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 (1994), 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. Retired Teachers Association v. Employee 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 for Dane County, 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 his or her 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 his or her 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 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. McCulloch v. Linblade, 513 F. Supp 2d 1037 (2007).

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.

The plaintiff's oral notice to the chief of police, who said he would file a report, and direct contact and negotiation with the city's insurer, within 120 days, was sufficient compliance to sustain an action for damages against the city. Harte v. City of Eagle River, 45 Wis. 2d 513, 173 N.W.2d 683 (1972).

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. Milwaukee, 54 Wis. 2d 286, 195 N.W.2d 480 (1970).

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).

This section creates a secondary liability on a municipality or county for highway defects that cause damage only when the act or default of another tortfeasor also contributes to the creation of the defect. Dickens v. Kensmoe, 61 Wis. 2d 211, 212 N.W.2d 484 (1973).

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).

An insurance policy was construed to waive the recovery limitations this section. Stanhope v. Brown County, 90 Wis. 2d 823, 280 N.W.2d 711 (1979).

Recovery limitations under this section are constitutional. Sambs v. City of Brookfield, 97 Wis. 2d 356, 293 N.W.2d 504 (1980).

Immunity under this section does not exist for injuries resulting from ice on a stairway connecting 2 sidewalks. Henderson v. Milwaukee County, 198 Wis. 2d 748, 543 N.W.2d 544 (Ct. App. 1995).

If a plaintiff's injuries occurred by reason of insufficiency or want of repairs of any highway, a governmental entity is not afforded immunity under s. 893.80 (4). Morris v. Juneau County, 219 Wis. 2d 543, 579 N.W.2d 690 (1998), 96−2507.

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 person other than a municipality with any lability for a defect is primarily liable for the entire resulting judgment. If a contractor settles with the injured party for less than the amount of the ultimate award, the municipality is not liable for the balance. VanCleve v. City of Marinette, 2002 WI App 10, 250 Wis. 2d 121, 639 N.W.2d 792, 01−0231.

Under this section, a municipality may not be held primarily liable, and there can be neither joint, nor primary, liability on the municipality's part if any other party has any liability. Municipal liability is successive and is only for the damages and costs that the party with primary liability is unable to pay. VanCleve v. City of Marinette, 2003 WI 2, 258 Wis. 2d 80, 655 N.W.2d 113, 01−0231.

A municipality's liability is triggered only if execution has been issued against the party with primary liability and returned unsatisfied. By entering into a settlement and release with a defendant found by a jury to be liable, a plaintiff indirectly waives any right to hold the municipality secondarily liable because the release prevents taking a judgment against and executing upon the primarily liable defendant. VanCleve v. City of Marinette, 2003 WI 2, 258 Wis. 2d 80, 655 N.W.2d 113, 01−0231.

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 3 weeks to address the problem. Actions based on artificial accumulations are actionable without the 3−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, 03−0537.

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).