



State of Wisconsin
2011 - 2012 LEGISLATURE



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2011 SENATE BILL 388

January 19, 2012 - Introduced by Senators GROTHMAN, GALLOWAY, WANGGAARD, SCHULTZ and KEDZIE, cosponsored by Representatives STRACHOTA, BROOKS, LEMAHIEU, KERKMAN, BALLWEG, KESTELL and DOYLE. Referred to Committee on Judiciary, Utilities, Commerce, and Government Operations.

1 **AN ACT to amend** 101.12 (1) (c), 101.19 (1) (b), 101.981 (1) (c) and 895.525 (2);
2 **and to create** 101.19 (1) (bm), 167.33 and 895.526 of the statutes; **relating to:**
3 duties of ski area operators and participants in snow sports, liability of ski area
4 operators, and granting rule-making authority.

Analysis by the Legislative Reference Bureau

Under current law, a participant in a recreational activity, including skiing, sledding, or tobogganing, on a premises that is open to the public for such purposes is deemed to accept the risks inherent in the activity of which an ordinary prudent person is or should be aware. Current law also imposes certain responsibilities on participants in a recreational activity, including the responsibility to act within the limits of his or her ability, heed all warnings regarding participation in the recreational activity, maintain control of his or her self and the equipment he or she is using, and refrain from acting in any manner that may cause or contribute to the death or injury to himself or herself or to other persons while participating in the recreational activity.

Under current law, if a participant in a recreational activity is injured or killed, his or her own actions may be considered contributory negligence in a civil suit brought against the owners of the premises if the participant failed to comply with any of the responsibilities set forth for participants in the activity.

Under this bill, the same rules of liability and negligence apply to skiing, sledding, tubing, tobogganing, and other snow sports (snow sports) that take place outside of a ski area. The bill establishes a different scheme for determining whether

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the operator of a ski area is liable for injuries sustained by a person who participates in a snow sport at a ski area.

Under the bill, a participant in a snow sport is deemed to know, and accept, certain risks inherent in the snow sport, such as changes in weather or visibility, the presence of certain snow conditions and difficulties with the terrain, and the risk of collisions and to accept that the operator of a ski area may not mitigate certain risks by padding items or obstacles within the ski area. A participant is also deemed to acknowledge that his or her decision whether to wear a helmet while participating in the snow sport may contribute to his or her injuries, and that he or she is solely responsible for ensuring that a helmet is properly fitted. Under the bill, a participant's responsibilities when participating in a snow sport include knowing and complying with all safety rules established by the ski area, knowing the limits of his or her abilities, and being able to maintain control of himself or herself and his or her equipment while participating in the snow sport.

The bill also sets forth several safety requirements for ski area operators and requirements designed to inform participants of the dangers inherent in snow sports and of the responsibilities each participant has for his or her own safety. The requirements include inspection of lifts at the ski area and placing warning signs and informational signs as to the level of difficulty of ski trails.

Under the bill, the operator of a ski area is immune from liability for any injury sustained by a participant in a snow sport or by an observer if the injury was a result of any of the risks accepted by the participant and the operator of the ski area has complied with the requirements.

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

1 **SECTION 1.** 101.12 (1) (c) of the statutes is amended to read:

2 101.12 (1) (c) Elevators, escalators, ~~ski lift and towing devices~~ lifts, as defined
3 in s. 167.33 (1) (f), and power dumbwaiters.

4 **SECTION 2.** 101.19 (1) (b) of the statutes is amended to read:

5 101.19 (1) (b) The required inspection of boilers, pressure vessels, refrigeration
6 plants, liquefied petroleum gas vessels, anhydrous ammonia tanks and containers,
7 ~~ski lift and towing devices~~, escalators, dumbwaiters, and amusement or thrill rides
8 but not of amusement attractions.

9 **SECTION 3.** 101.19 (1) (bm) of the statutes is created to read:

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1 101.19 (1) (bm) The inspection by the department of lifts, as defined in s. 167.33
2 (1) (f).

3 **SECTION 4.** 101.981 (1) (c) of the statutes, as affected by 2011 Wisconsin Act 32,
4 is amended to read:

5 101.981 (1) (c) “Conveyance” means an elevator, an escalator, a dumbwaiter,
6 a belt manlift, a moving walkway, a platform lift, and a stairway chair lift, and any
7 other similar device, such as an automated people mover, used to elevate or move
8 people or things, as provided in the rules of the department. “Conveyance” does not
9 include a personnel hoist; a material hoist; a grain elevator; a lift ~~or towing device~~
10 as defined in s. 167.33 (1) (f); an amusement or thrill ride; or a vertical platform lift,
11 inclined platform lift, or a stairway chair lift that serves an individual residential
12 dwelling unit.

13 **SECTION 5.** 167.33 of the statutes is created to read:

14 **167.33 Snow sports. (1) DEFINITIONS.** In this section:

15 (a) “Affiliate” means:

- 16 1. With respect to a partnership, each partner thereof.
17 2. With respect to a limited liability company, each member thereof.
18 3. With respect to a corporation, each officer, director, principal stockholder,
19 and controlling member thereof.

20 (b) “Competition” means any event authorized by a ski area operator, or by an
21 agent of a ski area operator, that involves a comparison of skills used in one or more
22 snow sports. “Competition” includes training sessions for such an event.

23 (c) “Freestyle features” means man-made features that include boxes, jumps,
24 hits, jibs, tabletops, spikes, take-off ramps, landings, banks, half pipes, picnic tables,
25 logs, and pipes.

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1 (d) "Freestyling" means mogul jumping, mogul skiing, ski jumping, aerial
2 skiing, ski cross, ski ballet, snowboarding, and any other similar snow sport.

3 (e) "Hazard" means any man-made or natural obstacle or hazard. "Hazard"
4 includes ridges, sharp corners, jumps, bumps, moguls, valleys, dips, cliffs, ravines,
5 and bodies of water.

6 (f) "Lift" means any aerial tramway or lift, a surface lift, a tow, or a conveyor
7 used by a ski area operator to transport participants in snow sports at a ski area.

8 (g) "Participant in a snow sport" means an individual who is engaged in a snow
9 sport or who is walking or otherwise traveling within a ski area for purposes of
10 engaging in the sport. "Participant in a snow sport" also means an individual who
11 is present at a ski area to observe others engaged in a snow sport or who is a
12 passenger on a lift. "Participant in a snow sport" includes an individual that is an
13 employee of a ski area operator when he or she is acting out the scope of his or her
14 employment.

15 (h) "Ski area" means trails, terrains, and other areas that are used by
16 individuals engaged in snow sports and that is administered as a single enterprise
17 by a ski area operator.

18 (i) "Ski area infrastructure" means lifts and any associated components,
19 snowmaking equipment and any associated components, and utility structures,
20 buildings, huts, signs, lift mazes, fences, or other structures located within a ski area.

21 (j) "Ski area operator" means a person that owns or is responsible for operating
22 a ski area or its affiliates. "Ski area operator" includes the employees and agents of
23 a ski area operator.

24 (k) "Ski area vehicle" means a motorized vehicle used in the operation and
25 maintenance of a ski area or used as transportation within a ski area.

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1 (L) "Skiing" means downhill skiing, alpine skiing, nordic skiing, cross-country
2 skiing, telemarking, or snowboarding.

3 (m) "Sledding" means sliding down a prepared course on sleds, toboggans, ski
4 bikes, or comparable devices. "Sledding" excludes tubing.

5 (n) "Snowmaking equipment" includes pipes, hoses, hydrants, snow guns, fans,
6 wands, pumps, and any other equipment associated with making snow.

7 (o) "Snow sport" means skiing, sledding, tubing, or freestyling.

8 (p) "Tree skiing area" means an area open to skiing, that is not groomed for
9 skiing, and that is forested.

10 (q) "Tubing" means sliding down a prepared course on inflatable tubes,
11 minibobs, or comparable devices.

12 **(2) CONDITIONS AND RISKS OF SNOW SPORTS.** For purposes of this section,
13 conditions and risks consist of all of the following:

14 (a) Changes in weather or visibility.

15 (b) The presence of surface or subsurface conditions, including any of the
16 following:

17 1. Snow, ice, crust, slush, soft spots, holes, grooves, bare spots, cuts, rocks,
18 boulders, or tracks from ski area vehicles.

19 2. Forest growth or debris, including stumps, logs, or brush.

20 (c) Ridges, sharp corners, bumps, moguls, valleys, rollers, dips, cliffs, ravines,
21 and double fall lines.

22 (d) Variations in the difficulty of terrain, surface conditions, or subsurface
23 conditions on a single trail or terrain or among trails or terrains that are designated
24 the same level of difficulty at the ski area or at another ski area.

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1 (e) The risk of injury or death on trails and terrains that fall away or drop off
2 toward hazards.

3 (f) The risk of collision with other participants in snow sports. employees of a
4 ski area operator, ski area infrastructure, or ski area vehicles.

5 (g) Variation in the location, construction, configuration, or steepness of trails
6 or terrains.

7 (h) The greater risk of collision, injury, or death in treed areas, in areas where
8 competitions are held, and in areas where freestyling is allowed.

9 **(3) DUTIES OF SKI AREA OPERATORS; SIGNAGE; NOTICE.** (a) *Notice on tickets*
10 *required.* Each ski area operator shall print on each ticket or season pass that it
11 issues to participants in snow sports the following warning:

12 “WARNING: Under Wisconsin law, each participant in a snow sport assumes
13 the risk of injury or death to person or injury to property resulting from the
14 conditions and risks that are considered to be inherent in a snow sport, has a number
15 of duties that must be met while engaging in a snow sport, and is subject to
16 limitations on the ability to recover damages from a ski area operator for injuries or
17 death to a person or to property. A complete copy of this law is available for review
18 at the main site where tickets to this ski area are sold.”

19 (b) *Signs required; generally.* Each ski area operator shall post and maintain
20 a sign that is at least 10 square feet in size at or near each of the sites where tickets
21 to the ski area are sold, at or near each of the entrances or lift loading areas for areas
22 that are open to snow sports, and at or near each area open to sledding or tubing
23 which is not served by a lift. The sign shall contain the following warning:

24 “WARNING — ASSUMPTION OF RISKS: Under Wisconsin law, each
25 participant in a snow sport is considered to have accepted and to have knowledge of

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1 the risk of injury or death to person or injury to property that may result. Under
2 Wisconsin law, each participant in a snow sport has the duty to take the precautions
3 that are necessary to avoid injury or death to person or injury to property. Wisconsin
4 law sets forth certain other limitations on the liability of ski area operators for
5 injuries or death to person or injury to property. A complete copy of this law is
6 available for review at the main site where tickets to this ski area are sold.”

7 (c) *Copies of law.* Each ski area operator shall post and maintain a current copy
8 of all of the provisions of this section at the main site where tickets to the ski area
9 are sold and shall make a copy of it for any individual upon request.

10 (d) *Signs required; skiing or sledding areas.* In addition to the sign required
11 under par. (b), each ski area operator shall post and maintain a sign that is at least
12 10 square feet in size at or near each entrance to a loading area of a lift that serves
13 areas open to skiing or sledding. The sign shall contain the following warning:

14 “WARNING — DUTIES OF INDIVIDUALS ENGAGED IN SKIING OR
15 SLEDDING: Under Wisconsin law, each individual engaged in skiing or sledding
16 has a duty to do all of the following:

- 17 1. Obey all posted warnings and signs.
- 18 2. Keep off of closed trails and out of closed areas.
- 19 3. Know the range of his or her ability and engage in skiing or sledding within
20 that ability.
- 21 4. Assess the difficulty of the trails and terrains that are open to skiing or
22 sledding.
- 23 5. Maintain control of his or her speed and direction.
- 24 6. Be able to stop or avoid other individuals or objects.

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1 7. Yield to other individuals engaged in skiing or sledding who are ahead or who
2 are down the slope.

3 8. Not stop at a point that will result in the individual obstructing a trail or not
4 being visible from above.

5 9. Yield to other individuals engaged in skiing or sledding who are uphill when
6 starting downhill or when merging onto a trail.

7 10. Be able to safely board, ride, and disembark any lift serving an area open to
8 skiing or sledding.

9 11. Board and disembark a lift only at designated sites.”

10 (e) *Signs required; tubing areas.* In addition to the sign required under par. (b),
11 each ski area operator shall post and maintain a sign that is at least 10 square feet
12 in size at or near each entrance to a loading area of a lift that serves areas open to
13 tubing or at or near an entrance of an area open to tubing that is not served by a lift.

14 The sign shall contain the following warning:

15 “WARNING — DUTIES OF INDIVIDUALS ENGAGED IN TUBING: Under
16 Wisconsin law, each individual engaged in sledding has a duty to do all of the
17 following:

18 1. Obey all posted warnings and signs.

19 2. Keep out of closed areas.

20 3. Know the range of his or her ability and engage in tubing within that ability.

21 4. Assess the difficulty of the terrain that is open to tubing.

22 5. Maintain control of the speed and direction of the tube or other device that
23 is being used.

24 6. Comply with any posted limits imposed on the number of passengers or on
25 the amount of weight of the tube or other device while it is being ridden.

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1 7. Be able to safely board, ride, and disembark any lift serving an area open to
2 tubing.

3 8. Board and disembark a lift only at designated sites.

4 9. Yield to other individuals engaged in tubing who are ahead or who are down
5 the the slope.

6 10. Look uphill and yield to oncoming tubes before leaving the bottom of the
7 hill at the end of a run.

8 (f) *Signs required; trails and terrains.* Each ski area operator shall designate
9 the trails that are open for skiing in its ski area and shall determine the difficulty
10 level of each trail. The ski area operator shall post and maintain a sign at or near
11 the beginning of each trail. The sign shall contain the name of the trail and all of the
12 applicable wording and emblems specified in this paragraph to describe the difficulty
13 level of the trail or terrain. The sign shall be at least 4 square feet in size. Each sign
14 shall contain one or more of the following designations that are applicable:

15 1. The word “easier” with an emblem consisting of a green circle.

16 2. The words “difficult” or “more difficult” with an emblem consisting of a blue
17 square.

18 3. The words “most difficult” with an emblem consisting of a black diamond.

19 4. The word “expert” or “extreme” with an emblem consisting of 2 black
20 diamonds.

21 5. The words “freestyling area ahead” with an emblem consisting of an orange
22 oval.

23 6. The words “tree skiing — caution.” The sign shall have an orange
24 background or orange lettering with a black or white background and shall contain

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1 the additional statement: “This back country trail is not groomed or patrolled —
2 Never ski here alone.”

3 (g) *Areas open to freestyling; signs and barricades required.* A ski area operator
4 shall designate an area as an area for freestyling if it contains one or more freestyle
5 features. A ski area operator shall construct and maintain a barricade with fencing,
6 roping, or similar means at the entrance to such an area. The opening in the
7 barricade may not be wider than 30 feet. The ski area operator shall post and
8 maintain a sign at or near the entrance of the area that is at least 3 square feet in
9 size and that shows the boundaries of the area open to freestyling. The sign shall
10 contain emblems consisting of a stop sign and orange oval. The sign shall contain
11 all of the following:

12 1. The words “freestyling skills required.”

13 2. The words “helmets are recommended” or “consider wearing a helmet.”

14 (h) *Lifts; signs required.* For each lift that is used by individuals engaged in
15 skiing and that does not serve any trail that is described under par. (f) as “easier,”
16 the ski operator shall post and maintain, at or near the loading area for the lift a sign
17 that is at least 10 square feet in size near or at the entrance of the loading area. The
18 sign shall contain the following warning:

19 “WARNING: This lift does not serve any trails that are “easier” (marked with
20 a green circle emblem). All of the trails served by this lift are “difficult” or “more
21 difficult” (marked with a blue square emblem), “most difficult” (marked with a black
22 diamond emblem), “expert” or “extreme terrain” (marked with an emblem consisting
23 of 2 black diamonds), or “freestyling terrain ahead” (marked with an orange oval).”

24 (i) *Variation of signs.* 1. In lieu of posting and maintaining each of the separate
25 signs required under par. (b) and par. (d) or (e), a ski area operator may post and

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1 maintain a single sign that is at least 12 square feet in size and that contains all of
2 the required warnings.

3 2. A ski area operator may vary from the specific wording, size, and location
4 requirements for signs specified under this subsection, but any variation may not
5 preclude a reasonably prudent participant in a snow sport from finding or
6 understanding the contents of the sign.

7 (4) DUTIES OF SKI AREA OWNERS; OTHER DUTIES. (a) *Maps*. Each ski area operator
8 shall post and maintain a map of the trails and terrains in the ski area that are
9 designated for any snow sport at all of the sites where tickets to the ski area are sold
10 if the ski area has more than 3 trails. The map shall contain the names of each trail
11 or terrain and a description of the level of difficulty for each trail as determined by
12 the ski area operator under sub. (3) (f). The sign shall be at least 32 square feet in
13 size.

14 (b) *Ski area vehicles*. Each ski area operator shall ensure that each ski area
15 vehicle that is present on a trail during the hours in which a lift is being operated
16 shall display all of the following:

17 1. A flashing light on or near the top of the ski area vehicle whenever the ski
18 area vehicle's engine is on.

19 2. If the ski area vehicle is an all-terrain vehicle, a snowmobile, or a similarly
20 sized motorized vehicle, in addition to the flashing light as specified in subd. 1., a red
21 or orange flag that is at least 40 square inches in size and that is mounted at least
22 5 feet from the bottom of the tracks or tires.

23 (c) *Lift inspections*. Annually, a ski area operator shall have all of the lifts
24 located in its ski area inspected by a qualified lift inspector to determine whether the

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1 lift is in compliance with the rules promulgated by the department of safety and
2 professional services.

3 (d) *Lift inspectors.* In order to be a qualified lift inspector for purposes of par.
4 (c), an individual shall be either or both of the following:

5 1. An individual authorized by the department of safety and professional
6 services to make inspections of lifts pursuant to ch. 101.

7 2. An individual who has knowledge of the requirements of the rules specified
8 in par. (c) and of the design and operation of lifts and who has one of the following:

9 a. A degree of engineering from a recognized university.

10 b. Experience as an inspector of lifts for an insurance company that has
11 provided liability insurance coverage to any ski area.

12 **(5) DUTIES OF INDIVIDUALS ENGAGED IN SNOW SPORTS.** (a) *Safety rules; skiing and*
13 *sledding.* Each individual engaged in skiing or sledding at a ski area has a duty to
14 do all the following:

15 1. Obey all posted warnings and signs.

16 2. Keep off of closed trails and out of closed areas.

17 3. Know the range of his or her ability and engage in skiing or sledding within
18 that ability.

19 4. Assess the difficulty of the trails and terrains that are open to skiing or
20 sledding.

21 5. Maintain control of his or her speed and direction.

22 6. Comply with any posted limits that are imposed on the number of passengers
23 or on the amount of weight of the sled or other sledding device while it is being ridden.

24 7. Be able to stop or avoid other individuals or objects.

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1 8. Yield to other individuals engaged in skiing or sledding who are ahead or who
2 are down the slope.

3 9. Not stop at a point that will result in the individual obstructing a trail or not
4 being visible from above.

5 10. Yield to other individuals engaged in skiing or sledding who are uphill when
6 starting downhill or merging onto a trail.

7 11. Be able to safely board, ride, and disembark any lift serving an area open to
8 skiing or sledding.

9 12. Board and disembark a lift only at designated sites.

10 (b) *Safety rules; tubing.* Each individual engaged in tubing at a ski area has
11 a duty to do all of the following:

12 1. Obey all posted signs and warnings.

13 2. Keep out of closed areas.

14 3. Know the range of his or her ability and engage in tubing within that ability.

15 4. Assess the difficulty of terrain that is open to tubing.

16 5. Maintain control of his or her speed and direction.

17 6. Comply with any posted limits that are imposed on the number of passengers
18 or on the amount of weight of the tube or other tubing device while it is being ridden.

19 7. Be able to safely board, ride, and disembark a lift serving an area open to tubing.

20 8. Board and disembark a lift only at designated sites.

21 9. Yield to other individuals engaged in tubing who are ahead or who are down
22 the slope.

23 10. Look uphill and yield to oncoming tubes before leaving the bottom of the
24 hill at the end of a run.

25 **SECTION 6.** 895.525 (2) of the statutes is amended to read:

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1 895.525 (2) DEFINITION. In this section, “recreational activity” means any
2 activity undertaken for the purpose of exercise, relaxation or pleasure, including
3 practice or instruction in any such activity. “Recreational activity” does not include
4 participating in a snow sport at a ski area, as those terms are defined in s. 167.33,
5 but includes hunting, fishing, trapping, camping, bowling, billiards, picnicking,
6 exploring caves, nature study, dancing, bicycling, horseback riding,
7 horseshoe-pitching, bird-watching, motorcycling, operating an all-terrain vehicle,
8 ballooning, curling, throwing darts, hang gliding, hiking, ~~tobogganing, sledding,~~
9 sleigh riding, snowmobiling, ~~skiing,~~ skating, participation in water sports, weight
10 and fitness training, sight-seeing, rock-climbing, cutting or removing wood,
11 climbing observation towers, animal training, harvesting the products of nature,
12 sport shooting, and participating in a snow sport outside a ski area, as those terms
13 are defined in s. 167.33, and any other sport, game or educational activity.

14 **SECTION 7.** 895.526 of the statutes is created to read:

15 **895.526 Participation in a snow sport; restrictions on civil liability,**
16 **assumption of risk. (1) DEFINITIONS.** All definitions in s. 167.33 apply to this
17 section unless the context otherwise requires.

18 **(2) APPRECIATION OF CONDITIONS AND RISK OF PARTICIPATION IN A SNOW SPORT.** (a)
19 Every participant in a snow sport at a ski area accepts the conditions and risks of the
20 snow sport as set forth in s. 167.33 (2).

21 (b) Every participant in a snow sport at a ski area is presumed to have seen and
22 understood signage provided by the ski area operator pursuant to s. 167.33 (3).

23 (c) Every participant in a snow sport at a ski area accepts that failure to wear
24 a helmet or wearing a helmet that is improperly sized, fitted, or secured increases
25 the risk of injury or death or the risk of a more severe injury. Every participant in

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1 a snow sport at a ski area accepts that a helmet may not be available for purchase
2 or for rent at a ski area.

3 (d) Every participant in a snow sport at a ski area accepts that natural or
4 man-made items or obstacles within a ski area, including ski area infrastructure
5 and ski area vehicles, may be unpadded or not heavily padded and accepts that there
6 may be a higher risk of injury or death or of a more severe injury associated with a
7 collision with an item or obstacle that is unpadded or not heavily padded.

8 **(3) RESPONSIBILITIES OF A PARTICIPANT IN A SNOW SPORT.** Every participant in a
9 snow sport is responsible to do all of the following:

10 (a) Fulfill his or her duties set forth in s. 167.33 (5).

11 (b) Choose whether to wear a helmet while participating in the snow sport. If
12 the participant chooses to wear a helmet, he or she has the responsibility to ensure
13 the helmet is of the correct size and fit and to ensure that it is properly secured while
14 he or she participates in the snow sport.

15 **(4) LIMITS ON LIABILITY FOR A SKI AREA OPERATOR; RELEASE AND LIABILITY OF A**
16 **PARTICIPANT.** (a) A ski operator who fulfills all of his or her duties under s. 167.33 (3)
17 and (4) owes no further duty of care to a participant in a snow sport and is not liable
18 for an injury or death that occurs as a result of any condition or risk accepted by the
19 participant under sub. (2). Whether a particular circumstance constitutes a
20 condition or risk of participating in a snow sport is a question of law.

21 (b) A participant involved in a collision with any other participant or with a
22 nonparticipant may be liable for an injury or death that occurs as a result of the
23 collision.

24 (c) An exculpatory release of liability is enforceable against an adult
25 participant who signs the release and against a minor participant on whose behalf

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1 a release has been signed by the minor participant's parent, legal guardian, or other
2 person authorized by the parent or legal guardian to sign the release.

3 (d) This subsection shall be construed broadly.

4 **(5) EFFECT ON RELATED PROVISION.** Nothing in this section affects the limitation
5 of a property owner's liability under s. 895.52.

6 (END)