

1983 Senate Bill 586

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1983 Wisconsin Act 418

AN ACT to repeal 29.68; to renumber 29.69; to amend 943.13 (title) and (1) (intro.); and to create 778.26 and 895.52 of the statutes, relating to limiting property owners' liability toward users of their property for recreational activities and changing penalties.

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

SECTION 1. Legislative intent. The legislature intends by this act to limit the liability of property owners toward others who use their property for recreational activities under circumstances in which the owner does not derive more than a minimal pecuniary benefit. While it is not possible to specify in a statute every activity which might constitute a recreational activity, this act provides examples of the kinds of activities that are meant to be included, and the legislature intends that, where substantially similar circumstances or activities exist, this legislation should be liberally construed in favor of property owners to protect them from liability. The act is intended to overrule any previous Wisconsin supreme court decisions interpreting section 29.68 of the statutes if the decision is more restrictive than or inconsistent with the provisions of this act.

SECTION 2. 29.68 of the statutes, as affected by 1983 Wisconsin Act 27, is repealed.

SECTION 3. 29.69 of the statutes is renumbered 23.115.

SECTION 4. 778.26 of the statutes is created to read:

778.26 Citation procedure; violation of land trespass laws. (1) The citation procedures established by this section may be used only in an action to recover a forfeiture under s. 943.13. The citation form provided by this section may serve as the initial pleading for the action and is adequate process to give a court jurisdiction over the person if the citation is filed with the circuit court.

(2) A citation under this section shall be signed by an officer who has authority to make arrests for the violation and shall contain substantially the following information:

- (a) The name, address and date of birth of the defendant.
- (b) The name and department of the issuing officer.
- (c) The violation alleged, the time and place of occurrence, a statement that the defendant committed the violation, the statute violated and a designation of the violation in language which can be readily understood by a person making a reasonable effort to do so.
- (d) A date, time and place for the court appearance, and a notice to appear.
- (e) The maximum forfeiture and penalty assessment for which the defendant is liable.
- (f) Provisions for deposit and stipulation in lieu of a court appearance.
- (g) Notice that if the defendant makes a deposit and fails to appear in court at the time specified in the citation, the failure to appear will be considered tender of a plea of no contest and submission to a forfeiture and penalty assessment plus costs not to exceed

the amount of the deposit. The notice shall also state that the court, instead of accepting the deposit and plea, may decide to summon the defendant or may issue an arrest warrant for the defendant upon failure to respond to a summons.

(h) Notice that if the defendant makes a deposit and signs the stipulation, the stipulation will be treated as a plea of no contest and submission to a forfeiture and penalty assessment plus costs not to exceed the amount of the deposit. The notice shall also state that the court, instead of accepting the deposit and stipulation, may decide to summon the defendant or issue an arrest warrant for the defendant upon failure to respond to a summons, and that the defendant may, at any time prior to or at the time of the court appearance date, move the court for relief from the effect of the stipulation.

(i) Notice that the defendant may, by mail prior to the court appearance, enter a plea of not guilty and request another date for a court appearance.

(j) Notice that if the defendant does not make a deposit and fails to appear in court at the time specified in the citation, the court may issue a summons or an arrest warrant.

(3) A defendant issued a citation under this section may deposit the amount of money the issuing officer directs by mailing or delivering the deposit and a copy of the citation prior to the court appearance date to the clerk of the circuit court in the county where the violation occurred or to the sheriff's office or police headquarters of the officer who issued the citation. The basic amount of the deposit shall be determined under a deposit schedule established by the judicial conference. The judicial conference shall annually review and revise the schedule. In addition to the basic amount determined by the schedule the deposit shall include the penalty assessment and costs.

(4) A defendant may make a stipulation of no contest by submitting a deposit and a stipulation in the manner provided by sub. (3) prior to the court appearance date. The signed stipulation is a plea of no contest and submission to a forfeiture plus the penalty assessment and costs not to exceed the amount of the deposit.

(5) Except as provided by sub. (6), a person receiving a deposit shall prepare a receipt in triplicate showing the purpose for which the deposit is made, stating that the defendant may inquire at the office of the clerk of the circuit court regarding the disposition of the deposit, and notifying the defendant that if he or she fails to appear in court at the time specified in the citation he or she shall be considered to have tendered a plea of no contest and submitted to a forfeiture and penalty assessment plus costs not to exceed the amount of the deposit and that the court may accept the plea. The original of the receipt shall be delivered to the defendant in person or by mail. If the defendant pays by check, the canceled check is the receipt.

(6) The person receiving a deposit and stipulation of no contest shall prepare a receipt in triplicate showing the purpose for which the deposit is made, stating that the defendant may inquire at the office of the clerk of the circuit court regarding the disposition of the deposit, and notifying the defendant that if the stipulation of no contest is accepted by the court the defendant will be considered to have submitted to a forfeiture and penalty assessment plus costs not to exceed the amount of the deposit. Delivery of the receipt shall be made in the same manner as provided in sub. (5).

(7) If a defendant issued a citation under this section fails to appear in court at the time specified in the citation or by subsequent postponement, the following procedure applies:

(a) If the defendant has not made a deposit, the court may issue a summons or an arrest warrant.

(b) If the defendant has made a deposit, the citation may serve as the initial pleading and the defendant shall be considered to have tendered a plea of no contest and submitted to a forfeiture and penalty assessment plus costs not to exceed the amount of the deposit. The court may either accept the plea of no contest and enter judgment accord-

ingly, or reject the plea and issue a summons. If the defendant fails to appear in response to the summons, the court shall issue an arrest warrant. If the court accepts the plea of no contest, the defendant may, within 90 days after the date set for appearance, move to withdraw the plea of no contest, open the judgment and enter a plea of not guilty if the defendant shows to the satisfaction of the court that failure to appear was due to mistake, inadvertence, surprise or excusable neglect. If a defendant is relieved from the plea of no contest, the court may order a written complaint or petition to be filed. If on reopening the defendant is found not guilty, the court shall delete the record of conviction and shall order the defendant's deposit returned.

(c) If the defendant has made a deposit and stipulation of no contest, the citation serves as the initial pleading and the defendant shall be considered to have tendered a plea of no contest and submitted to a forfeiture and penalty assessment plus costs not to exceed the amount of the deposit. The court may either accept the plea of no contest and enter judgment accordingly, or reject the plea and issue a summons or an arrest warrant. After signing a stipulation of no contest, the defendant may, at any time prior to or at the time of the court appearance date, move the court for relief from the effect of the stipulation. The court may act on such motion, with or without notice, for cause shown by affidavit and upon just terms, and relieve the defendant from the stipulation and the effects of the stipulation.

(8) If a citation or summons is issued to a defendant under this section and he or she is unable to appear in court on the day specified, the defendant may enter a plea of not guilty by mailing a letter stating that inability to the judge at the address indicated on the citation. The letter must show the defendant's return address. The letter may include a request for trial during normal daytime business hours. Upon receipt of the letter, the judge shall reply by letter to the defendant's address setting a time and place for trial. The time shall be during normal business hours if so requested. The date of the trial shall be at least 10 days from the date the letter was mailed by the judge. Nothing in this subsection forbids the setting of the trial at any time convenient to all parties concerned.

(9) An officer who collects a forfeiture, penalty assessment and costs under this section shall pay the money to the county treasurer within 20 days after its receipt. If the officer fails to make timely payment, the county treasurer may collect the payment from the officer by an action in the treasurer's name of office and upon the official bond of the officer, with interest at the rate of 12% per year from the time when it should have been paid.

SECTION 5. 895.52 of the statutes is created to read:

895.52 Recreational activities; limitation of property owners' liability. (1) DEFINITIONS. In this section:

- (a) "Governmental body" means any of the following:
1. The federal government.
 2. This state.
 3. A county or municipal governing body, agency, board, commission, committee, council, department, district or any other public body corporate and politic created by constitution, statute, ordinance, rule or order.
 4. A governmental or quasi-governmental corporation.
 5. A formally constituted subunit or an agency of subd. 1, 2, 3 or 4.
- (b) "Injury" means an injury to a person or to property.
- (c) "Nonprofit organization" means an organization or association not organized or conducted for pecuniary profit.
- (d) "Owner" means either of the following:

1. A person, including a governmental body or nonprofit organization, that owns, leases or occupies property.

2. A governmental body or nonprofit organization that has a recreational agreement with another owner.

(e) "Private property owner" means any owner other than a governmental body or nonprofit organization.

(f) "Property" means real property and buildings, structures and improvements thereon, and the waters of the state, as defined under s. 144.01 (19).

(g) "Recreational activity" means any outdoor activity undertaken for the purpose of exercise, relaxation or pleasure, including practice or instruction in any such activity. "Recreational activity" includes, but is not limited to, hunting, fishing, trapping, camping, picnicking, exploring caves, nature study, bicycling, horseback riding, bird-watching, motorcycling, ballooning, hang gliding, hiking, tobogganning, sledding, sleigh riding, snowmobiling, skiing, skating, water sports, sight-seeing, rock-climbing, cutting or removing wood, climbing observation towers, animal training, harvesting the products of nature and any other outdoor sport, game or educational activity, but does not include any organized team sport activity sponsored by the owner of the property on which the activity takes place.

(h) "Recreational agreement" means a written authorization granted by an owner to a governmental body or nonprofit organization permitting public access to all or a specified part of the owner's property for any recreational activity.

(i) "Residential property" means a building or structure designed for and used as a private dwelling accommodation or private living quarters, and the land surrounding the building or structure within a 300-foot radius.

(2) **NO DUTY; IMMUNITY FROM LIABILITY.** (a) Except as provided in subs. (3) to (6), no owner and no officer, employe or agent of an owner owes to any person who enters the owner's property to engage in a recreational activity:

1. A duty to keep the property safe for recreational activities.
2. A duty to inspect the property, except as provided under s. 23.115 (2).
3. A duty to give warning of an unsafe condition, use or activity on the property.

(b) Except as provided in subs. (3) to (6), no owner and no officer, employe or agent of an owner is liable for any injury to, or any injury caused by, a person engaging in a recreational activity on the owner's property or for any injury resulting from an attack by a wild animal.

(3) **LIABILITY; STATE PROPERTY.** Subsection (2) does not limit the liability of an officer, employe or agent of this state or of any of its agencies for either of the following:

(a) An injury that occurs on property of which this state or any of its agencies is the owner at any event for which the owner charges an admission fee for spectators.

(b) An injury caused by a malicious act or by a malicious failure to warn against an unsafe condition of which an officer, employe or agent knew, which occurs on property designated by the department of natural resources under s. 23.115 or designated by another state agency for a recreational activity.

(4) **LIABILITY; PROPERTY OF GOVERNMENTAL BODIES OTHER THAN THIS STATE.** Subsection (2) does not limit the liability of a governmental body other than this state or any of its agencies or of an officer, employe or agent of such a governmental body for either of the following:

(a) An injury that occurs on property of which a governmental body is the owner at any event for which the owner charges an admission fee for spectators.

(b) An injury caused by a malicious act or by a malicious failure to warn against an unsafe condition of which an officer, employe or agent of a governmental body knew, which occurs on property designated by the governmental body for recreational activities.

(5) **LIABILITY; PROPERTY OF NONPROFIT ORGANIZATIONS.** Subsection (2) does not limit the liability of a nonprofit organization or any of its officers, employes or agents for an injury caused by a malicious act or a malicious failure to warn against an unsafe condition of which an officer, employe or agent of the nonprofit organization knew, which occurs on property of which the nonprofit organization is the owner.

(6) **LIABILITY; PRIVATE PROPERTY.** Subsection (2) does not limit the liability of a private property owner or of an employe or agent of a private property owner whose property is used for a recreational activity if any of the following conditions exist:

(a) The private property owner collects money, goods or services in payment for the use of the owner's property for the recreational activity during which the injury occurs, and the aggregate value of all payments received by the owner for the use of the owner's property for recreational activities during the year in which the injury occurs exceeds \$500. The following do not constitute payment to a private property owner for the use of his or her property for a recreational activity:

1. A gift of wild animals or any other product resulting from the recreational activity.
2. An indirect nonpecuniary benefit to the private property owner or to the property that results from the recreational activity.
3. A donation of money, goods or services made for the management and conservation of the resources on the property.
4. A payment of not more than \$5 per person per day for permission to gather any product of nature on an owner's property.
5. A payment received from a governmental body.
6. A payment received from a nonprofit organization for a recreational agreement.

(b) The injury is caused by the malicious failure of the private property owner or an employe or agent of the private property owner to warn against an unsafe condition on the property, of which the private property owner knew.

(c) The injury is caused by a malicious act of the private property owner or of an employe or agent of a private property owner.

(d) The injury occurs on property owned by a private property owner to a social guest who has been expressly and individually invited by the private property owner for the specific occasion during which the injury occurs, if the injury occurs on any of the following:

1. Platted land.
2. Residential property.
3. Property within 300 feet of a building or structure on land that is classified as mercantile or manufacturing under s. 70.32 (2) (b) 2 or 3.

(e) The injury is sustained by an employe of a private property owner acting within the scope of his or her duties.

(7) **NO DUTY OR LIABILITY CREATED.** Except as expressly provided in this section, nothing in this section or s. 101.11 nor the common law attractive nuisance doctrine creates any duty of care or ground of liability toward any person who uses another's property for a recreational activity.

SECTION 6. 943.13 (title) and (1) (intro.) of the statutes are amended to read:

943.13 (title) Trespass to land. (1) (intro.) Whoever does any of the following is ~~guilty of a Class C misdemeanor~~ subject to a Class B forfeiture:

SECTION 7. Nonstatutory provision; deposit schedule. The judicial conference shall, before October 1, 1984, establish the deposit schedule required under section 778.26 (3) of the statutes, as created by this act, as if that subsection were in effect on the day after publication of this act.

SECTION 8. Cross-reference changes. In the sections of the statutes listed in Column A, the cross-references shown in Column B are changed to the cross-references shown in Column C:

A	B	C
Statute Sections	Old Cross-References	New Cross-References
48.237 (1) and (2)	778.25	778.25, 778.26
66.12 (1)(a)	778.25	778.25 or 778.26
350.19	29.68 (1) to (3)	895.52

SECTION 9. Effective dates. (1) Except as provided under subsection (2), all sections of this act take effect on the day following publication.

(2) The treatment of sections 48.237 (1) and (2), 66.12 (1) (a), 778.26 and 943.13 (1) (intro.) of the statutes takes effect on the first October 1 following publication.
