1995 Senate Bill 11

Date of enactment: **May 16, 1995**
Date of publication*: **May 16, 1995**

1995 WISCONSIN ACT 17

AN ACT *to renumber and amend* 895.045; and *to create* 895.045 (2) and 895.85 of the statutes; **relating to:** comparative negligence and punitive damages.

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

SECTION 1. 895.045 of the statutes is renumbered 895.045 (1) and amended to read:

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

SECTION 2. 895.045 (2) of the statutes is created to read:

895.045 **(2)** CONCERTED ACTION. Notwithstanding sub. (1), if 2 or more parties act in accordance with a common scheme or plan, those parties are jointly and severally liable for all damages resulting from that action, except as provided in s. 895.85 (5).

SECTION 3. 895.85 of the statutes is created to read:

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

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

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

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

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

(2) SCOPE. This section does not apply to awards of double damages or treble damages, or to the award of exemplary damages under ss. 46.90 (6) (c), 51.30 (9), 51.61 (7), 103.96 (2), 153.85, 252.14 (4), 252.15 (8) (a), 943.245 (2) and (3) and 943.51 (2) and (3).

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

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

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

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

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

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

SECTION 4. Initial applicability.

(1) This act first applies to civil actions commenced on the effective date of this subsection.

History of 1995 SENATE BILL 11

An Act to renumber and amend 895.045; and to create 895.045 (2) and (3) and 895.85 of the statutes; relating to: comparative negligence and punitive damages.

1995

01-17. S. Introduced by Senators Huelsman, Drzewiecki, Darling, Petak, Zien, Andrea, Buettner, Schultz, A. Lasee, Panzer, Cowles, Leean, Farrow, Rude, Weeden, Rosenzweig, Fitzgerald and Ellis; cosponsored by Representatives Green, Albers, Hubler, Kelso, Jensen, Freese, Gard, M. Lehman, Goetsch, Ladwig, Duff, Musser, Brandemuehl, Silbaugh, Wilder, Urban, Schneiders, Owens, Walker, Kreibich, Ainsworth, Vrakas, Ward, F. Lasee, Olsen, Powers, Lazich, Handrick, Hahn, Brancel, Grothman, Gronemus, Kaufert, Klusman, Nass, Ryba, Seratti and Dobyns.

01-17. S. Read first time and referred to committee on Judiciary 19

02-01. S. Public hearing held.

02-07. S. Fiscal estimate received.

02-27. S. Executive action taken.

02-28. S. Report introduction and adoption of Senate substitute amendment 1 recommended by committee on Judiciary, Ayes 4, Noes 3 by committee on Judiciary .97

02-28. S. Report passage as amended recommended by committee on Judiciary, Ayes 4, Noes 3 97

02-28. S. Available for scheduling.

03-01. S. Placed at the foot of the calendar of 3-1-95 105

03-01. S. Read a second time 105

03-01. S. Senate amendment 1 to Senate substitute amendment 1 offered by Senator Huelsman 105

03-01. S. Senate amendment 1 to Senate substitute amendment 1 adopted 105

03-01. S. Senate amendment 2 to Senate substitute amendment 1 offered by Senators Burke, Chvala, Wineke, Decker, Jauch, Risser, George, Moore and Adelman 105

03-01. S. Senate amendment 2 to Senate substitute amendment 1 rejected, Ayes 17, Noes 15 105

03-01. S. Senate amendment 3 to Senate substitute amendment 1 offered by Senator Adelman 105

03-01. S. Senate amendment 3 to Senate substitute amendment 1 rejected, Ayes 17, Noes 15 105

03-01. S. Senate amendment 4 to Senate substitute amendment 1 offered by Senator Adelman 105

03-01. S. Senate amendment 4 to Senate substitute amendment 1 rejected, Ayes 17, Noes 15 105

03-01. S. Senate amendment 5 to Senate substitute amendment 1 offered by Senator Adelman 105

03-01. S. Senate amendment 5 to Senate substitute amendment 1 laid on table 106

03-01. S. Senate amendment 6 to Senate substitute amendment 1 offered by Senator Adelman 106

03-01. S. Senate amendment 6 to Senate substitute amendment 1 rejected, Ayes 17, Noes 14 106

03-01. S. Senate amendment 7 to Senate substitute amendment 1 offered by Senators Chvala, Burke, Adelman and

04-08. A. Concurred in, Ayes 69, Noes 27 233
04-08. A. Ordered immediately messaged 233
04-12. S. Received from Assembly concurred in 166
04-12. S. LRB correction 168
04-12. S. LRB correction 168
04-26. S. Report correctly enrolled on 4-21-95 176
05-16. S. Presented to the Governor on 5-11-95 205
05-16. S. Report approved by the Governor on 5-16-95. 1995 Wisconsin Act 17. Published 5-16-95 199

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The roll was taken.

The result follows:

Ayes - Representatives Ainsworth, Albers, Baldus, Black, Brancel, Brandemuehl, Coleman, Dobyns, Dueholm, Duff, Foti, Freese, Gard, Goetsch, Green, Gronemus, Grothman, Gunderson, Hahn, Handrick, Hanson, Harsdorf, Hasenohrl, Hoven, Huber, Hubler, Huebsch, Hutchison, Jensen, Johnsrud, Kaufert, Kelso, Klusman, Kreibich, Kreuser, F. Lasee, Lazich, Lehman, Lorge, Meyer, Murat, Musser, Nass, Olsen, Ott, Otte, Ourada, Owens, Porter, Powers, Reynolds, Robson, Rutkowski, Ryba, Schneiders, Seratti, Silbaugh, Skindrud, Springer, Underheim, Urban, Vrakas, Walker, Ward, Wasserman, Wirch, Ziegelbauer, Zukowski and Speaker Prosser - 69.

Noes - Representatives Baldwin, Baumgart, Bell, Bock, Boyle, Carpenter, Coggs, Cullen, Grobschmidt, Krug, Krusick, Kunicki, La Fave, Linton, Morris-Tatum, Plache, Plombon, R. Potter, Riley, Schneider, Travis, Turner, Vander Loop, Wilder, Wood, L. Young and R. Young - 27.

Absent or not voting - Representatives Ladwig, Notestein and Williams - 3.

Motion carried.

Representative Jensen asked unanimous consent that the rules be suspended and that **Senate Bill 11** be immediately messaged to the Senate. Granted.

Representative Jensen asked unanimous consent that **Assembly Bill 242** be taken from the table and taken up at this time. Granted.

Assembly Bill 242

Relating to: requirements for admission to high school.

The question was: **Assembly Bill 242** having been read three times, shall the bill be passed?

The roll was taken.

The result follows:

Ayes - Representatives Ainsworth, Albers, Brancel, Brandemuehl, Coleman, Dobyns, Duff, Foti, Freese, Gard, Goetsch, Green, Grothman, Gunderson, Hahn, Handrick, Harsdorf, Hasenohrl, Hoven, Huber, Hubler, Huebsch, Hutchison, Jensen, Johnsrud, Kaufert, Kelso,

The question was: Adoption of Senate amendment 8 to Senate substitute amendment 1 to **Senate Bill 11** be laid on the table?

Senator Huelsman, with unanimous consent, asked that Senate amendment 8 to Senate substitute amendment 1 to **Senate Bill 11** be laid on the table.

The question was: Adoption of Senate substitute amendment 1 to **Senate Bill 11** ?

Adopted.

Ordered to a third reading.

Senator Ellis, with unanimous consent, asked that the bill be considered for final action at this time.

Senate Bill 11

Read a third time.

The ayes and noes were demanded and the vote was: ayes, 24; noes, 8; absent or not voting, 0 as follows:

Ayes - Senators Andrea, Breske, Buettner, Cowles, Darling, Drzewiecki, Ellis, Farrow, Fitzgerald, Huelsman, Jauch, A. Lasee, Leean, Moen, Moore, Panzer, Petak, Plewa, C. Potter, Rosenzweig, Rude, Schultz, Weeden and Zien - 24.

Noes - Senators Adelman, Burke, Chvala, Clausing, Decker, George, Risser and Wineke - 8.

Absent or not voting - None.

Passed.

Senator Ellis , with unanimous consent, asked that all action be ordered immediately messaged to the Assembly.

The Chair, with unanimous consent, asked that the Senate return to the third order of business.