816 N.W.2d 191, 10–0258.

In a medical malpractice claim based on unnecessary and improper treatment of inappropriate touching, the "physical injurious change," for purposes of determining the date of injury under sub. (1m) (a), occurs at the time of the touching. The fact that the patient may not have known at the time that the touching was inappropriate does not change this fact. Doe v. Mayo Clinic Health System–Eau Claire Clinic, Inc., 2016 WI 48, 369 Wis. 2d 351, 880 N.W.2d 681, 14–1177.

The $750,000 cap on noneconomic damages in medical malpractice judgments and settlements under sub. (4) (d) 1. is constitutional based on equal protection and due process grounds. Mayo v. Wisconsin Injured Patients & Families Compensation Fund, 2018 WI 78, 383 Wis. 2d 1, 914 N.W.2d 678, 14–2812.

A medical malpractice claim accrues under sub. (1m) (a) when a misdiagnosis causes an "injurious change," or a "greater harm," to the plaintiff. When a medical malpractice claim is based on a misdiagnosis or failure to diagnose, the greater harm is the development of the problem into a more serious condition that poses a greater danger to the plaintiff or worsened prognosis. Winzer v. Hartmann, 2021 WI App 68, 399 Wis. 2d 555, 966 N.W.2d 101, 19–1540.

The Constitutionality of Wisconsin's Noneconomic Damage Limitation. Peacy. 72 MLR 235 (1989).

Wisconsin's Caps on Noneconomic Damages in Medical Malpractice Cases: Where Wisconsin Stands (and Should Stand) on "Tort Reform." Kenitz. 89 MLR 601 (2006).

Bartholomew: The Wisconsin Supreme Court's Latest Foray into the Medical–Malpractice Thicket. Spencer. 2007 WLR 1121.

Tort Reform: It's Not About Victims ... It's About Lawyers. Scoptur. Wis. Law. June 1995.

893.555 Limitation of damages; long–term care providers. (1) In this section:

(a) "Long–term care provider" means any of the following:

1. An adult family home, as defined in s. 50.01 (1).

2. A residential care apartment complex, as defined in s. 50.01 (6d).

3. A community–based residential facility, as defined in s. 50.01 (1g).

4. A home health agency, as defined in s. 50.01 (1r).

5. A nursing home, as defined in s. 50.01 (3).

6. A hospice, as defined in s. 50.90 (1).

(b) "Noneconomic damages" has the meaning given in s. 893.55 (4) (a).

(2) Except as provided in sub. (3), an action to recover damages for injury arising from any treatment or operation performed by, or from any omission by, a long–term care provider, regardless of the theory on which the action is based, shall be commenced within the later of:

(a) Three years from the date of the injury.

(b) One year from the date the injury was discovered or, in the exercise of reasonable diligence should have been discovered, except that an action may not be commenced under this paragraph more than 5 years from the date of the act or omission.

(3) If a long–term care provider conceals from a patient a prior act or omission of the provider that has resulted in injury to the patient, an action shall be commenced within one year from the date the patient discovers the concealment or, in the exercise of reasonable diligence, should have discovered the concealment or within the time limitation provided by sub. (2), whichever is later.

(4) The total noneconomic damages recoverable for bodily injury arising from care or treatment performed, or from any omission, by a long–term care provider, including any action or proceeding based on contribution or indemnification and any action for a claim by a person other than the injured person for noneconomic damages recoverable for bodily injury, may not exceed the limit under s. 893.55 (4) (d) for each occurrence on or after February 1, 2011, from all long–term care providers and all employees of long–term care providers acting within the scope of their employment and providing long–term care services who are found negligent.

(5) A court in an action tried without a jury shall make a finding as to noneconomic damages without regard to the limit under s. 893.55 (4) (d). If noneconomic damages in excess of the limit are found, the court shall make any reduction required under s. 895.045 and shall award as noneconomic damages the lesser of the reduced amount or the limit. If an action is before a jury, the jury shall make a finding as to noneconomic damages without regard to the limit under s. 893.55 (4) (d). If the jury finds that noneconomic damages exceed the limit, the jury shall make any reduction required under s. 895.045 and the court shall award as noneconomic damages the lesser of the reduced amount or the limit.

(6) Notwithstanding the limits on noneconomic damages under this section, damages recoverable against a long–term care provider, and an employee of a long–term care provider acting within the scope of his or her employment and providing long–term care services, for wrongful death are subject to the limit under s. 895.04 (4). If damages in excess of the limit under s. 895.04 (4) are found, the court shall make any reduction required under s. 895.045 and shall award the lesser of the reduced amount or the limit under s. 895.04 (4).

(7) Damages recoverable under this section against a long–term care provider, and an employee of a long–term care provider acting within the scope of his or her employment and providing long–term care services, are subject to the provisions of s. 895.045.

(8) Evidence of any compensation for bodily injury received from sources other than the defendant to compensate the claimant for the injury is admissible in an action to recover damages for negligence by a long–term care provider. This section does not limit the substantive or procedural rights of persons who have claims based upon subrogation.

History: 2011 a. 2; 2013 a. 165 s. 114.

893.56 Health care providers; minors actions. Any person under the age of 18, who is not under disability by reason of insanity, developmental disability or imprisonment, shall bring an action to recover damages for injuries to the person arising from any treatment or operation performed by, or for any omission by a health care provider within the time limitation under s. 893.55 or by the time that person reaches the age of 10 years, whichever is later. That action shall be brought by the parent, guardian or other person having custody of the minor within the time limit set forth in this section.

History: 1977 c. 390; 1979 c. 323.

Judicial Council Committee's Note, 1979: This section is previous s. 893.235 renumbered for more logical placement in restructured ch. 893. [Bill 326–A]

This section applies only to living minors. Awve v. Physicians Insurance Co. of Wisconsin, 181 Wis. 2d 815, 512 N.W.2d 216 (Ct. App. 1994).

This section does not violate article I, section 9, of the Wisconsin Constitution, the right to remedy clause, nor does it offend equal protection or procedural due process principles. Aicher v. Wisconsin Patients Compensation Fund, 2000 WI 98, 237 Wis. 2d 99, 613 N.W.2d 849, 98–2955.

This section does not apply to a negligence claim alleging injury to a developmentally disabled child caused by a health care provider. The legislature has not provided a statute of limitations for claims against health care providers alleging injury to a developmentally disabled child. Haferman v. St. Clare Healthcare Foundation, Inc., 2005 WI 171, 286 Wis. 2d 621, 707 N.W.2d 853, 03–1307.

893.57 Intentional torts. An action to recover damages for libel, slander, assault, battery, invasion of privacy, false imprisonment or other intentional tort to the person shall be commenced within 3 years after the cause of action accrues or be barred.

History: 1979 c. 323; 2009 a. 120.

Judicial Council Committee's Note, 1979: This section is previous s. 893.21 (2) renumbered for more logical placement in restructured ch. 893. [Bill 326−A]

This section governs the intentional tort of bad faith by an insurer. Warmka v. Hartland Cicero Mutual Insurance Co., 136 Wis. 2d 31, 400 N.W.2d 923 (1987).

A cause of action does not accrue until the plaintiff knows the tortfeasor's identity or reasonably should have discovered it. Spitler v. Dean, 148 Wis. 2d 630, 436 N.W.2d 308 (1989).

A physician's intentional improper sexual touching of a patient was subject to this section governing intentional torts, not s. 893.55 governing medical malpractice. Deborah S.S. v. Yogesh N.G., 175 Wis. 2d 436, 499 N.W.2d 272 (Ct. App. 1993).

A claim involving excessive use of force in an arrest constitutes an intentional tort subject to this section. Kofler v. Florence, 216 Wis. 2d 41, 573 N.W.2d 568 (Ct. App. 1997), 97−1922.

This section is applicable to a breach of fiduciary duty claim. Beloit Liquidating Trust v. Grade, 2004 WI 39, 270 Wis. 2d 356, 677 N.W.2d 298, 02−2035.

A breach of the fiduciary duty of loyalty is an intentional tort subject to the statute of limitations in this section. Zastrow v. Journal Communications, Inc., 2006 WI 72, 291 Wis. 2d 426, 718 N.W.2d 51, 04−0276.

The notion that each "hit" or viewing of information on the Internet should be considered a new publication of allegedly defamatory statements that retriggers the statute of limitations is rejected. Ladd v. Uecker, 2010 WI App 28, 323 Wis. 2d 798, 780 N.W.2d 216, 09−0596.

A tort to the person is a tort involving or consisting in an injury to one's person, reputation, or feelings, as distinguished from an injury or damage to real or personal property. Because malicious prosecution is an intentional tort to the person, the two−year [now three−year] statute of limitations in this section applies. Turner v. Sanoski, 2010 WI App 92, 327 Wis. 2d 503; 787 N.W.2d 429, 09−1319.

This section applies to a claim alleging intentional trespass. Given that the phrase "to the person" must be given meaning, it may seem to connote a personal injury that is physical in nature. However, a tort "to the person" is a tort involving or consisting in an injury to one's person, reputation, or feelings, as distinguished from an injury or damage to real or personal property. Intentional trespass is a personal tort: it is an offense against another's possession, including the person's right to exclude others from the person's real property, and the corresponding feeling of security the person may achieve in doing so. Munger v. Seehafer, 2016 WI App 89, 372 Wis. 2d 749, 890 N.W.2d 22, 14−2594.

This section governed the plaintiff's claim for intentional interference with contract. Tilstra v. Bou−Matic, LLC, 1 F. Supp. 3d 900 (2014).

893.58 Actions concerning seduction. All actions for damages for seduction shall be commenced within one year after the cause of action accrues or be barred.

History: 1979 c. 323.

Judicial Council Committee's Note, 1979: This section is previous s. 893.22 (2) renumbered for more logical placement in restructured ch. 893. [Bill 326−A]

Since the mother's counterclaim was served within one year from the date alleged of the last alleged act of seduction, the cause of action was not barred by the one−year statute of limitations. Slawek v. Stroh, 62 Wis. 2d 295, 215 N.W.2d 9 (1974).

893.585 Sexual exploitation by a therapist. (1) Notwithstanding ss. 893.54, 893.55, and 893.57, an action under s. 895.441 for damages shall be commenced within 3 years after the cause of action accrues or be barred.

(2) If a person entitled to bring an action under s. 895.441 is unable to bring the action due to the effects of the sexual contact or due to any threats, instructions, or statements from the therapist, the period of inability is not part of the time limited for the commencement of the action, except that this subsection shall not extend the time limitation by more than 15 years.

(3) This section does not apply to damages incurred under s. 895.442.

History: 1985 a. 275; 2003 a. 279; 2005 a. 155.

893.587 Sexual assault of a child; limitation. An action to recover damages for injury caused by an act that would constitute a violation of s. 948.02, 948.025, 948.06, 948.085, or 948.095 or would create a cause of action under s. 895.442 shall be commenced before the injured party reaches the age of 35 years or be barred.

History: 1987 a. 332; 2001 a. 16; 2003 a. 279; 2005 a. 155, 277; 2007 a. 97.

A victim's action was time barred when "flashbacks" more than two years prior to commencing suit made the victim aware of incest that allegedly occurred more than 50 years earlier. The action was barred despite evidence that the victim was unable to shift the blame from herself at the time of discovery. Byrne v. Bercker, 176 Wis. 2d 1037, 501 N.W.2d 402 (1993).

An adult victim of incest, who at the time of the incestuous act was aware of the identity of the tortfeasor and the impropriety of the conduct, did not qualify for tolling of the statute of limitations under the discovery rule because the victim was unaware of the psychological harm that might occur. Cheryl D. v. Estate of Robert D.B., 207 Wis. 2d 548, 559 N.W.2d 272 (Ct. App. 1996), 95−3510.

Claims for injury caused by an archdiocese's alleged fraudulent misrepresentation that the archdiocese did not know that priests it assigned had histories of sexually abusing children and did not know the priests were dangerous to children were not barred by this section. None of the listed statutes in this section refers to fraudulent misrepresentations. Doe v. Archdiocese of Milwaukee, 2007 WI 95, 303 Wis. 2d 34, 734 N.W.2d 827, 05−1945.

The limitations period in this section applies only to claims alleging that the defendant caused the plaintiff's injury by committing an enumerated act. In this case, the issue was not whether the plaintiff could sue the individual who sexually assaulted the plaintiff as a child. The plaintiff's action to recover damages was for injury caused by a non−profit organization's act of negligently hiring, retaining, and supervising that individual. Because the plaintiff did not allege that the organization committed an enumerated injury−causing act, the plaintiff's claim was not an action to recover damages to which this section applied. The governing time limit was instead the three−year statute of limitations under s. 893.54, as extended by s. 893.16. Fleming v. Amateur Athletic Union of the United States, Inc., 2023 WI 40, 407 Wis. 2d 273, 990 N.W.2d 244, 21−1054.

893.59 Actions concerning damage to highway or railroad grade. An action under s. 88.87 (3) (b) to recover damages to a highway or railroad grade shall be commenced within 90 days after the alleged damage occurred or be barred.

History: 1979 c. 323.

Judicial Council Committee's Note, 1979: This section has been created to place into ch. 893 the statute of limitations for an action to recover damages to a highway or railroad grade. (See note following s. 88.87 (3) (b)). [Bill 326−A]

SUBCHAPTER VI

ACTIONS RELATED TO FINANCIAL TRANSACTIONS OR GOVERNMENTAL OBLIGATIONS

893.60 What actions not affected. Actions against directors or stockholders of a moneyed corporation or banking association or against managers or members of a limited liability company to recover a forfeiture imposed or to enforce a liability created by law shall be commenced within 6 years after the discovery by the aggrieved party of the facts upon which the forfeiture attached or the liability was created or be barred.

History: 1979 c. 323; 1993 a. 112.

Judicial Council Committee's Note, 1979: This section is previous s. 893.51 renumbered for more logical placement in restructured ch. 893. [Bill 326−A]

893.61 Contract for payment of money; governmental subdivisions. An action upon any bond, coupon, interest warrant or other contract for the payment of money, whether sealed or otherwise, made or issued by any town, county, city, village, school district or technical college district in this state shall be commenced within 6 years after the cause of action accrues or be barred.

History: 1979 c. 323; 1993 a. 399.

Judicial Council Committee's Note, 1979: This section is previous s. 893.19 (2) renumbered for more logical placement in restructured ch. 893. [Bill 326−A]

893.62 Action concerning usury. An action under s. 138.06 (3) for interest, principal and charges paid on a loan or forbearance shall be commenced within 2 years after the interest which is at a rate greater than allowed under s. 138.05 is paid or be barred.

History: 1979 c. 323.

Judicial Council Committee's Note, 1979: This section has been created to place into ch. 893 the statute of limitations for an action concerning usury. (See note following s. 138.06 (3)). [Bill 326−A]

893.63 Actions on cashier's check, certified check, or bank money order. (1) Upon the expiration of 2 years from the date of any cashier's check, certified check or bank money order, there having been no presentment for payment of the check or money order by a holder thereof, the maker shall, upon demand, return to the remitter noted thereon, if any, the full face amount of the cashier's check, certified check or bank money order, and thereafter shall be relieved of any and all liability upon the cashier's check, certified check or bank money order, to the remitter, the payee or any other holder thereof.

(2) Subsection (1) applies to all cashier's checks, certified checks and bank money orders, which have been made before November 2, 1969 but were not presented for payment by a holder within 2 years of their date, but an action by the remitter of a cashier's check, certified check and bank money order, to recover

moneys held by a bank beyond the time limited by sub. (1) shall be subject to s. 893.43.

History: 1979 c. 323.

Judicial Council Committee's Note, 1979: This section is previous s. 893.215 renumbered for more logical placement in restructured ch. 893. [Bill 326−A]

893.64 Actions upon accounts. In actions brought to recover the balance due upon a mutual and open account current the cause of action shall be deemed to have accrued at the time of the last item proved in such account.

History: 1979 c. 323.

Judicial Council Committee's Note, 1979: This section is previous s. 893.25 renumbered for more logical placement in restructured ch. 893. [Bill 326−A]

There must be mutual debts or setoff before this section applies. Demos v. Carey, 50 Wis. 2d 262, 184 N.W.2d 117 (1971).

893.65 Bank bills not affected. This chapter does not apply to any action brought upon any bills, notes or other evidences of debt issued or put into circulation as money by a bank or other person.

History: 1979 c. 323.

Judicial Council Committee's Note, 1979: This section is previous s. 893.29 renumbered for more logical placement in restructured ch. 893 and revised to reflect Lusk v. Stoughton State Bank, 135 Wis. 311, 115 N.W. 813 (1908). [Bill 326−A]

893.66 Certified public accountants; limitations of actions. (1) Except as provided in subs. (1m) to (4), an action to recover damages, based on tort, contract or other legal theory, against any certified public accountant licensed or certified under ch. 442 for an act or omission in the performance of professional accounting services shall be commenced within 6 years from the date of the act or omission or be barred.

(1m) If a person sustains damages covered under sub. (1) during the period beginning on the first day of the 6th year and ending on the last day of the 6th year after the performance of the professional accounting services, the time for commencing the action for damages is extended one year after the date on which the damages occurred.

(2) If a person sustains damages covered under sub. (1) and the statute of limitations applicable to those damages bars commencement of the cause of action before the end of the period specified in sub. (1), then that statute of limitations applies.

(3) This section does not apply to actions subject to s. 551.509 (10) or 553.51 (4).

(4) This section does not apply to any person who commits fraud or concealment in the performance of professional accounting services.

History: 1993 a. 310; 2001 a. 16; 2007 a. 196.

SUBCHAPTER VII

ACTIONS RELATING TO GOVERNMENTAL DECISIONS OR ORGANIZATION

893.70 Action against certain officials. An action against a sheriff, coroner, medical examiner, town clerk, or constable upon a liability incurred by the doing of an act in his or her official capacity and in virtue of his or her office or by the omission of an official duty, including the nonpayment of money collected upon execution, shall be commenced within 3 years after the cause of action accrues or be barred. This section does not apply to an action for an escape.

History: 1979 c. 323.

Judicial Council Committee's Note, 1979: This section is previous s. 893.20 (1) renumbered for more logical placement in restructured ch. 893. [Bill 326−A]

893.71 County seat; contesting change. An action or proceeding to test the validity of a change of any county seat shall be commenced within 3 years after the date of the publication of the governor's proclamation of such change or be barred. Every defense founded upon the invalidity of any such change must be interposed within 3 years after the date of the aforesaid publication, and the time of commencement of the action or proceeding to which any such defense is made shall be deemed the time when such defense is interposed.

History: 1979 c. 323.

Judicial Council Committee's Note, 1979: This section is previous s. 893.20 (3) renumbered for more logical placement in restructured ch. 893. [Bill 326−A]

893.72 Actions contesting special assessment. An action to avoid any special assessment, or taxes levied pursuant to the special assessment, or to restrain the levy of the taxes or the sale of lands for the nonpayment of the taxes, shall be brought within one year from the notice thereof, and not thereafter. This limitation shall cure all defects in the proceedings, and defects of power on the part of the officers making the assessment, except in cases where the lands are not liable to the assessment, or the city, village or town has no power to make any such assessment, or the amount of the assessment has been paid or a redemption made.

History: 1979 c. 323; 1993 a. 246.

Judicial Council Committee's Note, 1979: This section is previous s. 893.24 renumbered for more logical placement in restructured ch. 893. [Bill 326−A]

The one−year bar under this section does not apply if the municipality did not have the power to make the assessment. State ex rel. Robinson v. Town of Bristol, 2003 WI App 97, 264 Wis. 2d 318, 667 N.W.2d 14, 02−1427.

893.73 Actions contesting governmental decisions. (1) The following actions are barred unless brought within 180 days after the adoption of the order, resolution, ordinance or ordinance amendment contested:

(a) An action to contest the validity of a county zoning ordinance or amendment, if s. 59.69 (14) applies to the action.

(b) An action to review the validity of proceedings for division or dissolution of a town under s. 60.03.

(2) The following actions are barred unless brought within 90 days after the adoption of the order, annexation ordinance or final determination of the action contested:

(a) An action under s. 60.73 contesting an act of a town board or the department of natural resources in the establishment of a town sanitary district.

(b) An action to contest the validity of an annexation, if s. 66.0217 (11) applies to the action.

History: 1979 c. 323; 1981 c. 346; 1983 a. 532; 1995 a. 201; 1999 a. 150 s. 672; 2003 a. 214.

NOTE: 2003 Wis. Act 214, which affected this section, contains extensive explanatory notes.

Judicial Council Committee's Note, 1979: This section has been created to consolidate into one provision of ch. 893 six types of actions presently outside of the chapter involving the contesting of governmental decisions. The actions have been broken down into 2 separate categories, those which must be commenced within 180 days of the adoption of the governmental decision and those that must be commenced within 90 days of the decision.

The previous 180−day period within which to contest a county zoning ordinance or amendment remains unchanged.

The one−year period in which to commence an action to contest the proceedings to constitute or divide a town has been shortened to 180 days (see note following s. 60.05 (4)). The previous 180−day time period to commence an action contesting the validity of the creation of a soil and water district remains unchanged (see note following s. 92.16).

The previous 20−day period to commence an action to set aside an action of a town board to establish a sanitary district has been increased to 90 days (see note following s. 60.304).

The previous 60−day period within which to commence an action to contest the validity of an annexation has been increased to 90 days (see note following s. 66.021 (10) (a)).

The 90−day period to commence an action contesting the validity of an order regarding a highway or highway records remains unchanged (see note following s. 80.34 (2)). [Bill 326−A]

Under sub. (2), "adoption" refers to a legislative body's approval of an annexation ordinance. The statute of limitations begins to run on that date. Town of Sheboygan v. City of Sheboygan, 150 Wis. 2d 210, 441 N.W.2d 752 (Ct. App. 1989).

893.735 Action by prisoner contesting a governmental decision. (1) In this section, "prisoner" has the meaning given in s. 801.02 (7) (a) 2.

(2) An action seeking a remedy available by certiorari made on behalf of a prisoner is barred unless commenced within 45 days after the cause of action accrues. The 45−day period shall begin on the date of the decision or disposition, except that the court may extend the period by as many days as the prisoner proves have elapsed between the decision or disposition and the prisoner's actual notice of the decision or disposition. Subject to no contact requirements of a court or the department of corrections, a pris-

oner in administrative confinement, program segregation or adjustment segregation may communicate by 1st class mail, in accordance with department of corrections' rules or with written policies of the custodian of the prisoner, with a 3rd party outside the institution regarding the action or special proceeding.

(3) In this section, an action seeking a remedy available by certiorari is commenced at the time that the prisoner files a petition seeking a writ of certiorari with a court.

History: 1997 a. 133.

The words "on behalf of" in sub. (2) are not restricted to third−party conduct. The time limit applies to actions filed by a prisoner on behalf of himself or herself. State ex rel. Collins v. Cooke, 2000 WI App 101, 235 Wis. 2d 63, 611 N.W.2d 774, 99−1212.

Persons seeking certiorari review of probation revocation are prisoners subject to the 45−day filing deadline under sub. (2). State ex rel. Cramer v. Wisconsin Court of Appeals, 2000 WI 86, 236 Wis. 2d 473, 613 N.W.2d 591, 99−1089.

The definition of "prisoner" in s. 801.02 (7) (a) 2. does not include a Wisconsin inmate sent to an out−of−state county jail, and, therefore, the 45−day limit does not apply to the inmate. State ex rel. Frohwirth v. Wisconsin Parole Commission, 2000 WI App 139, 237 Wis. 2d 627, 614 N.W.2d 541, 99−2079.

When a prison inmate places a certiorari petition in the prison's mailbox for forwarding to the circuit court, the 45−day limit under sub. (2) is tolled. However, other defects in filing may nonetheless result in rejection by the court. State ex rel. Shimkus v. Sondalle, 2000 WI App 262, 240 Wis. 2d 310, 622 N.W.2d 763, 00−0841.

To invoke the tolling of the 45−day limit under sub. (2), an inmate must present an affidavit or some other sufficient evidence of the date on which the petition was deposited in the institution mailbox. State ex rel. Shimkus v. Sondalle, 2000 WI App 262, 240 Wis. 2d 310, 622 N.W.2d 763, 00−0841.

A verified petition, being a sworn statement, that was unchallenged by the state was sufficient to establish the number of days between the date of the challenged decision and the prisoner's receipt of it. There were no circumstances justifying not extending the 45−day limit pursuant to sub. (2). State ex rel. Johnson v. Litscher, 2001 WI App 47, 241 Wis. 2d 407, 625 N.W.2d 887, 00−1485.

That out−of−state inmates have a longer filing deadline for challenging parole revocation under *Frohwirth*, 2000 WI App 139, does not violate the constitutional guarantee of equal protection. State ex rel. Saffold v. Schwarz, 2001 WI App 56, 241 Wis. 2d 253, 625 N.W.2d 333, 99−2945.

The statute of limitations is tolled while a prisoner waits for the Department of Justice to provide the certification required by ss. 801.02 (7) (d) and 802.05 (3) (c). State ex rel. Locklear v. Schwarz, 2001 WI App 74, 242 Wis. 2d 327, 629 N.W.2d 30, 99−3211.

To invoke the tolling of the 45−day limit under sub. (2), a prisoner must submit proper documents and comply with statutory fee or fee−waiver requirements. State ex rel. Tyler v. Bett, 2002 WI App 234, 257 Wis. 2d 606, 652 N.W.2d 800, 01−2808.

Petitioners were entitled to equitable relief when they timely asked counsel to file for certiorari, counsel promised to do so, and due to counsel's failure to timely file they were denied certiorari review. The 45−day time limit for the filing of a writ of certiorari was equitably tolled as of the date that counsel promised to file for certiorari review. State ex rel. Griffin v. Smith, 2004 WI 36, 270 Wis. 2d 235, 677 N.W.2d 259, 01−2345.

893.74 School district; contesting validity. No appeal or other action attacking the legality of the formation of a school district, either directly or indirectly, may be commenced after the school district has exercised the rights and privileges of a school district for a period of 90 days.

History: 1979 c. 323.

Judicial Council Committee's Note, 1979: This section has been created to place into ch. 893 the statute of limitations for an action attacking the legality of a formation of a school district (see note following s. 117.01 (7)). [Bill 326−A]

893.75 Limitation of action attacking municipal contracts. Whenever the proper officers of any city, village or town, however incorporated, enter into any contract in manner and form as prescribed by statute, and either party to the contract has procured or furnished materials or expended money under the terms of the contract, no action or proceedings may be maintained to test the validity of the contract unless the action or proceeding is commenced within 60 days after the date of the signing of the contract.

History: 1979 c. 323; 1993 a. 246.

Judicial Council Committee's Note, 1979: This action has been created to place into ch. 893 the statute of limitation for an action contesting the validity in a contract entered into by a city or village (see note following s. 66.13). [Bill 326−A]

893.76 Order to repair or remove building or restore site; contesting. An application under s. 66.0413 (1) (h) to a circuit court for an order restraining the inspector of buildings or other designated officer from razing and removing a building or part of a building and restoring a site to a dust−free and erosion−free condition shall be made within 30 days after service of the order issued under s. 66.0413 (1) (b) or be barred.

History: 1979 c. 323; 1989 a. 347; 1991 a. 189; 1993 a. 213; 1999 a. 150.

Judicial Council Committee's Note, 1979: This section has been created to place into ch. 893 the statute of limitations for an application for an order restraining the razing or removing of a building (see note following s. 66.05 (3)). [Bill 326−A]

893.765 Order to remove wharves or piers in navigable waters; contesting. An application under s. 30.13 (5m) (c) to circuit court for a restraining order prohibiting the removal of a wharf or pier shall be made within 30 days after service of the order issued under s. 30.13 (5m) (a) or be barred.

History: 1981 c. 252; 1999 a. 150 ss. 669, 672; 2001 a. 30 s. 108.

893.77 Validity of municipal obligation. (1) An action to contest the validity of any municipal obligation which has been certified by an attorney in the manner provided in s. 67.025, for other than constitutional reasons, must be commenced within 30 days after the recording of such certificate as provided by s. 67.025. An action to contest the validity of any state or state authority obligation for other than constitutional reasons must be commenced within 30 days after the adoption of the authorizing resolution for such obligation.

(2) An action or proceeding to contest the validity of any municipal bond or other financing, other than an obligation certified as described in sub. (1), for other than constitutional reasons, must be commenced within 30 days after the date on which the issuer publishes in the issuer's official newspaper, or, if none exists, in a newspaper having general circulation within the issuer's boundaries, a class 1 notice, under ch. 985, authorized by the governing body of the issuer, and setting forth the name of the issuer, that the notice is given under this section, the amount of the bond issue or other financing and the anticipated date of closing of the bond or other financing and that a copy of proceedings had to date of the notice are on file and available for inspection in a designated office of the issuer. The notice may not be published until after the issuer has entered into a contract for sale of the bond or other financing.

(3) An action contesting bonds of a municipal power district organized under ch. 198, for other than constitutional reasons, shall be commenced within 30 days after the date of their issuance or be barred.

History: 1971 c. 40 s. 93; 1971 c. 117, 211; 1973 c. 265; 1975 c. 221; 1979 c. 323; 1983 a. 192.

Judicial Council Committee's Note, 1979: This section is previous s. 893.23 renumbered for more logical placement in the restructured chapter. Section 893.77 (3) is created to place into ch. 893 of the statutes the statute of limitations for an action contesting the bonds of a municipal power district (see note following s. 198.18 (3)). [Bill 326−A]

SUBCHAPTER VIII

CLAIMS AGAINST GOVERNMENTAL BODIES, OFFICERS AND EMPLOYEES; STATUTORY CHALLENGES

893.80 Claims against governmental bodies or officers, agents or employees; notice of injury; limitation of damages and suits. (1b) In this section, "agent" includes a volunteer. In this subsection, "volunteer" means a person who satisfies all of the following:

(a) The person provides services or performs duties for and with the express or implied consent of a volunteer fire company organized under ch. 181 or 213, political corporation, or governmental subdivision or agency thereof. A person satisfies the requirements under this paragraph even if the activities of the person with regard to the services and duties and the details and method by which the services are provided and the duties are performed are left to the discretion of the person.

(b) The person is subject to the right of control of the volunteer company, political corporation, or governmental subdivision or agency described in par. (a).

(c) The person is not paid a fee, salary, or other compensation by any person for the services or duties described in par. (a). In this paragraph, "compensation" does not include the reimbursement of expenses.

(1d) Except as provided in subs. (1g), (1m), (1p) and (8), no action may be brought or maintained against any volunteer fire company organized under ch. 213, political corporation, govern-

mental subdivision or agency thereof nor against any officer, official, agent or employee 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 employee 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 employee; 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.

(1g) Notice of disallowance of the claim submitted under sub. (1d) 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 employee, 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.

(1m) With regard to a claim to recover damages for medical malpractice, the provisions of sub. (1d) do not apply. The time periods that apply for commencing an action under this section for damages for medical malpractice are the time periods under ss. 893.55 (1m), (2), and (3) and 893.56.

(1p) No action may be brought or maintained with regard to a claim to recover damages against any political corporation, governmental subdivision or agency thereof for the negligent inspection of any property, premises, place of employment or construction site for the violation of any statute, rule, ordinance or health and safety code unless the alleged negligent act or omission occurred after November 30, 1976. In any such action, the time period under sub. (1d) (a) shall be one year after discovery of the negligent act or omission or the date on which, in the exercise of reasonable diligence the negligent act or omission should have been discovered.

(1t) Only one action for property damage may be brought under sub. (1p) by 2 or more joint tenants of a single–family dwelling.

(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) Except as provided in this subsection, 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. 181 or 213, political corporation, governmental subdivision or agency thereof and against their officers, officials, agents or employees 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 $50,000. The amount recoverable under this subsection shall not exceed $25,000 in any such action against a volunteer fire company organized under ch. 181 or 213 or its officers, officials, agents or employees. If a volunteer fire company organized under ch. 181 or 213 is part of a combined fire department, the $25,000 limit still applies to actions against the volunteer fire company or its officers, officials, agents or employees. No punitive damages may be allowed or recoverable in any such action under this subsection.

(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 employees nor may any suit be brought against such corporation, subdivision or agency or volunteer fire company or against its officers, officials, agents or employees 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 employee 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 employee thereof for injury, damage or death, such statute shall apply and the limitations in sub. (3) shall be inapplicable.

(6) A 1st class city, its officers, officials, agents or employees shall not be liable for any claim for damages to person or property arising out of any act or omission in providing or failing to provide police services upon the interstate freeway system or in or upon any grounds, building or other improvement owned by a county and designated for stadium or airport purposes and appurtenant uses.

(7) No suit may be brought against the state or any governmental subdivision or agency thereof or against any officer, official, agent or employee of any of those entities who, in good faith, acts or fails to act to provide a notice to a property owner that a public nuisance under s. 823.113 (1) or (1m) (b) exists.

(8) This section does not apply to actions commenced under s. 19.37, 19.97, or 281.99 or to claims against the interstate insurance product regulation commission.

(9) The procurement or maintenance of insurance or self–insurance by a volunteer fire company organized under ch. 181 or 213, political corporation, or governmental subdivision or agency thereof, irrespective of the extent or type of coverage or the persons insured, shall not do any of the following:

(a) Constitute a waiver of the provisions of this section.

(b) Be relied upon to deny a person status as an officer, official, agent, or employee of the volunteer fire company, political corporation, or governmental subdivision or agency thereof.

History: Sup. Ct. Order, 67 Wis. 2d 585, 784 (1975); 1975 c. 218; 1977 c. 285, 447; 1979 c. 34; 1979 c. 323 s. 29; Stats. 1979 s. 893.80; 1981 c. 63; 1985 a. 340; 1987 a. 377; 1993 a. 139; 1995 a. 6, 158, 267; 1997 a. 27; 2005 a. 281; 2007 a. 168; 2009 a. 278; 2011 a. 162.

Judicial Council Committee's Note, 1979: Previous s. 895.43 is renumbered for more logical placement in restructured ch. 893. [Bill 326–A]

A spouse's action for loss of consortium is separate and has a separate dollar limitation from the injured spouse's claim for damages. Schwartz v. City of Milwaukee, 54 Wis. 2d 286, 195 N.W.2d 480 (1972).

Section 895.43 (3) [now sub. (4)] establishes municipal immunity from actions for the intentional torts of its employees; assault and battery constitutes an intentional tort. Section 895.43 (3) [now sub. (4)] also precludes suit against a municipality for the alleged failure of its police and fire commission to act to remove an officer, since that is a quasi–judicial function. Salerno v. City of Racine, 62 Wis. 2d 243, 214 N.W.2d 446 (1974).

When a policy contained no language precluding the insurer from raising the limited liability defense, the $25,000 limitation was not waived. Sambs v. City of Brookfield, 66 Wis. 2d 296, 224 N.W.2d 582 (1975).

A plaintiff's complaint alleging that two police officers who forcibly entered the plaintiff's home and physically abused the plaintiff were negligent inter alia in failing to identify themselves and in using excessive force, in reality alleged intentional torts for which the municipality was immune from direct action under s. 895.43 (3) [now sub. (4)]. Baranowski v. City of Milwaukee, 70 Wis. 2d 684, 235 N.W.2d 279 (1975).

The class action statute, s. 260.12 [now s. 803.08], is part of title XXV of the statutes [now chs. 801 to 823], and the scope of title XXV is restricted to civil actions in courts of record. The county board is not a court of record. The class action statute can have no application to making claims against a county. Multiple claims must identify each claimant and show each claimant's authorization. Hicks v. Milwaukee

County, 71 Wis. 2d 401, 238 N.W.2d 509 (1976). But see Townsend v. Neenah Joint School District, 2014 WI App 117, 358 Wis. 2d 618, 856 N.W.2d 644, 13–2839.

Compliance with a statute is a condition in fact requisite to liability, but it is not a condition required for stating a cause of action. Rabe v. Outagamie County, 72 Wis. 2d 492, 241 N.W.2d 428 (1976).

The requirements that a claim be first presented to a school district and disallowed and that suit be must commenced within six months of disallowance do not deny equal protection. Binder v. City of Madison, 72 Wis. 2d 613, 241 N.W.2d 613 (1976).

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 s. 101.14 does not involve a quasi–judicial function within the meaning of s. 895.43 (3) [now sub. (4)]. Coffey v. City of Milwaukee, 74 Wis. 2d 526, 247 N.W.2d 132 (1976).

Under s. 895.43 (1) [now sub. (1d)], the plaintiff has the burden of proving the giving of notice, or actual notice, and the nonexistence of prejudice, but need not allege the same in the complaint. A city is required to plead lack of compliance with the statute as a defense. Weiss v. City of Milwaukee, 79 Wis. 2d 213, 255 N.W.2d 496 (1977).

The doctrine of municipal tort immunity was applied to relieve a political subdivision from liability for negligence when an automobile collision occurred due to the use of a sewer by a truck. Allstate Insurance Co. v. Metropolitan Sewerage Commission, 80 Wis. 2d 10, 258 N.W.2d 148 (1977).

A park manager of a state–owned recreational area who knew that a publicly used trail was inches away from a 90–foot gorge and that the terrain was dangerous breached a ministerial duty in failing to either place warning signs or advise superiors of the condition and was liable for injuries to the plaintiffs who fell into the gorge. Cords v. Anderson, 80 Wis. 2d 525, 259 N.W.2d 672 (1977).

A breach of a ministerial duty was inferred from the complaint's allegations that the defendant state employees who set up a detour route on which the plaintiff was injured failed to follow national traffic standards, place appropriate signs, and safely construct a temporary road. Pavlik v. Kinsey, 81 Wis. 2d 42, 259 N.W.2d 709 (1977).

An insurance policy was construed to waive recovery limitations under former s. 81.15, 1965 stats., and s. 895.43 [now this section]. Stanhope v. Brown County, 90 Wis. 2d 823, 280 N.W.2d 711 (1979).

Section 118.20 is not the exclusive remedy of a wronged teacher. It is supplementary to the remedy under the Wisconsin Fair Employment Act. General provisions of this section are superseded by specific authority of that act. Kurtz v. City of Waukesha, 91 Wis. 2d 103, 280 N.W.2d 757 (1979).

"Quasi–judicial" or "quasi–legislative" acts are synonymous with "discretionary" acts. Scarpaci v. Milwaukee County, 96 Wis. 2d 663, 292 N.W.2d 816 (1980).

Recovery limitations under former s. 81.15, 1965 stats., and s. 895.43 (2) [now sub. (2)] are constitutional. Sambs v. City of Brookfield, 97 Wis. 2d 356, 293 N.W.2d 504 (1980).

A city was liable for the negligent acts of its employees, even though the employees were immune from liability. Maynard v. City of Madison, 101 Wis. 2d 273, 304 N.W.2d 163 (Ct. App. 1981).

This section cannot limit damage awards under 42 USC 1983. The court erred in reducing an attorney fees award. Thompson v. Village of Hales Corners, 115 Wis. 2d 289, 340 N.W.2d 704 (1983).

A sheriff's dispatcher breached a ministerial duty by failing to have a fallen tree removed from a road. Domino v. Walworth County, 118 Wis. 2d 488, 347 N.W.2d 917 (Ct. App. 1984).

Service of notice of a claim on a county agency met the jurisdictional prerequisite of sub. (1) (b) [now sub. (1d) (b)]. Finken v. Milwaukee County, 120 Wis. 2d 69, 353 N.W.2d 827 (Ct. App. 1984).

A claim for a specific amount of money damages satisfied the sub. (1) (b) [now sub. (1d) (b)] requirement of an "itemized statement of relief sought." Figgs v. City of Milwaukee, 121 Wis. 2d 44, 357 N.W.2d 548 (1984).

Although a decision to release a patient from a mental health complex was quasi–judicial and protected under sub. (4), the medical examination and diagnosis that formed the basis for the decision to release were not. Gordon v. Milwaukee County, 125 Wis. 2d 62, 370 N.W.2d 803 (Ct. App. 1985).

When a claim was not disallowed in writing and the claimant did not wait 120 days after presentation before filing a lawsuit, the statute of limitations was not tolled. Schwetz v. Employers Insurance of Wausau, 126 Wis. 2d 32, 374 N.W.2d 241 (Ct. App. 1985).

An injured party and subrogee may not recover separately up to the liability limit under sub. (3). Wilmot v. Racine County, 136 Wis. 2d 57, 400 N.W.2d 917 (1987).

Recovery limitations applicable to an insured municipality are likewise applied to the insurer, notwithstanding higher policy limits and s. 632.24. Gonzalez v. City of Franklin, 137 Wis. 2d 109, 403 N.W.2d 747 (1987).

When three municipalities formed one volunteer fire department under ch. 60, liability under sub. (3) was limited to $50,000, not three times that amount. Selzler v. Dresser, Osceola, Garfield Fire Department, 141 Wis. 2d 465, 415 N.W.2d 546 (Ct. App. 1987).

A parole officer did not breach a ministerial duty by allowing a parolee to drive. C.L. v. Olson, 143 Wis. 2d 701, 422 N.W.2d 614 (1988).

Each of three children damaged by a county's negligence in the treatment of their mother was entitled to recover the $50,000 maximum under sub. (3). Boles v. Milwaukee County, 150 Wis. 2d 801, 443 N.W.2d 679 (Ct. App. 1989).

The sub. (4) immunity provision does not apply to breach of contract suits. Energy Complexes, Inc. v. Eau Claire County, 152 Wis. 2d 453, 449 N.W.2d 35 (1989).

If a claim is filed and the affected body does not serve a notice of disallowance, the six–month limitation period in sub. (1) (b) [now sub. (1g)] is not triggered. Linstrom v. Christianson, 161 Wis. 2d 635, 469 N.W.2d 189 (Ct. App. 1991).

Governmental immunity attaches to a police officer's actions in executing an arrest. "Quasi–judicial" and "quasi–legislative" under sub. (4) are synonymous with "discretionary," but immunity does not attach merely because the conduct involves discretion. The question is whether the decision involves the type of judgment and discretion that rises to governmental discretion, as opposed to professional or technical judgment and discretion. Sheridan v. City of Janesville, 164 Wis. 2d 420, 474 N.W.2d 799 (Ct. App. 1991).

Discretionary act immunity under this section is inapplicable to s. 345.05 claims of municipal liability for motor vehicle accidents. Frostman v. State Farm Mutual Automobile Insurance Co., 171 Wis. 2d 138, 491 N.W.2d 100 (Ct. App. 1992).

A letter to an attorney referring to the denial of a client's claim does not trigger the six–month statute of limitations under sub. (1) (b) [now sub. (1g)]. Humphrey v. Elk Creek Lake Protection & Rehabilitation District, 172 Wis. 2d 397, 493 N.W.2d 241 (Ct. App. 1992).

Once the 120–day period under sub. (1) (b) [now sub. (1g)] has run, a municipality may not revive the six–month limitation period by giving notice of disallowance. Blackbourn v. School District, 174 Wis. 2d 496, 497 N.W.2d 460 (Ct. App. 1993).

Sub. (4) immunity does not extend to medical decisions of governmental medical personnel. Linville v. City of Janesville, 174 Wis. 2d 571, 497 N.W.2d 465 (Ct. App. 1993).

A paramedic has a ministerial duty to attempt a rescue at a life threatening situation; thus there is no immunity under sub. (4). Linville v. City of Janesville, 174 Wis. 2d 571, 497 N.W.2d 465 (Ct. App. 1993).

Sub. (4) affords a governmental body immunity for its intentional torts. The intentional torts of a city cannot occur except through the acts of an official or agent of the city. Old Tuckaway Associates v. City of Greenfield, 180 Wis. 2d 254, 509 N.W.2d 323 (Ct. App. 1993).

Inequitable or fraudulent conduct need not be established to estop a party from asserting the failure to comply with the notice of claim requirements of this section. An employee's reliance on a school district employee's instruction to deal directly with the school's insurer was sufficient to estop the school from asserting a failure to comply with sub. (1) (b) [now sub. (1d) (b)] as a defense. Fritsch v. St. Croix Central School District, 183 Wis. 2d 336, 515 N.W.2d 328 (Ct. App. 1994).

This section applies to all causes of action, including actions for equitable relief, not just to actions in tort or those for money damages. The state must comply with the sub. (1) [now sub. (1d)] notice requirements. Sub. (5) does not say that when a claim is based on another statute sub. (1) [now sub. (1d)] does not apply. Discussing substantial compliance with sub. (1) [now sub. (1d)]. DNR v. City of Waukesha, 184 Wis. 2d 178, 515 N.W.2d 888 (1994).

A police officer who decides to engage in pursuit is afforded immunity from liability for the decision but may be subject to liability under s. 346.03 (5) for operating a motor vehicle negligently during the chase. A city that has adopted a policy that complies with s. 346.03 (6) is immune from liability for injuries resulting from a high speed chase. Estate of Cavanaugh v. Andrade, 191 Wis. 2d 244, 528 N.W.2d 492 (Ct. App. 1995).

Sub. (1) [now sub. (1d)] has two components: notice of injury and notice of claim. Both must be satisfied before an action is commenced. The notice of claim must state a specific dollar amount. Vanstone v. Town of Delafield, 191 Wis. 2d 586, 530 N.W.2d 16 (Ct. App. 1995).

An independent contractor is not an agent under sub. (3) and is not protected by the liability limits under this section. Kettner v. Wausau Insurance Cos., 191 Wis. 2d 723, 530 N.W.2d 399 (Ct. App. 1995).

Intentional tort immunity granted to municipalities by sub. (4) does not extend to the municipalities' representatives. Envirologix Corp. v. City of Waukesha, 192 Wis. 2d 277, 531 N.W.2d 357 (Ct. App. 1995).

When an action was mandatory under a city ordinance, but permissive under state statutes, the action was mandatory and therefore ministerial and not subject to immunity under sub. (4). Turner v. City of Milwaukee, 193 Wis. 2d 412, 535 N.W.2d 15 (Ct. App. 1995).

The general rule is that a public employee is immune from personal liability for injuries resulting from acts performed within the scope of the individual's public office. Barillari v. City of Milwaukee, 194 Wis. 2d 247, 533 N.W.2d 759 (1995).

A statement by a police officer that an action will be taken does not render that action ministerial. Failure to carry out the action does not remove the immunity granted by this section. Barillari v. City of Milwaukee, 194 Wis. 2d 247, 533 N.W.2d 759 (1995).

The county had an absolute duty not to represent in an offer to purchase that it had no notice that a property it was selling was free of toxic materials unless it was true. An appraisal indicating contamination contained in the county's files was actual notice to the county. Under those circumstances, there was no immunity under sub. (4). Major v. County of Milwaukee, 196 Wis. 2d 939, 539 N.W.2d 472 (Ct. App. 1995), 95–1351.

Actions brought under the open meetings and public records laws are exempt from the notice provisions of sub. (1) [now sub. (1d)]. State ex rel. Auchinleck v. Town of LaGrange, 200 Wis. 2d 585, 547 N.W.2d 587 (1996), 94–2809.

There is no discretion as to maintaining a sewer system so as not to cause injury to residents. Thus a municipality's operation and maintenance of a sewer system do not fall within the immunity provisions of this section. Menick v. City of Menasha, 200 Wis. 2d 737, 547 N.W.2d 778 (Ct. App. 1996), 95–0185.

A suit filed prior to the expiration of the 120–day period or denial of the claim is not truly commenced and does not toll the statute of limitations when filed. Colby v. Columbia County, 202 Wis. 2d 342, 550 N.W.2d 124 (1996), 93–3348.

The interplay between this section and s. 893.23 creates a statute of limitations equal to three years and 120 days when filing a claim under this section. Colby v. Columbia County, 202 Wis. 2d 342, 550 N.W.2d 124 (1996), 93–3348.

Service of a disallowance of claim on a claimant's attorney does not meet the statutory requirement of service on the claimant. When there was never proper service

under the statute, the general three–year statute of limitations for personal injuries applied. Cary v. City of Madison, 203 Wis. 2d 261, 551 N.W.2d 596 (Ct. App. 1996), 95–3559.

Class action procedure under s. 803.08 does not override the notice requirements of this section. Notice on behalf of named persons and others "similarly situated" does not satisfy the notice requirement for the unnamed persons. For the government entity to have actual knowledge, it must have knowledge of the event for which liability is asserted, and also the identity of and damage alleged to have been suffered by the potential claimant. Nothing in sub. (1p) makes the notice requirements inapplicable to claims under that subsection. Markweise v. Peck Foods Corp., 205 Wis. 2d 208, 556 N.W.2d 326 (Ct. App. 1996), 94–2285.

Allowing the continuation of a "known present danger" is an exception to governmental immunity. To apply, the danger must be so clear and absolute that taking corrective action falls within the definition of a ministerial duty. Expert testimony of dangerousness is not sufficient to establish a "known present danger." Bauder v. Delavan–Darien School District, 207 Wis. 2d 310, 558 N.W.2d 881 (Ct. App. 1996), 95–0495.

The immunity provisions of sub. (4), like the notice and claim provisions of sub. (1) [now sub. (1d)], are not limited to tort or money damage actions. Johnson v. City of Edgerton, 207 Wis. 2d 343, 558 N.W.2d 653 (Ct. App. 1996), 96–0894.

Governmental immunity extends to private parties who act under directives from government authorities. Estate of Lyons v. CNA Insurance Cos., 207 Wis. 2d 446, 558 N.W.2d 658 (Ct. App. 1996), 95–3372.

The damage limitation under sub. (3) is not an affirmative defense and may not be waived by omission, although it may be expressly waived. Discretionary immunity under sub. (4) is an affirmative defense and may be waived by omission. Anderson v. City of Milwaukee, 208 Wis. 2d 18, 559 N.W.2d 563 (1997), 94–1030.

The filing of a federal lawsuit, subsequently dismissed, did not satisfy the notice and claim requirements of sub. (1) (b) [now sub. (1d) (b)]. Probst v. Winnebago County, 208 Wis. 2d 280, 560 N.W.2d 291 (Ct. App. 1997), 96–0186.

Appeals of special assessments brought under s. 66.60 (12) (a) [now s. 66.0703 (12)] are exempt from the notice provisions of sub. (1) [now sub. (1d)]. Gamroth v. Village of Jackson, 215 Wis. 2d 251, 571 N.W.2d 917 (Ct. App. 1997), 96–3396.

For purposes of immunity under sub. (4), fulfilling the duties under the safe place statute is discretionary. Spencer v. County of Brown, 215 Wis. 2d 641, 573 N.W.2d 222 (Ct. App. 1997), 97–0267.

Compliance with sub. (1) (b) [now sub. (1d) (b)] is a prerequisite to all actions against listed entities, whether sounding in tort or not, and whether brought as an initial claim, counterclaim, or cross–claim. City of Racine v. Waste Facility Siting Board, 216 Wis. 2d 616, 575 N.W.2d 712 (1998), 96–0688.

Filing a notice of claim under sub. (1) (b) [now sub. (1d) (b)] is not required when an injunction of a public nuisance is sought under s. 30.294, whether or not the injunction will be directed against the municipality. Gillen v. City of Neenah, 219 Wis. 2d 806, 580 N.W.2d 628 (1998), 96–2470.

Lyons, 207 Wis. 2d 446 (1996), adopted a form of governmental–contractor immunity applicable to parties who contract with municipal and state authorities and who are directed to perform certain tasks under the contract. That immunity extends to the contractor's subcontractors. Jankee v. Clark County, 222 Wis. 2d 151, 585 N.W.2d 913 (Ct. App. 1998), 95–2136.

Sub. (1m) as amended in 1986 cannot be applied retroactively. Snopek v. Lakeland Medical Center, 223 Wis. 2d 288, 588 N.W.2d 19 (1999), 96–3645.

A town contesting an annexation under s. 66.0217 (10) [now s. 66.0217 (11)] is not required to file a notice of claim under this section against the annexing municipality. Town of Burke v. City of Madison, 225 Wis. 2d 615, 593 N.W.2d 822 (Ct. App. 1999), 98–0108.

Alleging an ongoing course of conduct without identifying a specific circumstance or example of that conduct that occurred within 120 days of the notice of claim does not satisfy the requirements of sub. (1) (a) [now sub. (1d) (a)]. Probst v. Winnebago County, 225 Wis. 2d 753, 593 N.W.2d 478 (Ct. App. 1999), 98–0451.

This section does not apply to certiorari actions under s. 59.694 (10). Kapischke v. County of Walworth, 226 Wis. 2d 320, 595 N.W.2d 42 (Ct. App. 1999), 98–0796.

A public officer is clothed in immunity when that officer applies statutes to a given set of facts. An unambiguous statute, negligently applied, that does not direct how to act in any manner does not create a ministerial duty that is not sheltered by immunity. Kierstyn v. Racine Unified School District, 228 Wis. 2d 81, 596 N.W.2d 417 (1999), 97–1573.

Suits must be based in tort to garner immunity under sub. (4). There is no immunity from actions for declaratory relief. Willow Creek Ranch, L.L.C. v. Town of Shelby, 2000 WI 56, 235 Wis. 2d 409, 611 N.W.2d 693, 97–2075.

The notice provisions of this section do not apply to third–party complaints for contribution. Dixson v. Wisconsin Health Organization Insurance Corp., 2000 WI 95, 237 Wis. 2d 149, 612 N.W.2d 721, 97–3816.

A governmental employee may have a ministerial duty to take some action, although how that act is performed is discretionary. Rolland v. County of Milwaukee, 2001 WI App 53, 241 Wis. 2d 215, 625 N.W.2d 590, 99–1913.

Sub. (1g) is constitutional. There is a rational basis for restricting the opportunity to bring suit to six months for claimants who have been served with a notice of disallowance and to three years when claimants have not been served. That there are different time periods does not violate equal protection guarantees. Griffin v. Milwaukee Transport Services, Inc., 2001 WI App 125, 246 Wis. 2d 433, 630 N.W.2d 536, 00–0861.

Sovereign immunity from suit can only be waived by express language. Consent to suit may not be implied. Anhalt v. Cities & Villages Mutual Insurance Co., 2001 WI App 271, 249 Wis. 2d 62, 637 N.W.2d 422, 00–3551.

The existence of a known present danger should not turn on the subjective impressions of a citizen–witness. A public officer's duty to act becomes absolute when the nature of the danger is compelling and known to the officer and is of such force that the officer has no discretion not to act. Hoskins v. Dodge County, 2002 WI App 40, 251 Wis. 2d 276, 642 N.W.2d 213, 01–0834.

A proper application of the known danger exception to public officer immunity begins with the assumption that the officer was negligent in failing to perform, or in inadequately performing the act in question. To pierce immunity the circumstances must have been sufficiently dangerous so as to give rise to a ministerial duty not just to act generally but to perform the particular act upon which liability is premised. Lodl v. Progressive Northern Insurance Co., 2002 WI 71, 253 Wis. 2d 323, 646 N.W.2d 314, 00–0221.

Both state and municipal immunity under sub. (4) are subject to several exceptions representing a judicial balance struck between the need of public officers to perform their functions freely and the right of an aggrieved party to seek redress. There is no immunity against liability associated with 1) the performance of ministerial duties imposed by law; 2) known and compelling dangers that give rise to ministerial duties on the part of public officers or employees; 3) acts involving medical discretion; and 4) acts that are malicious, willful, and intentional. Lodl v. Progressive Northern Insurance Co., 2002 WI 71, 253 Wis. 2d 323, 646 N.W.2d 314, 00–0221.

Nothing in *Cords*, 80 Wis. 2d 525 (1977), suggests that a ministerial duty is placed on the government to protect the public from every manifest danger. The *Cords* known and present danger exception to sub. (4) immunity did not apply to a pipe that was used as a footbridge over a creek when the public was not invited to so use it, a sidewalk was provided to cross the creek not far from the pipe, and the use as a footbridge presented an obvious danger. Caraher v. City of Menomonie, 2002 WI App 184, 256 Wis. 2d 605, 649 N.W.2d 344, 01–2772.

The analysis of immunity under sub. (4) assumes negligence. The existence of a form clearly and unambiguously detailing information requested of a high school guidance counselor did not transform the counselor's counseling obligations into a ministerial act. The counselor's failure to provide correct advice in the face of clear and unambiguous information goes to the counselor's negligence, not the nature of the counselor's duty. Scott v. Savers Property & Casualty Insurance Co., 2003 WI 60, 262 Wis. 2d 127, 663 N.W.2d 715, 01–2953.

Sub. (1) [now sub. (1d)] does not apply to appeals of condemnation awards under s. 32.05 (11). Nesbitt Farms, LLC v. City of Madison, 2003 WI App 122, 265 Wis. 2d 422, 665 N.W.2d 379, 02–2212.

Any fire department created pursuant to s. 60.55, whether formed under ch. 181 or 213, is a government subdivision or agency entitled to immunity under sub. (4). Mellenthin v. Berger, 2003 WI App 126, 265 Wis. 2d 575, 666 N.W.2d 120, 02–2524.

A ministerial duty cannot arise from a manufacturer's instructions because a ministerial duty must be imposed by law. Law means an act of government and includes statutes, administrative rules, policies, or orders and plans adopted or contracts entered into by governmental units. Meyers v. Schultz, 2004 WI App 234, 277 Wis. 2d 845, 690 N.W.2d 873, 04–0542.

A municipality may be immune from nuisance suits depending on the nature of the tortious acts giving rise to the nuisance. A municipality is immune from suit for nuisance predicated on negligent acts that are discretionary in nature. A municipality does not enjoy immunity from suit for nuisance when the underlying tortious conduct is negligence comprised of acts performed pursuant to a ministerial duty. Milwaukee Metropolitan Sewerage District v. City of Milwaukee, 2005 WI 8, 277 Wis. 2d 635, 691 N.W.2d 658, 02–2961.

Decisions concerning the adoption, design, and implementation of a public works system are discretionary, such as the adoption of a waterworks system, the selection of the type of pipe, the placement of the pipe in the ground, and the continued existence of the pipe, are legislative decisions for which a city enjoys immunity. A city may be liable for its negligence in failing to repair the leaky water main if it had notice of the leak and was under a ministerial duty to repair it prior to a break. Milwaukee Metropolitan Sewerage District v. City of Milwaukee, 2005 WI 8, 277 Wis. 2d 635, 691 N.W.2d 658, 02–2961.

It is contrary to the protection afforded by sub. (1) [now sub. (1d)] to force a government entity to spend resources and taxpayer money to investigate every injury when the requisite 120–day notice is not given on the mere chance that the injury may turn out to be catastrophic, irrespective of how minor it may seem initially. Moran v. Milwaukee County, 2005 WI App 30, 278 Wis. 2d 747, 693 N.W.2d 121, 04–0709.

The known and compelling danger exception to immunity under sub. (4) is determined on a case–by–case basis. A dangerous situation will give rise to a ministerial duty when there exists a danger of such force that the time, mode, and occasion for performance is evident with such certainty that nothing remains for the exercise of judgment and discretion. The duty arises by virtue of particularly hazardous circumstances that are both known to the municipality or its officers and sufficiently dangerous to require an explicit, non–discretionary municipal response. It is not enough that the situation require the employee to do something about it. Voss v. Elkhorn Area School District, 2006 WI App 234, 297 Wis. 2d 389, 724 N.W.2d 420, 05–3037. But see Engelhardt v. City of New Berlin, 2019 WI 2, 385 Wis. 2d 86, 921 N.W.2d 714, 16–0801.

Service of a notice of disallowance must be upon the claimant and strictly comply with those modes of service set out in sub. (1g), which requires that service be made by either registered or certified mail. The return of a receipt for registered or certified mail signed by the claimant and the return of registered mail addressed to the claimant are examples of proof of service acceptable under sub. (1g). Pool v. City of Sheboygan, 2007 WI 38, 300 Wis. 2d 74, 729 N.W.2d 415, 05–2028.

Sub. (1m) applies to medical malpractice claims against governmental bodies that fall within the scope of this section. Ch. 655 does not contain any statute of limitations provision that conflicts with this section. The generally exclusive nature of ch. 655 does not prevent the application of this section when applicable. Rouse v. Theda Clark Medical Center, Inc., 2007 WI 87, 302 Wis. 2d 358, 735 N.W.2d 30, 05–2743.

The University of Wisconsin Hospital & Clinics Authority is a "political corporation" under sub. (1) (a) [now sub. (1d) (a)] that falls within the notice of claim requirement of this section. Rouse v. Theda Clark Medical Center, Inc., 2007 WI 87, 302 Wis. 2d 358, 735 N.W.2d 30, 05–2743.

There is a three–point test for when the notice–of–claim requirement in sub. (1) (b) [now sub. (1d) (b)] has to give way: 1) whether there is a specific statutory scheme for which the plaintiff seeks exemption; 2) whether enforcement of sub. (1) [now sub. (1d)] would hinder a legislative preference for a prompt resolution of the type of claim

under consideration; and 3) whether the purposes for which sub. (1) [now sub. (1d)] was enacted would be furthered by requiring that a notice of claim be filed. Oak Creek Citizen's Action Committee v. City of Oak Creek, 2007 WI App 196, 304 Wis. 2d 702, 738 N.W.2d 168, 06−2697.

Sub. (1) (b) [now sub. (1d) (b)] did not apply to an action for mandamus seeking to compel a city council to comply with the direct−legislation statute, s. 9.20. Oak Creek Citizen's Action Committee v. City of Oak Creek, 2007 WI App 196, 304 Wis. 2d 702, 738 N.W.2d 168, 06−2697.

Administrative code provisions imposed a ministerial duty on a municipality to place a water main at a specified depth. When the municipality installed the water main at an appropriate depth to prevent freezing and the surface was subsequently graded so that the water main was no longer at the required depth, there was no breach of the ministerial duty. The design of the overall development, including the soil grading, was a discretionary act and enjoyed governmental immunity. DeFever v. City of Waukesha, 2007 WI App 266, 306 Wis. 2d 766, 743 N.W.2d 848, 06−3053.

Under *Lyons*, 207 Wis. 2d 446 (1996), an independent professional contractor who follows official directives is an agent for the purposes of sub. (4) or is entitled to common law immunity when: 1) the governmental authority approved reasonably precise specifications; 2) the contractor's actions conformed to those specifications; and 3) the contractor warned the supervising governmental authority about the possible dangers associated with those specifications that were known to the contractor but not to the governmental officials. Estate of Brown v. Mathy Construction Co., 2008 WI App 114, 313 Wis. 2d 497, 756 N.W.2d 417, 07−1543. See also Bronfeld v. Pember Cos., 2010 WI App 150, 330 Wis. 2d 123, 792 N.W.2d 222, 09−2297.

Under the *Lyons*, 207 Wis. 2d 446 (1996), test, the specification question is not what other safety precautions might have been taken, but whether the safety requirements provided by the contract were reasonably precise specifications. A contract is reasonably precise if it reasonably and precisely lists items required. Common sense dictates that items not required by the contract do not obligate the contractor to provide them. Estate of Brown v. Mathy Construction Co., 2008 WI App 114, 313 Wis. 2d 497, 756 N.W.2d 417, 07−1543.

A spirit rule book for cheerleading, not officially adopted by a school district, lacked the absolute, certain, and imperative direction that prescribes and defines the time, mode, and occasion for an action's performance with such certainty that nothing remains for judgment or discretion. As such, the plaintiff did not show that the rule book created an absolute, certain, or imperative duty that fell within the ministerial duty exception to governmental immunity under sub. (4). Noffke v. Bakke, 2009 WI 10, 315 Wis. 2d 350, 760 N.W.2d 156, 06−1886.

So long as a precautionary measure is taken in response to an open and obvious danger, the law is that the government remains immune from suit under sub. (4). In this case, the trial court found that a teacher took no precautionary measure to deal with a known danger. While the teacher had the option to pick one precautionary measure over another, the teacher did not have the option to do nothing, and the exception to immunity applied. Heuser v. Community Insurance Corp., 2009 WI App 151, 321 Wis. 2d 729, 774 N.W.2d 653, 08−2760.

A government entity is not entitled to immunity for a failure to maintain its property as to a condition of disrepair or defect or a failure to operate. In this case, once the sewerage district had notice that its deep tunnel was draining the aquifer in downtown Milwaukee to the detriment of property owners, it had an "absolute, certain and imperative" duty to repair the tunnel. As the entity responsible for the tunnel, and being aware that the tunnel was causing structural damage to the plaintiff's property, the district had a ministerial duty to repair the tunnel. Because it did not, it enjoyed no immunity for its negligence under sub. (4). Bostco LLC v. Milwaukee Metropolitan Sewerage District, 2011 WI App 76, 334 Wis. 2d 620, 800 N.W.2d 518, 07−0221. Affirmed. 2013 WI 78, 350 Wis. 2d 554, 835 N.W.2d 160, 07−0221.

Three factors should be considered when determining whether to exempt a specific statute from the notice of claim requirements: 1) whether there is a specific statutory scheme for which the plaintiff seeks exemption; 2) whether enforcement of the notice of claim requirements would hinder a legislative preference for a prompt resolution of the type of claim under consideration; and 3) whether the purposes for which this section was enacted would be furthered by requiring that a notice of claim be filed. Antitrust actions brought under s. 133.18 are not exempt from the notice of claim requirements found in sub. (1) [now sub. (1d)]. E−Z Roll Off, LLC v. County of Oneida, 2011 WI 71, 335 Wis. 2d 720, 800 N.W.2d 421, 09−0775.

The first step in the ministerial duty analysis is to identify a source of law or policy that imposes the alleged duty. Merely arguing, in general terms, that a municipality that alters the normal course of traffic on a road must take measures to ensure the public can safely travel on the road and not pointing to any statute, regulation, or policy that imposes this duty, fails to do so. Even assuming the county had a duty to ensure reasonably safe travel during road construction, that duty would not be ministerial. How to safely control traffic in a construction zone is an inherently discretionary decision requiring the exercise of judgment. American Family Mutual Insurance Co. v. Outagamie County, 2012 WI App 60, 341 Wis. 2d 413, 816 N.W.2d 340, 11−1211.

It is evident that the plain meaning of "action" in sub. (3) is a judicial proceeding. While two other subsections within this section utilize the term "suit," those subsections are unrelated; they operate independently and without reference to sub. (3). Thus, it does no mischief to interpret suit and action to have the same meaning. Sub. (3) provides for one damages cap, per person, per action. Anderson v. Hebert, 2013 WI App 54, 347 Wis. 2d 321, 830 N.W.2d 704, 12−1313.

Volunteer firefighters are actuated by a purpose to serve the fire department from the moment they choose to respond to an emergency call. Because of that, they are operating within the scope of their employment for the purposes of sub. (4) immunity. Brown v. Acuity, 2013 WI 60, 348 Wis. 2d 603, 833 N.W.2d 96, 11−0583.

Under s. 346.03 (3), the driver of an emergency vehicle may proceed through a red stop signal only if the driver's vehicle gives a visual and an audible signal. A driver who did not give an audible signal has no discretion to proceed through a red stop signal. The statute sets forth "absolute, certain and imperative" requirements concerning the "performance of a specific task." Thus s. 346.03 (3) imposes upon a driver a ministerial duty to stop at a red stop signal, and a driver who does not falls within the ministerial duty exception to public officer immunity. Brown v. Acuity, 2013 WI 60, 348 Wis. 2d 603, 833 N.W.2d 96, 11−0583.

The monetary damage cap in sub. (3) does not violate equal protection. The plain meaning of sub. (3) is to limit the dollar amount of recovery to be paid for damages, injuries, or death to $50,000 per claimant, but the plain meaning of that provision has no bearing on the availability of equitable relief such as abatement. Bostco LLC v. Milwaukee Metropolitan Sewerage District, 2013 WI 78, 350 Wis. 2d 554, 835 N.W.2d 160, 07−0221.

A municipal entity may be subjected to claims for equitable relief to abate a negligently maintained nuisance that is a cause of significant harm and of which the municipal entity has notice. Under *Willow Creek*, 2000 WI 56, and *Johnson*, 207 Wis. 2d 343 (1996), equitable relief will be barred when a municipal entity is entitled to immunity. When a plaintiff seeks equitable or injunctive relief against a municipal entity, a court must first answer the threshold question of whether immunity applies. If a court concludes that the actions the plaintiff is seeking to stop through a suit in equity are legislative, quasi−legislative, judicial, or quasi−judicial, then the suit must be dismissed because the governmental entity is protected by immunity. Bostco LLC v. Milwaukee Metropolitan Sewerage District, 2013 WI 78, 350 Wis. 2d 554, 835 N.W.2d 160, 07−0221.

When a governmental contractor seeks immunity under sub. (4), the contractor must show both that the contractor was an agent as that term is used in sub. (4) and that the allegedly injurious conduct was caused by the implementation of a decision for which immunity is available for governmental entities under sub. (4). A governmental contractor seeking to assert the defense of immunity should clearly allege in the pleadings why the injury−causing conduct comes within a legislative, quasi−legislative, judicial, or quasi−judicial function as set out in sub. (4). Showers Appraisals, LLC v. Musson Bros., Inc., 2013 WI 79, 350 Wis. 2d 509, 835 N.W.2d 226, 11−1158. See also Melchert v. Pro Electric Contractors, 2017 WI 30, 374 Wis. 2d 439, 892 N.W.2d 710, 13−2882.

While s. 346.03 provides statutory privileges of authorized emergency vehicles exempting their operators from certain rules of the road, it also explicitly states that an operator of an emergency vehicle is not relieved of the "duty to drive or ride with due regard under the circumstances for the safety of all persons." The duty of "due regard under the circumstances" is a ministerial duty for purposes of determining immunity under this section. Legue v. City of Racine, 2014 WI 92, 357 Wis. 2d 250, 849 N.W.2d 837, 12−2499.

Nothing in Wisconsin law bars class action against a governmental body that is a mass action of named claimants bringing similar claims, provided that each claimant has complied with this section. Townsend v. Neenah Joint School District, 2014 WI App 117, 358 Wis. 2d 618, 856 N.W.2d 644, 13−2839.

To evaluate whether named claimants gave sufficient notice under this section, the issue is whether the notice they filed substantially complied with all the requirements of this section. To substantially comply, a notice must satisfy two related but distinct notice requirements. Sub. (1d) (a) imposes a "notice of injury" requirement of "written notice of the circumstances of the claim signed by the party, agent or attorney" and a "notice of claim" requirement under sub. (1d) (b) that notice of the claimant's identity and address, along with an itemized statement of relief sought, was presented to the proper person at the governmental body and was denied. Actual notice and lack of prejudice are an alternative to the written notice for sub. (1d) (a) but not for sub. (1d) (b). Townsend v. Neenah Joint School District, 2014 WI App 117, 358 Wis. 2d 618, 856 N.W.2d 644, 13−2839.

Whether claims were presented by the claimants' authority is a function of the requirement under sub. (1d) (a) that a claim be "signed by the party, agent or attorney" or, in the alternative, that the governmental body had actual notice. In this case, the notice was signed by an attorney "for Claimants and Class," and the "class" was defined as the persons whose names, addresses, and claims were itemized on an attached list. If the notice of claim were a pleading in court, the attorney's signature would have sufficed to indicate the attorney's status as representative for the identified clients and "need not be verified or accompanied by affidavit." Townsend v. Neenah Joint School District, 2014 WI App 117, 358 Wis. 2d 618, 856 N.W.2d 644, 13−2839.

When a gas company provided the only training for natural gas leak emergencies for the entire city fire department, the responsibility for training first responders on how to respond to natural gas emergencies was effectively delegated to the gas company. The gas company's first responder handbook that accompanied the training was the only written protocol available describing how city employees were to handle natural gas emergencies and was effectively adopted by the city when it delegated its specialized training authority to the gas company. The fire department had a ministerial duty based on the city's delegations of both the emergency response training and the performance requirements in the handbook. Oden v. City of Milwaukee, 2015 WI App 29, 361 Wis. 2d 708, 863 N.W.2d 619, 14−0130.

The "known danger" exception, a subset of the ministerial duty exception, to governmental immunity did not apply in this case. The police department performed its ministerial duty by promptly acting in response to sexual assault allegations regarding a child reported by the school principal and performing a criminal investigation. The child's objection in this lawsuit was to the scope of the investigation, inferring that the police should have somehow deduced or learned through additional investigation that the child's uncle was assaulting the child. The "how" and "scope" of the investigation performed by the police department were discretionary acts rather than a ministerial duty and thus the police department was entitled to immunity. D.B. v. County of Green Lake, 2016 WI App 33, 368 Wis. 2d 282, 879 N.W.2d 131, 15−1301.

The scope and breadth of the county's investigation of abuse reported under s. 48.981 (2) falls within the county's discretion rather than being a ministerial act. Therefore, immunity under sub. (4) applied to a county, when the county's investigation followed the requirements of s. 48.981 (3) (a) 3. by referring the matter to the police for investigation within 12 hours of receiving the report. D.B. v. County of Green Lake, 2016 WI App 33, 368 Wis. 2d 282, 879 N.W.2d 131, 15−1301.

The known danger exception to governmental immunity under sub. (4) applies when an obviously hazardous situation known to the public officer or employee is of such force that a ministerial duty to correct the situation is created. Simply allowing for the exercise of discretion does not suffice to bring an action under the blanket of immunity provided by sub. (4) when the facts or allegations reveal a duty so clear and absolute that it falls within the concept of a ministerial duty. In this case, the fact that there may have been several possible ways in which the defendant could have fulfilled its ministerial duty did not affect the resolution of the case. It was sufficient for the court to conclude that a ministerial duty was created by the obviously hazardous circumstances presented in the case. Engelhardt v. City of New Berlin, 2019 WI 2, 385 Wis. 2d 86, 921 N.W.2d 714, 16−0801.

In this case, the condominium association alleged causes of action for public and private nuisance against the village for hosting public performances at a pavilion constructed in a public park in the village. Under the common law of nuisance, every

continuation of a nuisance is a new nuisance. Therefore, for purposes of the notice of claim statute, each individual concert that was alleged to be a nuisance constituted a new event giving rise to a new 120–day notice of injury period under sub. (1d) (a). Yacht Club at Sister Bay Condominium Ass'n v. Village of Sister Bay, 2019 WI 4, 385 Wis. 2d 158, 922 N.W.2d 95, 17–0140.

Noncompliance with this section is an affirmative defense and not a jurisdictional prerequisite to filing suit. Maple Grove Country Club Inc. v. Maple Grove Estates Sanitary District, 2019 WI 43, 386 Wis. 2d 425, 926 N.W.2d 184, 16–2296.

A village's oral policy to pump water out of a lift station when water reaches a certain level did not create a ministerial duty to act, and rules of the Department of Natural Resources emphasized the discretionary nature of the decision. Because the task was discretionary, the village was immune from suit for negligence under sub. (4). Pinter v. Village of Stetsonville, 2019 WI 74, 387 Wis. 2d 475, 929 N.W.2d 547, 17–1593.

In this case, even if a growing snow and ice ramp created by a city's alleged negligent plowing practices was known to the city, the danger was not sufficiently compelling to give rise to a ministerial duty. A commonplace icy condition on the street where the plaintiff was injured did not create a danger so severe and so immediate that a response was demanded. To conclude otherwise would ignore the realities that Wisconsin pedestrians are accustomed to icy winter conditions and that a Wisconsin municipality will never be able to address every potentially unsafe snow and ice accumulation on its roadways and must instead exercise its discretion in determining how and when to respond to them. Knoke v. City of Monroe, 2021 WI App 6, 395 Wis. 2d 551, 953 N.W.2d 889, 19–2003.

The first sentence of s. 893.83 grants municipalities a period of absolute immunity for claims based on snow and ice accumulations that have existed less than three weeks. The second sentence clarifies that immunity is not absolute if the snow or ice accumulation has existed for three weeks or more—under such circumstances, a claim is subject to this section, like any other tort claim against a municipality. Knoke v. City of Monroe, 2021 WI App 6, 395 Wis. 2d 551, 953 N.W.2d 889, 19–2003.

The first sentence of sub. (1d) (a) outlines the requirements of formal notice of injury. There are four elements: 1) proper timing (within the first 120 days); 2) proper service under s. 801.11 (governing service of process in civil actions); 3) proper signatory; and 4) a description of the circumstances of the claim. That notice simply alerts the defendant that an incident occurred that might thereafter ripen into a claim. Formal notice of the claim itself comes later. Clark v. League of Wisconsin Municipalities Mutual Insurance Co., 2021 WI App 21, 397 Wis. 2d 220, 959 N.W.2d 648, 19–0954.

To mitigate the potential harshness that might ensue from the strict application of the formal notice of injury requirement, the statute contains a savings clause. The second sentence of sub. (1d) (a) allows for substantial compliance, excusing a plaintiff's failure to provide formal notice when: 1) the defendant had actual notice of the claim; and 2) the plaintiff shows to the satisfaction of the court that the delay or failure to give the requisite formal notice has not been prejudicial. In at least one respect, the actual notice requirement may be more difficult to meet than formal notice: actual notice must be "of the claim," rather than of the mere "circumstances" that may later give rise to a claim. On the other hand, actual notice is not limited to a particular timeframe and may occur outside the 120 days following the injury–causing event. In this case, the plaintiff's submission of the notice of claim form served double–duty as both actual notice under the savings clause and notice of claim under sub. (1d) (b). Clark v. League of Wisconsin Municipalities Mutual Insurance Co., 2021 WI App 21, 397 Wis. 2d 220, 959 N.W.2d 648, 19–0954.

Prejudice in the context of sub. (1d) (a) has been defined as the inability of a party to adequately defend a claim because the party lacked sufficient opportunity to conduct a prompt investigation. The date on which a defendant had "actual notice of the claim" may bear on prejudice, but it is certainly not dispositive. The key inquiry is what, if anything, would the defendant have done differently had the plaintiff timely served a statutorily compliant written notice describing the circumstances of the claim? It is conceivable that the answer to this "what if" question could be affected by when the defendant first learned of the actual claim. An example might be when the defendant's awareness of an injury was not enough to prompt an investigation sufficient to protect the defendant's interests—when, in other words, only the defendant's knowledge of a potential lawsuit could have prompted such an investigation. But whether that is true in any given case should be assessed as part of the overall factual inquiry into prejudice. Clark v. League of Wisconsin Municipalities Mutual Insurance Co., 2021 WI App 21, 397 Wis. 2d 220, 959 N.W.2d 648, 19–0954.

Discussing liability of vocational, technical, and adult education [now technical college] districts and of their officers and employees. 77 Atty. Gen. 145.

A town that responds to a Level B hazardous waste release in its own capacity, in the absence of a county wide agreement, does not receive immunity from civil liability under s. 895.483 (2), but other statutory and common law immunities apply. OAG 1–99.

Monroe, 365 U.S. 167 (1961), is overruled insofar as it holds that local governments are wholly immune from suit under 42 USC 1983. Monell v. Department of Social Services, 436 U.S. 658, 98 S. Ct. 2018, 56 L. Ed. 2d 611 (1978).

A defendant public official has the burden to plead "good faith" as an affirmative defense in a 42 USC 1983 case. Gomez v. Toledo, 446 U.S. 635, 100 S. Ct. 1920, 64 L. Ed. 2d 572 (1980).

A municipality is immune from punitive damages under 42 USC 1983. City of Newport v. Fact Concerts, Inc., 453 U.S. 247, 101 S. Ct. 2748, 69 L. Ed. 2d 616 (1981).

A city ordinance regulating cable television was not exempt from antitrust scrutiny under the *Parker*, 317 U.S. 341 (1943), doctrine. Community Communications Co. v. City of Boulder, 455 U.S. 40, 102 S. Ct. 835, 70 L. Ed. 2d 810 (1982).

This section is preempted in 42 USC 1983 actions and may not be applied as it conflicts with the purpose and effects of federal civil rights actions. Felder v. Casey, 487 U.S. 131, 108 S. Ct. 2302, 101 L. Ed. 2d 123 (1988).

A claim of excessive force in the course of making a seizure of the person is properly analyzed under the 4th amendment's objective reasonableness standard. A police officer's attempt to terminate a dangerous high–speed car chase that threatens the lives of innocent bystanders does not violate the 4th amendment, even when it places the fleeing motorist at risk of serious injury or death. Scott v. Harris, 550 U.S. 372, 127 S. Ct. 1769, 167 L. Ed. 2d 686 (2007).

Whether an official protected by qualified immunity may be held personally liable for an allegedly unlawful official action generally turns on the objective legal reasonableness of the action, assessed in light of the legal rules that were clearly established at the time the action was taken. When an alleged 4th amendment violation involves a search or seizure pursuant to a warrant, the fact that a neutral magistrate has issued a warrant is the clearest indication that the officers acted in an objectively reasonable manner. There is a narrow exception allowing suit when it is obvious that no reasonably competent officer would have concluded that a warrant should issue. Messerschmidt v. Millender, 565 U.S. 535, 132 S. Ct. 1235, 182 L. Ed. 2d 47 (2012).

Sub. (4) bars direct suits against municipalities for the torts of their employees. It does not preclude suing the officer directly and using s. 895.46 to indirectly recover from the municipality. Graham v. Sauk Prairie Police Commission, 915 F.2d 1085 (1990).

Once a deputy assumed a duty to protect a person subsequently murdered in a room adjacent to where the deputy was present, the deputy's obligation was no longer discretionary and the deputy was no longer entitled to immunity under sub. (4) for decisions made at the murder site. Losinski v. County of Trempealeau, 946 F.2d 544 (1991).

Immunity of elected officials under sub. (4) is not defeated by the possibility that the officials' acts were malicious. Farr v. Gruber, 950 F.2d 399 (1991).

The state may not be sued by a citizen under the wrongful death statute. Pinon v. Wisconsin, 368 F. Supp. 608 (1973).

Discussing civil rights actions against municipalities. Starstead v. City of Superior, 533 F. Supp. 1365 (1982).

A county was not vicariously liable for its sheriff's alleged use of excessive force when the complaint alleged an intentional tort. Voie v. Flood, 589 F. Supp. 746 (1984).

Decisions by law enforcement officers concerning whether and how to arrest someone are discretionary for purposes of sub. (4). Wilson v. City of Milwaukee, 138 F. Supp. 2d 1126 (2001).

The duty to report abuse of children to authorities under s. 48.981 is ministerial and not discretionary. Baumgardt v. Wausau School District Board of Education, 475 F. Supp. 2d 800 (2007).

Claims under the wage claim statute, s. 109.03, are not exempt from the requirements set forth in this section. Gilbertson v. City of Sheboygan, 165 F. Supp. 3d 742 (2016).

The exception to discretionary immunity under sub. (4) for malicious, willful, and intentional conduct can apply to negligence claims. Price v. Mueller–Owens, 516 F. Supp. 3d 816 (2021).

Knowledge of the relevant events isn't enough to qualify as actual notice under sub. (1d) (a). Rather, the defendants must have notice of the claim. Among other things, that means that the defendants must have notice of the specific relief that the plaintiff is requesting. Stabenow v. City of Eau Claire, 546 F. Supp. 3d 787 (2021).

The Discretionary Function Exception to Government Tort Liability. Wyant. 61 MLR 163 (1977).

Revising Wisconsin's Government Immunity Doctrine. Annoye. 88 MLR 971 (2005).

Municipal Liability: The Failure to Provide Adequate Police Protection—The Special Duty Doctrine Should Be Discarded. Krause. 1984 WLR 499.

Wisconsin Recovery Limit for Victims of Municipal Torts: A Conflict of Public Interests. Ulrich. 1986 WLR 155.

Reining in Municipalities: How to Tame the Municipal Immunity Monster in Wisconsin. Dudding. 2004 WLR 1741.

Pushing the Reset Button on Wisconsin's Governmental Immunity Doctrine. Bullard. 2014 WLR 801.

Several Police Supervisor Immunities From State Court Suit May Be Doomed By the Wisconsin Supreme Court. Fine. WBB Oct. 1977.

Government Immunity for Safe Place Statute Violations. Cabush. Wis. Law. Oct. 1999.

Fighting City Hall: Municipal Immunity in Wisconsin. Pollack. Wis. Law. Dec. 2000.

Returning to First Principles? Governmental Immunity in Wisconsin. Johnson–Karp. Wis. Law. Apr. 2014.

893.82 Claims against state employees; notice of claim; limitation of damages. (1) The purposes of this section are to:

(a) Provide the attorney general with adequate time to investigate claims which might result in judgments to be paid by the state.

(b) Provide the attorney general with an opportunity to effect a compromise without a civil action or civil proceeding.

(c) Place a limit on the amounts recoverable in civil actions or civil proceedings against any state officer, employee or agent.

(2) In this section:

(a) "Civil action or civil proceeding" includes a civil action or civil proceeding commenced or continued by counterclaim, cross claim or 3rd–party complaint.

(b) "Claimant" means the person or entity sustaining the damage or injury or his or her agent, attorney or personal representative.

(c) "Damage" or "injury" means any damage or injury of any nature which is caused or allegedly caused by the event. "Damage" or "injury" includes, but is not limited to, any physical or mental damage or injury or financial damage or injury resulting from claims for contribution or indemnification.

(d) "State officer, employee or agent" includes any of the following persons:

1. An officer, employee or agent of any nonprofit corporation operating a museum under a lease agreement with the state historical society.

1m. A volunteer health care provider who provides services under s. 146.89, except a volunteer health care provider described in s. 146.89 (5) (a), for the provision of those services.

1n. A practitioner who provides services under s. 257.03 and a health care facility on whose behalf services are provided under s. 257.04, for the provision of those services.

1r. A physician under s. 251.07 or 252.04 (9) (b).

2. A member of a local emergency planning committee appointed by a county board under s. 59.54 (8) (a).

3. A member of the board of governors created under s. 619.04 (3), a member of a committee or subcommittee of that board of governors, a member of the injured patients and families compensation fund peer review council created under s. 655.275 (2), and a person consulting with that council under s. 655.275 (5) (b).

(2m) No claimant may bring an action against a state officer, employee or agent unless the claimant complies strictly with the requirements of this section.

(3) Except as provided in sub. (5m), no civil action or civil proceeding may be brought against any state officer, employee or agent for or on account of any act growing out of or committed in the course of the discharge of the officer's, employee's or agent's duties, and no civil action or civil proceeding may be brought against any nonprofit corporation operating a museum under a lease agreement with the state historical society, unless within 120 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, employee or agent involved. Except as provided under sub. (3m), a specific denial by the attorney general is not a condition precedent to bringing the civil action or civil proceeding.

(3m) If the claimant is a prisoner, as defined in s. 801.02 (7) (a) 2., the prisoner may not commence the civil action or proceeding until the attorney general denies the claim or until 120 days after the written notice under sub. (3) is served upon the attorney general, whichever is earlier. This subsection does not apply to a prisoner who commences an action seeking injunctive relief if the court finds that there is a substantial risk to the prisoner's health or safety.

(4) (a) Except as provided in par. (b), if the civil action or proceeding under sub. (3) is based on contribution or indemnification, the event under sub. (3) is the underlying cause of action, not the cause of action for contribution or indemnification, and, except as provided in sub. (5m), the 120−day limitation applies to that event.

(b) 1. If the claimant under par. (a) establishes that he or she had no actual or constructive knowledge of the underlying cause of action at the time of the event under sub. (3), except as provided in sub. (5m), the 120−day limitation under sub. (3) applies to the earlier of the following:

a. The date the cause of action for contribution or indemnification accrues.

b. The date the claimant acquired actual or constructive knowledge of the underlying cause of action.

2. The claimant has the burden of proving he or she had no actual knowledge of the underlying cause of action under this paragraph.

(5) The notice under sub. (3) shall be sworn to by the claimant and shall be served upon the attorney general at his or her office in the capitol or at the department of justice by personal service or by certified mail. If served by certified mail, notice shall be considered to be given upon mailing for the purpose of computing the time of giving notice.

(5m) With regard to a claim to recover damages for medical malpractice, the provisions of subs. (3), (3m), and (4) do not apply. The time periods for commencing an action under this section for damages for medical malpractice are the time periods under ss. 893.55 (1m), (2), and (3) and 893.56.

(6) 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, employee or agent, or against a nonprofit corporation operating a museum under a lease agreement with the state historical society, including any such action or proceeding based on contribution or indemnification, shall not exceed $250,000. No punitive damages may be allowed or recoverable in any such action.

(7) With respect to a state officer, employee or agent described in sub. (2) (d) 3., this section applies to an event causing the injury, damage or death giving rise to an action against the state officer, employee or agent, which occurs before, on or after April 25, 1990.

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

(9) For purposes of this section, any employee of the state of Minnesota performing services for this state pursuant to a valid agreement between this state and the state of Minnesota providing for interchange of employees or services is considered to have the same status an as employee of this state performing the same services for this state, and any employee of this state who performs services for the state of Minnesota pursuant to such an agreement is considered to have the same status as when performing the same services for this state in any action brought under the laws of this state.

History: 1973 c. 333; 1977 c. 29; 1979 c. 221; 1979 c. 323 s. 30; 1979 c. 355; Stats. 1979 s. 893.82; 1983 a. 27; 1985 a. 66, 340; 1987 a. 342; 1987 a. 403 s. 256; 1989 a. 187, 206, 359; 1991 a. 39, 269; 1993 a. 27, 28; 1995 a. 158, 201; 1997 a. 133; 2003 a. 111; 2005 a. 96; 2007 a. 79, 130; 2009 a. 42, 278; 2011 a. 32; 2013 a. 241; 2019 a. 29.

Judicial Council Committee's Note, 1979: This section is previous s. 895.45 renumbered for more logical placement in restructured ch. 893. The previous 90−day time period in which to file written notice of a claim against an employee of the state of Wisconsin has been increased to 120 days to make the time period consistent with the period for filing notice of claims with other governmental bodies allowed in s. 893.80. (See note following s. 893.80). [Bill 326−A]

The court had no jurisdiction over state employees alleged to have intentionally damaged the plaintiff when the complaint failed to comply with the notice of claim statute. Elm Park Iowa, Inc. v. Denniston, 92 Wis. 2d 723, 286 N.W.2d 5 (Ct. App. 1979).

Noncompliance with the notice of injury statute barred suit even though the defendant failed to raise the issue in responsive pleadings. Mannino v. Davenport, 99 Wis. 2d 602, 299 N.W.2d 823 (1981).

The court properly granted the defendant's motion to dismiss since a notice of claim of injury was not served upon the attorney general within the 120−day limit. Ibrahim v. Samore, 118 Wis. 2d 720, 348 N.W.2d 554 (1984).

Sub. (3) does not create an exception for a plaintiff who is unaware that a defendant is a state employee. Renner v. Madison General Hospital, 151 Wis. 2d 885, 447 N.W.2d 97 (Ct. App. 1989).

Under an administrative−services−only state group insurance contract, the insurer is an agent of the state, and the plaintiff must comply with the notice provisions under this section to maintain an action. Smith v. Wisconsin Physicians Service, 152 Wis. 2d 25, 447 N.W.2d 371 (Ct. App. 1989).

A possible finding that a state employee was acting as an apparent agent of a non−state hospital does not permit the maintenance of a suit against the state employee absent compliance with the notice requirements. Kashishian v. Port, 167 Wis. 2d 24, 481 N.W.2d 277 (1992).

Actual notice and lack of prejudice to the state are not exceptions to the 120−day notice requirement. Carlson v. Pepin County, 167 Wis. 2d 345, 481 N.W.2d 498 (Ct. App. 1992).

The certified mail requirement under sub. (5) is subject to strict construction. Thus, when the plaintiff in this case served notice of claim by regular mail rather than by certified mail, dismissal was appropriate. Kelly v. Reyes, 168 Wis. 2d 743, 484 N.W.2d 388 (Ct. App. 1992).

Records relating to pending claims need not be disclosed under s. 19.35. Records of nonpending claims must be disclosed unless an in camera inspection reveals attorney−client privilege would be violated. George v. Record Custodian, 169 Wis. 2d 573, 485 N.W.2d 460 (Ct. App. 1992).

Sub. (3) does not apply to claims for injunctive and declaratory relief. Lewis v. Sullivan, 188 Wis. 2d 157, 524 N.W.2d 630 (1994).

Sub. (5) requires a notice of claim to be sworn to and to include evidence showing that an oath or affirmation occurred. Kellner v. Christian, 197 Wis. 2d 183, 539 N.W.2d 685 (1995), 93−1657.

The discovery rule does not apply to sub. (3). The failure to apply the discovery rule to sub. (3) is not unconstitutional. Oney v. Schrauth, 197 Wis. 2d 891, 541 N.W.2d 229 (Ct. App. 1995), 94−3298.

The constitutional mandate of just compensation for a taking of property cannot be limited in amount by statute. A taking may result in the state's obligation to pay more than $250,000. Wisconsin Retired Teachers Ass'n v. Employe Trust Funds Board, 207 Wis. 2d 1, 558 N.W.2d 83 (1997), 94−0712.

A state "agent" under sub. (3) means an individual and not a state agency. Miller v. Mauston School District, 222 Wis. 2d 540, 588 N.W.2d 305 (Ct. App. 1998), 97−1874.

A defendant is not relieved from filing a notice of claim under this section when a state employee also performs functions for a private employer. The notice of claim provisions are constitutional. Riccitelli v. Broekhuizen, 227 Wis. 2d 100, 595 N.W.2d 392 (1999), 98−0329.

This section does not provide an administrative remedy for purposes of filing a federal civil rights claim under 42 USC 1983, and therefore the failure to file a notice of claim under this section was not a failure to exhaust administrative remedies justifying denial of a petition. State ex rel. Ledford v. Circuit Court, 228 Wis. 2d 768, 599 N.W.2d 45 (Ct. App. 1999), 99−0939.

The factors relevant to a master/servant relationship are relevant to deciding whether a person is a state employee under sub. (3). A state employee's affiliation with another entity does not vitiate the employee's status as a state employee for purposes of sub. (3) as long as the act sued upon grows out of or was committed in the course of duties as a state employee. Lamoreux v. Oreck, 2004 WI App 160, 275 Wis. 2d 801, 686 N.W.2d 722, 03−2045.

A notice is properly served on the attorney general under sub. (5) if a claimant sends the notice by certified mail addressed to the attorney general at the attorney general's capitol office, Main Street office, post office box, or any combination of those three addresses, assuming that the notice otherwise complies with sub. (5). Hines v. Resnick, 2011 WI App 163, 338 Wis. 2d 190, 807 N.W.2d 687, 11−0109.

Kellner, 197 Wis. 2d 183 (1995), sets forth two requirements in order for a notice of claim to be properly "sworn to" under sub. (5). First, a formal oath or affirmation must be taken by a claimant. Second, the notice of claim must contain a statement showing that the oath or affirmation occurred. Neither requirement demands that a false notice of claim be punishable for perjury or that a notice of claim must contain a statement by a notary that an oath or affirmation was administered. Estate of Hopgood v. Boyd, 2013 WI 1, 345 Wis. 2d 65, 825 N.W.2d 273, 11−0914.

Sub. (3)'s time−of−the−event requirement only requires a plaintiff to include the time of the event giving rise to a claim when it is possible to do so. To require otherwise essentially bars recovery for plaintiffs with claims that are not set in a single moment in time and creates an absurd result. The plaintiffs' claims in this case did not arise from a singular event occurring at a fixed moment in time, but were based on numerous events that transpired over a duration of time. Requiring them to set forth the exact moment in time that each of these events occurred was unreasonable. Mayo v. Boyd, 2014 WI App 37, 353 Wis. 2d 162, 844 N.W.2d 652, 13−1578.

Members of the Investment Board, Employee Trust Fund Board, Teachers Retirement Board, Wisconsin Retirement Board, Group Insurance Board, and Deferred Compensation Board are subject to the limitations on damages under this section and are entitled to the state's indemnification for liability under s. 895.46. OAG 2−06.

This section provides no affirmative waiver of the state's immunity to suit but forecloses suit when its procedures are not followed. The state has not waived its immunity under the federal Fair Labor Standards Act. Luder v. Endicott, 86 F. Supp. 2d 854 (2000).

The injury caused by a misdiagnosis arises when the misdiagnosis causes greater harm than existed at the time of the misdiagnosis. Under sub. (6), discovery occurs when the plaintiff has information that would give a reasonable person notice of the injury, that is, of the greater harm caused by the misdiagnosis. McCullough v. Lindblade, 513 F. Supp. 2d 1037 (2007).

The notice−of−claim statute applies to claims for malpractice against a staff attorney in the public defender's office. Sanders v. Vishny, 563 F. Supp. 3d 938 (2021).

893.825 Statutory challenges. (1) In an action in which a statute is alleged to be unconstitutional, or to be in violation of or preempted by federal law, or if the construction or validity of a statute is otherwise challenged, the attorney general shall be served with a copy of the proceeding and is entitled to be heard.

(2) In an action in which a statute is alleged to be unconstitutional, or to be in violation of or preempted by federal law, or if the construction or validity of a statute is otherwise challenged, the speaker of the assembly, the president of the senate, and the senate majority leader shall also be served with a copy of the proceeding and the assembly, the senate, and the joint committee on legislative organization are entitled to be heard.

History: 2017 a. 369.

893.83 Damages caused by accumulation of snow or ice; liability of city, village, town, and county. No action may be maintained against a city, village, town, or county to recover damages for injuries sustained by reason of an accumulation of snow or ice upon any bridge or highway, unless the accumulation existed for 3 weeks. Any action to recover damages for injuries sustained by reason of an accumulation of snow or ice that has existed for 3 weeks or more upon any bridge or highway is subject to s. 893.80.

History: 2003 a. 214 ss. 136, 137, 189; 2011 a. 132.

NOTE: 2003 Wis. Act 214, which affected this section, contains extensive explanatory notes.

Shoveling snow from a sidewalk to create a mound along the curb does not create an unnatural or artificial accumulation that renders a city liable. Kobelinski v. Milwaukee & Suburban Transport Corp., 56 Wis. 2d 504, 202 N.W.2d 415 (1972).

City liability arising from snow and ice on sidewalks is determined under the standard of whether, under all the circumstances, the city was unreasonable in allowing the condition to continue. Circumstances to be considered include location, climactic conditions, accumulation, practicality of removal, traffic on the sidewalk, and intended use of the sidewalk by pedestrians. Schattschneider v. Milwaukee & Suburban Transport Corp., 72 Wis. 2d 252, 240 N.W.2d 182 (1976).

This section does not apply to a stairway connecting sidewalks. Although case law has extended the meaning of "highways" to include sidewalks, "highways" do not include stairways connecting sidewalks. Henderson v. Milwaukee County, 198 Wis. 2d 747, 543 N.W.2d 544 (Ct. App. 1995), 95−2294.

As used in this section, "highway" includes the shoulder of the highway. Morris v. Juneau County, 219 Wis. 2d 543, 579 N.W.2d 690 (1998), 96−2507.

A "highway" is an area that the entire community has free access to travel on. A public parking lot is available to the entire community for vehicular travel, and, as such, a city's public parking lot is a "highway" for purposes of this section. Ellerman v. City of Manitowoc, 2003 WI App 216, 267 Wis. 2d 480, 671 N.W.2d 366, 03−0322.

When an accumulation of ice is created by natural conditions, a municipality has three weeks to address the problem. Actions based on artificial accumulations are actionable without the three−week requirement. To be an artificial condition, grading must be part of a drainage design plan or be shown to divert water from other sources onto the sidewalks. If not, grading, by itself, does not create an artificial condition on land even if the municipality had notice that a hazardous condition existed. Gruber v. Village of North Fond du Lac, 2003 WI App 217, 267 Wis. 2d 368, 671 N.W.2d 692, 03−0357.

NOTE: The above annotations cite to s. 81.15, the predecessor statute to this section.

The first sentence of this section grants municipalities a period of absolute immunity for claims based on snow and ice accumulations that have existed less than three weeks. The second sentence clarifies that immunity is not absolute if the snow or ice accumulation has existed for three weeks or more—under such circumstances, a claim is subject to s. 893.80, like any other tort claim against a municipality. Knoke v. City of Monroe, 2021 WI App 6, 395 Wis. 2d 551, 953 N.W.2d 889, 19−2003.

SUBCHAPTER IX

STATUTES OF LIMITATION; ACTIONS BY THE STATE, STATUTORY LIABILITY AND MISCELLANEOUS ACTIONS

893.85 Action concerning old−age assistance lien. (1) An action to collect an old−age assistance lien filed under s. 49.26, 1971 stats., prior to August 5, 1973, must be commenced within 10 years after the date of filing of the required certificate under s. 49.26 (4), 1971 stats.

(2) No claim under s. 49.25, 1971 stats., may be presented more than 10 years after the date of the most recent old−age assistance payment covered by the claim.

History: 1977 c. 385; 1979 c. 323.

Judicial Council Committee's Note, 1979: This section is previous s. 893.181 renumbered for more logical placement in restructured ch. 893. [Bill 326−A]

893.86 Action concerning recovery of legal fees paid for indigents. An action under s. 757.66 to recover an amount paid by a county for legal representation of an indigent defendant shall be commenced within 10 years after the recording of the claim required under s. 757.66 or be barred.

History: 1979 c. 323; 1993 a. 301.

893.87 General limitation of action in favor of the state. Any action in favor of the state, if no other limitation is prescribed in this chapter, shall be commenced within 10 years after the cause of action accrues or be barred. No cause of action in favor of the state for relief on the ground of fraud shall be deemed to have accrued until discovery on the part of the state of the facts constituting the fraud.

History: 1979 c. 323.

Judicial Council Committee's Note, 1979: This section is previous s. 893.18 (6) renumbered for more logical placement in restructured ch. 893. [Bill 326−A]

This section applies only if the action is of a type that does not fall under any other statute of limitations. State v. Holland Plastics Co., 111 Wis. 2d 497, 331 N.W.2d 320 (1983).

When every day of violation of a statute constitutes a separate violation, a cause of action accrues on each day of an alleged violation. State v. Chrysler Outboard Corp., 219 Wis. 2d 130, 580 N.W.2d 203 (1998), 96−1158.

893.88 Paternity actions. Notwithstanding s. 990.06, an action for the establishment of the paternity of a child shall be commenced within 19 years of the date of the birth of the child or be barred.

History: 1971 c. 21; 1979 c. 323, 352; 1979 c. 355 s. 225, 231; 1979 c. 357; Stats. 1979 s. 893.88; 1983 a. 447.

This section did not revive a time−barred paternity action. State v. D.B., 137 Wis. 2d 57, 403 N.W.2d 434 (1987).

This section is constitutional. James A.O. v. George C.B., 182 Wis. 2d 166, 513 N.W.2d 410 (Ct. App. 1994).

This section, limiting only an action for the establishment of paternity, does not preclude a motion for the purpose of determining paternity in a probate proceeding. DiBenedetto v. Jaskolski, 2003 WI App 70, 261 Wis. 2d 723, 661 N.W.2d 869, 01−2189.

893.89 Action for injury resulting from improvements to real property. (1) In this section, "exposure period" means the 7 years immediately following the date of substantial completion of the improvement to real property.

(2) Except as provided in sub. (3), no cause of action may accrue and no action may be commenced, including an action for contribution or indemnity, against the owner or occupier of the property or against any person involved in the improvement to real property after the end of the exposure period, to recover damages for any injury to property, for any injury to the person, or for wrongful death, arising out of any deficiency or defect in the design, land surveying, planning, supervision or observation of construction of, the construction of, or the furnishing of materials for, the improvement to real property. This subsection does not affect the rights of any person injured as the result of any defect in any material used in an improvement to real property to commence an action for damages against the manufacturer or producer of the material.

(3) (a) Except as provided in pars. (b) and (c), if a person sustains damages as the result of a deficiency or defect in an improvement to real property, and the statute of limitations applicable to the damages bars commencement of the cause of action before the end of the exposure period, the statute of limitations applicable to the damages applies.

(b) If, as the result of a deficiency or defect in an improvement to real property, a person sustains damages during the period beginning on the first day of the 5th year and ending on the last day of the 7th year after the substantial completion of the improvement to real property, the time for commencing the action for the damages is extended for 3 years after the date on which the damages occurred.

(c) An action for contribution is not barred due to the accrual of the cause of action for contribution beyond the end of the exposure period if the underlying action that the contribution action is based on is extended under par. (b).

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

(a) A person who commits fraud, concealment or misrepresentation related to a deficiency or defect in the improvement to real property.

(b) A person who expressly warrants or guarantees the improvement to real property, for the period of that warranty or guarantee.

(c) An owner or occupier of real property for damages resulting from negligence in the maintenance, operation or inspection of an improvement to real property.

(d) Damages that were sustained before April 29, 1994.

(5) Except as provided in sub. (4), this section applies to improvements to real property substantially completed before, on or after April 29, 1994.

(6) This section does not affect the rights of any person under ch. 102.

History: 1975 c. 335; 1979 c. 323; 1993 a. 309, 311; 2017 a. 235.

"Substantial completion," the event that triggers the limitation period under former s. 893.89, 1977 stats., is ambiguous. The period begins to run when planners, designers, and contractors lose a significant amount of control over the improvement. A convenient and fair measure of the time when control over the improvement shifts from the builders to the owner is the date when construction is sufficiently completed so that the owner or the owner's representative can occupy or use the improvement for the use it was intended. Holy Family Catholic Congregation v. Stubenrauch Associates, Inc., 136 Wis. 2d 515, 402 N.W.2d 382 (Ct. App. 1987). See also Wascher v. ABC Insurance Co., 2022 WI App 10, 401 Wis. 2d 94, 972 N.W.2d 162, 20−1961.

Bleachers at a high school football stadium qualified as an "improvement to real property" for purposes of this section because they were a permanent addition to real property that enhanced its capital value, involved the expenditure of labor and money, and were designed to make the property more useful or valuable. That an improvement can be removed without harming the real property will not necessarily indicate that the item is not an improvement to real property. The more pertinent inquiry is whether the item can be readily dissembled and moved. Kohn v. Darlington Community Schools, 2005 WI 99, 283 Wis. 2d 1, 698 N.W.2d 794, 03−1067.

This section does not violate article I, section 9, of the Wisconsin Constitution, the right to remedy clause, nor the guarantees of equal protection in the federal and state constitutions. Kohn v. Darlington Community Schools, 2005 WI 99, 283 Wis. 2d 1, 698 N.W.2d 794, 03−1067.

This section bars safe place claims under s. 101.11 resulting from injuries caused by structural defects ten [now seven] years after a structure is substantially completed, as opposed to safe place claims resulting from injuries caused by unsafe conditions associated with the structure. Mair v. Trollhaugen Ski Resort, 2006 WI 61, 291 Wis. 2d 132, 715 N.W.2d 598, 04−1252.

The evident purpose of sub. (4) (b) is to give a party who has bargained for a warranty or guarantee the benefit of the warranty or guarantee period before the exposure period begins to run. The common council is the only entity authorized by statute to act on behalf of a city. Sub. (4) (b) does not need to explicitly state that a municipality must take "official action," because the only manner in which a municipality may lawfully act is already established by the statutes that govern it. Sub. (4) (b) does not extend to an "unofficial" warranty or guarantee that is unenforceable and does not provide an equitable estoppel exception to the running of the statute. Hocking v. City of Dodgeville, 2009 WI App 108, 320 Wis. 2d 519, 770 N.W.2d 761, 08−2812.

When the design and construction of city streets caused a water drainage problem, the city's failure to alter the streets to remedy the problem was a not failure to "maintain" the streets under sub. (4) (c). The applicable common meaning of "maintenance" in this context is the labor of keeping something in a state of repair. Here there was no factual submission showing that the city did or failed to do something with respect to keeping the streets in repair that caused the water damage. Hocking v. City of Dodgeville, 2009 WI App 108, 320 Wis. 2d 519, 770 N.W.2d 761, 08−2812.

The warranty specified in sub. (4) (b) is an express warranty; this means an implied warranty is not enough. City officials, such as employees and individual members of the common council, cannot, through representations that problems will be solved, bind the city to resolve those problems unless they act or make their representations with the authority to bind the city. Hocking v. City of Dodgeville, 2010 WI 59, 326 Wis. 2d 155, 785 N.W.2d 398, 08−2812.

When an improvement to real property creates a nuisance, a party has ten [now seven] years from the substantial completion of that improvement to bring suit. Sub. (4) (c) applies when an improvement to real property is completed, but the owner or occupier is negligent in the maintenance, operation, or inspection of it, thus causing damage. It does not apply to proper maintenance of an improvement when it is the improvement itself that causes injury. Hocking v. City of Dodgeville, 2010 WI 59, 326 Wis. 2d 155, 785 N.W.2d 398, 08−2812.

An easement agreement that expressly stated that the defendant sewer district agreed to construct and maintain an intercepting sewer in good order and condition and to indemnify and save harmless the plaintiff from all loss or injury to its property and persons due to such construction was an express warranty under *Hocking*, 2010 WI 59. Cianciola, LLP v. Milwaukee Metropolitan Sewerage District, 2011 WI App 35, 331 Wis. 2d 740, 796 N.W.2d 806, 10−0087.

This section provides that persons involved in improvements to real property may not be sued more than ten [now seven] years after substantial completion of a project. The statute does not extend the time for bringing lawsuits that are otherwise time−barred by statutes of limitations. This section is a catch−all provision that imposes a time limit on many lawsuits relating to property improvements that are not otherwise time−barred within ten [now seven] years after substantial completion. If a cause of action is time−barred by a statute of limitations before it would be barred under this section, that statute of limitations applies. Kalahari Development, LLC v. Iconica, Inc., 2012 WI App 34, 340 Wis. 2d 454, 811 N.W.2d 825, 11−0643.

This section applies to claims against subsequent owners who were not involved in the actual improvement to the property. Expanding the class of claims exempt from the statute of repose under sub. (4) (c) to include not only unsafe conditions, but also structural defects of which an owner has notice, would effectively swallow the rule because every improvement that is negligently designed could be considered an ongoing nuisance that the owner or operator negligently maintains by failing to correct. Crisanto v. Heritage Relocation Services, Inc., 2014 WI App 75, 355 Wis. 2d 403, 851 N.W.2d 771, 13−1369.

"Damages" in sub. (4) (d) means legally actionable damages. Peter v. Sprinkmann Sons Corp., 2015 WI App 17, 360 Wis. 2d 411, 860 N.W.2d 308, 14−0923.

The purpose of this section is to protect contractors who are involved in permanent improvements to real property. Daily repairs are not improvements to real property as that phrase is used in this section. Peter v. Sprinkmann Sons Corp., 2015 WI App 17, 360 Wis. 2d 411, 860 N.W.2d 308, 14−0923.

Although the accident in this case occurred well after the ten−year [now seven−year] exposure period had expired, there was sufficient evidence in the record to support the trial court's findings that the defendant concealed and misrepresented changes in construction, thus triggering the fraud exception to the statute of repose. Wosinski v. Advance Cast Stone Co., 2017 WI App 51, 377 Wis. 2d 596, 901 N.W.2d 797, 14−1961.

The builder's statute of repose may not be avoided by arguing that a hazard such as an uneven floor or inclined surface should be discovered by a property owner and either fixed or marked. If that logic were followed, a duty to inspect and warn would render the statutory exposure period meaningless because a plaintiff could always allege that a defendant should have inspected its premises and either fixed or warned of any alleged defect. Soletski v. Krueger International, Inc., 2019 WI App 7, 385 Wis. 2d 787, 924 N.W.2d 207, 17−2063.

The mere fact that a plaintiff is engaged in general maintenance at a defendant's facility does not trigger the builder's statute of repose's maintenance exception under sub. (4) (c). An improvement to real property must have been negligently maintained to trigger the exception. Soletski v. Krueger International, Inc., 2019 WI App 7, 385 Wis. 2d 787, 924 N.W.2d 207, 17−2063.

A defect is structural if it arises by reason of the materials used in construction or from improper layout or construction. In this case, the presence of airborne asbestos during the original construction of the power plants was a hazardous condition inherent in those structures by reason of their design or construction. The plaintiff's safe place claims under s. 101.11 were therefore based on an injury caused by a structural defect, and the construction statute of repose barred the plaintiff's claims. Nooyen

v. Wisconsin Electric Power Co., 2020 WI App 9, 390 Wis. 2d 687, 939 N.W.2d 621, 19–0289.

The maintenance exception under sub. (4) (c) applies when damages occur as the result of an owner or occupier's failure to maintain the improvement itself, not when the owner or occupier has failed to maintain a safe workplace. Nooyen v. Wisconsin Electric Power Co., 2020 WI App 9, 390 Wis. 2d 687, 939 N.W.2d 621, 19–0289.

A plaintiff alleging that the plaintiff developed mesothelioma as a result of exposure to asbestos does not have a legally cognizable claim until the plaintiff is actually diagnosed. Although the plaintiff in this case was allegedly exposed to asbestos between 1970 and 1973, the plaintiff was not diagnosed with mesothelioma until 2016 and therefore did not have a claim until that time. Accordingly, the circuit court properly applied the version of the statute that was in effect at the time of the plaintiff's diagnosis. Nooyen v. Wisconsin Electric Power Co., 2020 WI App 9, 390 Wis. 2d 687, 939 N.W.2d 621, 19–0289.

In this case, although the placement of stone cladding on the house may have hidden the mortar from view and obscured the fact that flashing had not been installed, there was no evidence to suggest that the defendants placed the stone on the home with the intent to conceal any alleged defects from the home owners. Absent such evidence of intent, the fact that the defendants' work was allegedly defective was not sufficient, in and of itself, to show that they engaged in fraud, concealment, or misrepresentation, as required by the exception under sub. (4) (a). Wascher v. ABC Insurance Co., 2022 WI App 10, 401 Wis. 2d 94, 972 N.W.2d 162, 20–1961.

Although the statute of repose under sub. (2) applies to actions "to recover damages," the statute of repose applied to the plaintiffs' claim for injunctive relief in this case. The plaintiffs sought an injunction ordering the defendants to perform remedial work at the plaintiffs' home, a request that was not aimed at preventing some future conduct by the defendants that would injure the plaintiffs or violate their rights. Rather, the request for injunctive relief was, at its core, remedial in nature—it sought to remedy allegedly deficient work that the defendants had already performed. Wascher v. ABC Insurance Co., 2022 WI App 10, 401 Wis. 2d 94, 972 N.W.2d 162, 20–1961.

893.895 Real estate appraisers; limitations of actions.

(1) In this section:

(a) "Appraisal report" has the meaning given in s. 458.01 (3).

(b) "Client" means a person for whom an appraisal report is prepared.

(2) Except as provided in subs. (3) and (4), an action to recover damages based on tort, contract, or other legal theory against a real estate appraiser licensed or certified under ch. 458 for an act or omission in the performance of real estate appraisal services shall be commenced within 5 years after the date the real estate appraiser submits the appraisal report to the client for whom the services are performed or be barred.

(3) If a person sustains damages covered under sub. (2) and the statute of limitations applicable to those damages bars commencement of the cause of action before the end of the period specified in sub. (2), then that statute of limitations applies.

(4) This section does not apply to a real estate appraiser who commits fraud or concealment in the performance of real estate appraisal services.

History: 2021 a. 194.

893.90 Bond; campaign financing; lobbying.

(1) An action by the state or any of its departments or agencies or by any county, town, village, city, school district, technical college district or other municipal unit to recover any sum of money by reason of the breach of an official bond or the breach of a bond of any nature, whether required by law or not, given by a public officer or any agent or employee of a governmental unit shall be commenced within 3 years after the governmental unit receives knowledge of the fact that a default has occurred in some of the conditions of the bond and that it was damaged because of the default or be barred.

(2) Any civil action arising under ch. 11, subch. III of ch. 13 or subch. II of ch. 19 shall be commenced within 3 years after the cause of action accrues or be barred.

History: 1979 c. 323; 1981 c. 335; 1993 a. 399.

Judicial Council Committee's Note, 1979: This section is previous ss. 893.20 and 893.205 (3) renumbered for more logical placement in restructured ch. 893. [Bill 326–A]

893.91 Action for expenses related to a forest fire.

An action by a state or town under s. 26.14 (9) (b) to recover expenses incurred in the suppression of a forest fire shall be commenced within 2 years of the setting of the fire or be barred.

History: 1979 c. 323.

Judicial Council Committee's Note, 1979: This section has been created to place into ch. 893 the statute of limitation for an action to recover expenses related to fighting a forest fire. See the note following s. 26.14 (9) (b). [Bill 326–A]

893.92 Action for contribution.

An action for contribution based on tort, if the right of contribution does not arise out of a prior judgment allocating the comparative negligence between the parties, shall be commenced within one year after the cause of action accrues or be barred.

History: 1979 c. 323.

Judicial Council Committee's Note, 1979: This section is previous s. 893.22 (4) renumbered for more logical placement in restructured ch. 893. [Bill 326–A]

A claim for contribution accrues when payment is made. Milwaukee Mutual Insurance Co. v. Priewe, 118 Wis. 2d 318, 348 N.W.2d 585 (Ct. App. 1984).

893.925 Action for certain damages related to mining.

(1) A claim against the mining damage appropriation under s. 107.31 to recover damages for mining–related injuries shall be brought within 3 years of the date on which the death occurs or the injury was or should have been known.

(2) (a) An action to recover damages for mining–related injuries under s. 107.32 shall be brought within 3 years of the date on which the death or injury occurs unless the department of safety and professional services gives written notice within the time specified in this subsection that a claim has been filed with it under sub. (1), in which case an action based on the claim may be brought against the person to whom the notice is given within one year after the final resolution, including any appeal, of the claim or within the time specified in this subsection, whichever is longer.

(b) In this subsection "date of injury" means the date on which the evidence of injury, resulting from the act upon which the action is based, is sufficient to alert the injured party to the possibility of the injury. The injury need not be of such magnitude as to identify the causal factor.

History: 1979 c. 353 s. 7; Stats. 1979 s. 893.207; 1979 c. 355 s. 227; Stats. 1979 s. 893.925; 1995 a. 27 ss. 7214, 9116 (5); 2011 a. 32.

893.93 Miscellaneous actions.

(1) The following actions shall be commenced within 6 years after the cause of action accrues or be barred:

(c) An action upon a claim, whether arising on contract or otherwise, against a decedent or against a decedent's estate, unless probate of the estate in this state is commenced within 6 years after the decedent's death.

(cm) An action under s. 218.0125 (7) or 218.0126.

(d) An action under s. 968.31.

(e) An action under s. 895.444.

(1m) The following actions shall be commenced within 3 years after the cause of action accrues or be barred:

(a) An action upon a liability created by statute when a different limitation is not prescribed by law.

(b) An action for relief on the ground of fraud. The cause of action in such case is not deemed to have accrued until the discovery, by the aggrieved party, of the facts constituting the fraud.

(2) The following actions shall be commenced within 2 years after the cause of action accrues or be barred:

(a) An action by a private party upon a statute penalty, or forfeiture when the action is given to the party prosecuting therefor and the state, except when the statute imposing it provides a different limitation.

(b) An action to recover a forfeiture or penalty imposed by any bylaw, ordinance or regulation of any town, county, city or village or of any corporation or limited liability company organized under the laws of this state, when no other limitation is prescribed by law.

(3) The following actions shall be commenced within one year after the cause of action accrues or be barred:

(a) An action against a sheriff or other officer for the escape of a prisoner arrested or imprisoned on civil process.

(b) An action under ch. 135.

(4) An action by a drainage board for damages under s. 88.92 (2) shall be commenced within 3 years after the drainage board discovers the fact, or with the exercise of reasonable diligence should have discovered the fact of the damage, whichever comes first, or be barred.

History: 1979 c. 323; 1993 a. 98, 112, 456; 2005 a. 155; 2017 a. 235.

Judicial Council Committee's Note, 1979: This section has been created to place in one location within restructured ch. 893 various miscellaneous statutes of limitation for easier reference and use. Sub. (1) (a) is previous s. 893.19 (4). Sub. (1) (b) is previous s. 893.19 (7). Sub. (1) (c) is previous s. 893.19 (9). Sub. (1) (d) is previous s. 893.19 (10). Sub. (2) (a) is previous s. 893.21 (1) with a comma placed after the word "penalty" in order to have the section accurately reflect the decision in Grengs v. 20th Century Fox Film Corporation, 232 F.2d 325 (1956). Sub. (2) (b) is previous s. 893.21 (4). Sub. (3) (a) is previous s. 893.22 (1). Sub. (3) (b) is previous s. 893.22 (3). [Bill 326−A]

If the complaint does not allege the requisite elements for a cause of action based on fraud, s. 893.19 (7) [now sub. (1m) (b)] does not apply. Demos v. Carey, 50 Wis. 2d 262, 184 N.W.2d 117 (1971).

A complaint alleging employment discrimination on the basis of sex and seeking back−pay damages is an action upon a liability created by statute, and, in the absence of any other applicable limitation, the six−year limitation of s. 893.19 (4) [now sub. (1m) (a)] applies. Yanta v. Montgomery Ward & Co., 66 Wis. 2d 53, 224 N.W.2d 389 (1974).

When unreasonable delay in bringing suit prejudices the defendant because of the death of a key witness, laches will bar suit even if the s. 893.19 (7) [now sub. (1m) (b)] statute of limitations does not. Schafer v. Wegner, 78 Wis. 2d 127, 254 N.W.2d 193 (1977).

Complaints under the open meetings law are not brought in the individual capacity of the plaintiff but on behalf of the state, subject to the two−year statute of limitations under sub. (2). State ex rel. Leung v. City of Lake Geneva, 2003 WI App 129, 265 Wis. 2d 674, 666 N.W.2d 104, 02−2747.

Sub. (1) (a) [now sub. (1m) (a)] does not apply to a professional disciplinary proceeding, the focus of which is to monitor and supervise the performance of a person who has been granted the privilege of a license in this state. Krahenbuhl v. Wisconsin Dentistry Examining Board, 2004 WI App 147, 275 Wis. 2d 626, 685 N.W.2d 591, 03−2864.

Claims for injury caused by an Archdiocese's alleged fraudulent misrepresentation that the Archdiocese did not know that priests it assigned had histories of sexually abusing children and did not know the priests were dangerous to children were independent claims based on the Archdiocese's alleged knowledge of the priests' prior sexual molestation of children and the Archdiocese's intent to deceive children and their families and not derivative of the underlying sexual molestations by the priests. The date of the accrual of the fraud claims was when the plaintiffs discovered or, in the exercise of reasonable diligence, should have discovered that the Archdiocese's alleged fraud was a cause of their injuries. Doe v. Archdiocese of Milwaukee, 2007 WI 95, 303 Wis. 2d 34, 734 N.W.2d 827, 05−1945.

It is not necessary that a defrauded party have knowledge of the ultimate fact of fraud. What is required is that it be in possession of such essential facts as will, if diligently investigated, disclose the fraud. The burden of diligent inquiry is upon the defrauded party as soon as the party has such information as indicates where the facts constituting the fraud can be discovered. Doe v. Archdiocese of Milwaukee, 2007 WI 95, 303 Wis. 2d 34, 734 N.W.2d 827, 05−1945.

The six−year limitations period found in sub. (1) (a) [now sub. (1m) (a)] applies to actions under the Uniform Fiduciaries Act, s. 112.01. Willowglen Academy−Wisconsin, Inc. v. Connelly Interiors, Inc., 2008 WI App 35, 307 Wis. 2d 776, 746 N.W.2d 570, 07−1178.

The limitation period under sub. (1) (b) [now sub. (1m) (b)] was tolled when the victim had "sufficient knowledge to make a reasonable person aware of the need for diligent investigation." Stockman v. LaCroix, 790 F.2d 584 (1986).

A cause of action under sub. (1) (b) [now sub. (1m) (b)] accrues on the discovery of the fraud. Discovery occurs when the party has knowledge that would cause a reasonable person to make sufficient inquiry to discover the fraud. Owen v. Wangerin, 985 F.2d 312 (1993).

Discovery occurs when the plaintiff has information that would constitute the basis for an objective belief as to the plaintiff's injury and its cause. The degree of certainty that constitutes sufficient knowledge is variable, depending on the particular facts and circumstances of the plaintiff. With corporate players, a different quantum of expertise and knowledge is in play. Wisconsin courts have recognized that ignorance is a less compelling excuse for corporate enterprises in the context of the discovery rule. KDC Foods, Inc. v. Gray, Plant, Mooty, Mooty & Bennett, P.A., 763 F.3d 743 (2014).

Wisconsin courts have applied the two−year limitations period under sub. (2) (a) to actions that principally benefit the public at large, a "statute penalty," and the six−year limitations period under sub. (1) (a) to actions that principally benefit the plaintiff at issue. Because a claim under s. 146.83 (3f) (b) is primarily private in nature and does not result in a statute penalty for the public's benefit, the six−year limitations period of sub. (1) (a) applies. Although s. 146.84 (1) (b) and (bm) authorize exemplary damages, what matters is who, on balance, the cause of action benefits—the private individual or the general public. Smith v. RecordQuest, LLC, 989 F.3d 513 (2021).

Section 551.59 (5) applies to actions arising out of sales of securities under federal Securities and Exchange Commission rules, rather than s. 893.19 (7) [now sub. (1m) (b)]. Kramer v. Loewi & Co., 357 F. Supp. 83 (1973).

Section 893.21 (1) [now sub. (2) (a)] did not control an action by the federal Equal Employment Opportunity Commission charging discrimination in employment when the statute limited only acts brought by a "private party" and the commission is a federal agency enforcing public policy. Equal Employment Opportunity Commission v. Laacke & Joys Co., 375 F. Supp. 852 (1974).

Section 893.19 (4) [now sub. (1m) (a)] governs civil rights actions. Minor v. Lakeview Hospital, 421 F. Supp. 485 (1976).

Section 893.19 (4) [now sub. (1m) (a)] governed an action under federal law against an oil refiner for compensatory damages for alleged overcharges. Section 893.21 (1) [now sub. (2) (a)] governed an action for treble damages. U.S. Oil Co. v. Koch Refining Co., 497 F. Supp. 1125 (1980).

The defendant in a civil rights action was estopped from pleading the statute of limitations when its own fraudulent conduct prevented the plaintiff from timely filing suit. Bell v. City of Milwaukee, 498 F. Supp. 1339 (1980).

At a minimum, actions for contractual rescission based on negligent or strict responsibility misrepresentation sound in contract, not tort, at least under Wisconsin law, and are not actions "on the ground of fraud" under sub. (1) (b) [now sub. (1m) (b)]. If all misrepresentations—intentional, negligent, and strict responsibility—were "fraudulent," there would be no need for the second category of "material" misrepresentations. CMFG Life Insurance Co. v. UBS Securities, 30 F. Supp. 3d 822 (2014).

893.94 Organized crime control; civil remedies. Any civil action arising under ss. 946.80 to 946.88 is subject to the limitations under s. 946.88 (1).

History: 1981 c. 280; 1989 a. 121.

893.95 Unclaimed property; civil remedies. Any civil action to enforce ch. 177 is subject to the limitations under s. 177.0610.

History: 1983 a. 408; 2021 a. 87.

893.96 Family leave and medical leave; civil remedies. Any civil action arising under s. 103.10 (13) (a) is subject to the limitations of s. 103.10 (13) (b).

History: 1987 a. 287.

893.965 Bone marrow and organ donation leave; civil remedies. Any civil action arising under s. 103.11 (13) (a) is subject to the limitations of s. 103.11 (13) (b).

History: 2015 a. 345.

893.97 Business closing notification. An action arising under s. 109.07 (3) is subject to the limitations under s. 109.07 (4) (d).

History: 1989 a. 44.

893.98 Cessation of health care benefits notification. An action arising under s. 109.075 (3) is subject to the limitations under s. 109.075 (4) (d).

History: 1997 a. 237.

893.99 Home care consumer notification. An action arising under s. 105.115 (4) (a) is subject to the limitations under s. 105.115 (4) (a).

History: 2005 a. 197.

NOTE: Statutes not contained in this chapter that relate to or impose time restrictions on asserting a claim or a cause of action include, but are not limited to, the following:

NOTE: Notice of injury, filing, disallowance or commencement of action time limits imposed by statutes governing claims against government entities, include, but are not limited to, the following:

Reference also should be made to the index.