



State of Wisconsin
2021 - 2022 LEGISLATURE

LRB-2294/1
SWB:emw

2021 SENATE BILL 295

April 8, 2021 - Introduced by Senators JOHNSON, L. TAYLOR, ROYS and LARSON, cosponsored by Representatives BROSTOFF, L. MYERS, BOWEN, CABRERA, MOORE OMOKUNDE, SHELTON, DRAKE, HEBL, HONG, ANDERSON, ORTIZ-VELEZ, CONSIDINE, NEUBAUER, HAYWOOD, BALDEH, GOYKE and SPREITZER. Referred to Committee on Judiciary and Public Safety.

AUTHORS SUBJECT TO CHANGE

1 **AN ACT** *to repeal* 895.46 (1) (b), (d), and (dm); and *to create* 893.822 and 895.46
2 (6m) of the statutes; **relating to:** eliminating public official immunity as a
3 defense to civil liability claims against law enforcement officers and prohibiting
4 indemnification for judgments against law enforcement officers.

Analysis by the Legislative Reference Bureau

This bill provides that immunity granted to public officials under current law does not apply and is not a defense to civil liability claimed against a law enforcement officer for any act or failure to act by the officer done in an official capacity or in the course of his or her agency or employment.

With certain exceptions, current law grants public officials, including law enforcement officers, immunity from liability for actions taken while acting in an official capacity or in the course of his or her employment or agency. Public officer immunity provides immunity from suit for “acts done in the exercise of legislative, quasi-legislative, judicial or quasi-judicial functions.” As stated by the Wisconsin Supreme Court, there is, with exceptions, a “general rule of immunity for public officers in their performance of acts within the scope of employment.” *Brown v. Acuity*, 2013 WI 60, ¶ 42, 348 Wis. 2d 603, 623, 833 N.W.2d 96, 106.

The bill also eliminates certain indemnification available under current law for law enforcement officers. Under current law, law enforcement officers and other local and state officers, employees, and agents may be eligible for indemnification by the governmental entity that employs them for any judgment against them (in excess of any available insurance) for acts committed while carrying out their duties if the

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individual is found to be acting within the scope of employment. With certain exceptions, under current law, officers, employees, and agents may also be entitled to legal counsel or, if legal counsel is not provided, indemnification for the costs of legal representation.

For further information see the state and local fiscal estimate, which will be printed as an appendix to this bill.

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

1 **SECTION 1.** 893.822 of the statutes is created to read:

2 **893.822 Claims against law enforcement officers; limitations on**
3 **immunity. (1)** In this section, “law enforcement officer” has the meaning given in
4 s. 165.85 (2) (c).

5 **(2)** Immunity granted to public officials under s. 893.80 (4) or afforded under
6 common law does not apply and may not be raised as a defense to civil liability
7 claimed against a law enforcement officer for any act or failure to act by the officer
8 done in an official capacity or in the course of his or her agency or employment.

9 **(3)** Nothing in this section may be interpreted as affecting any sovereign
10 immunity rights available to the state.

11 **SECTION 2.** 895.46 (1) (b), (d), and (dm) of the statutes are repealed.

12 **SECTION 3.** 895.46 (6m) of the statutes is created to read:

13 **895.46 (6m) (a)** In this subsection, “law enforcement officer” has the meaning
14 given in s. 165.85 (2) (c).

15 **(b)** Notwithstanding any other provision in this section, the protection afforded
16 by this section does not apply to any law enforcement officer proceeded against in an
17 official capacity or as an individual because of acts committed while carrying out
18 duties as an officer or employee or as an agent of any department of the state.

19 **SECTION 4. Initial applicability.**

