



## WISCONSIN LEGISLATIVE COUNCIL AMENDMENT MEMO

**2011 Assembly Bill 497**

**Assembly Amendment 1, as  
Amended, and Senate  
Amendment 1**

*Memo published:* March 14, 2012

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### **2011 ASSEMBLY BILL 497**

**2011 Assembly Bill 497** provides that no school board, no governing body of a charter school, and no officer, employee, or agent of a school board or of a governing body of a charter school, *is liable* for the death of, any injury to, or any death or injury caused by, a person engaging in certain recreational activities taking place on the school grounds. In addition, with respect to a person who enters the school grounds to participate in certain recreational activities, no school board, no governing body of a charter school, and no officer, employee, or agent of a school board or of a governing body of a charter school, *owes a duty* to keep the school grounds safe, to inspect the school grounds, or to warn of unsafe circumstances.

For the above provisions to apply, the person must be engaging or participating in a recreational activity held pursuant to a recreational agreement. The term “recreational activity” means any indoor or outdoor physical activity, sport, team sport, or game, whether organized or unorganized, undertaken for exercise, relaxation, diversion, or pleasure. The term “recreational agreement” means a written authorization granted by the school to a person permitting public access to the school grounds for a recreational activity.

Assembly Bill 497 provides an exception for malicious acts. Specifically, it does not limit the liability of a school board, a governing body of a charter school, or an officer, employee, or agent of the school board or of the governing body of a charter school, for a death or injury caused by a *malicious act or malicious failure to warn* against an unsafe condition of which an officer, employee, or agent of a school was aware, which occurs on school grounds being used for a recreational activity pursuant to a recreational agreement.

**ASSEMBLY AMENDMENT 1 (AS AMENDED BY ASSEMBLY AMENDMENT 1 TO ASSEMBLY AMENDMENT 1)**

Under *Assembly Amendment 1* to the bill, a *school district* is added to the list of parties to which the bill applies.

*Assembly Amendment 1* adds an exception for deaths or injuries to *spectators*. The amendment provides that the bill does not limit the liability of a school district, a school board, a governing body of a charter school, or an officer, employee, or agent of the school board or of the governing body of a charter school, for the death of or injury to a spectator that occurs on school grounds being used for a recreational activity pursuant to a recreational agreement.

*Assembly Amendment 1 to Assembly Amendment 1* adds an exception for deaths or injuries to persons participating in *certain recreational activities*. The amendment provides that the bill does not limit the liability of a school district, a school board, a governing body of a charter school, or an officer, employee, or agent of the school board or of the governing body of a charter school, for the death of or injury to a person participating in a recreational activity involving any of the following pursuant to a recreational agreement:

- A weight room.
- A swimming pool.
- Gymnastic equipment.

*Assembly Amendment 1* changes the definition of “recreational activity” to mean all of the following, other than an indoor or outdoor organized team sport or activity organized and held by a school:

- Any indoor physical activity, sport, team sport, or game, whether organized or unorganized, undertaken for the purpose of exercise, relaxation, diversion, education, or pleasure.
- Any outdoor activity undertaken for the purpose of exercise, relaxation, or pleasure, including practice or instruction in any such activity. “Outdoor activity” includes hunting, fishing, trapping, camping, picnicking, exploring caves, nature study, bicycling, horseback riding, bird-watching, motorcycling, operating an all-terrain vehicle, ballooning, hang gliding, hiking, tobogganing, 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, sport shooting, and any other outdoor sport, game, or educational activity.

*Assembly Amendment 1* provides that each *recreational agreement* must, in addition to the requirements set forth in the bill, also include all of the following:

- A description of the recreational activity or activities to be held on the school grounds pursuant to the agreement.

- The time and place of the recreational activity or activities.
- Any eligibility requirements for participation in the recreational activity or activities.
- Whether and, if so, to what extent participants who are minors will be supervised.
- A clear statement describing a participant's assumption of risk.

*Assembly Amendment 1* also authorizes a school board, in granting temporary use of the school grounds for a recreational activity held pursuant to a recreational agreement, to impose as a condition fees not to exceed reasonable costs for maintenance, security, supervision of participants who are minors, if applicable, and cleaning.

### **SENATE AMENDMENT 1**

Under current law, s. 893.80, Stats., imposes certain notice requirements and certain limitations on claims and damages in a lawsuit brought or maintained against a volunteer fire company, political corporation, governmental subdivision or agency thereof, or any officer, official, agent or employee of the corporation, subdivision or agency. *Senate Amendment 1* provides that, for the purposes of s. 893.80, Stats., an *agent* includes a "volunteer," which *Senate Amendment 1* defines as a person who:

- Provides services or performs duties for and with the express or implied consent of a volunteer fire company, political corporation, or governmental subdivision or agency thereof;
- Is subject to the right of control of the volunteer fire company, political corporation, or governmental subdivision or agency thereof; and
- Is not paid a fee, salary, or other compensation by any person for the services or duties described above, other than reimbursement of expenses.

In addition, *Senate Amendment 1* provides that the procurement or maintenance of insurance or self-insurance by a volunteer fire company, political corporation, or governmental subdivision or agency thereof, irrespective of the extent or type of coverage or the persons insured, shall not do any of the following:

- Constitute a waiver of the provisions of s. 893.80, Stats.; or
- Be relied upon to deny a person status as an officer, official, agent, or employee of the volunteer fire company, political corporation, or governmental subdivision or agency that is procuring or maintaining the insurance or self-insurance.

### **LEGISLATIVE HISTORY**

Assembly Amendment 1 to 2011 Assembly Bill 497 was offered on February 17, 2012, by Representative Bies. On February 21, 2012, the Assembly Committee on Public Health and Public Safety recommended adoption of Assembly Amendment 1 on a vote of Ayes, 8; Noes, 0; and recommended passage of the bill, as amended, on a vote of Ayes, 7; Noes, 1.

Assembly Amendment 1 to Assembly Amendment 1 was offered on February 23, 2012, by Representative Bies. On March 6, 2012, the Assembly adopted Assembly Amendment 1 to Assembly Amendment 1 on a voice vote. On the same day, the Assembly adopted Assembly Amendment 1, as amended, on a voice vote. On March 6, 2012, the Assembly passed the bill, as amended, on a voice vote.

Senate Amendment 1 to 2011 Assembly Bill 497 was offered by Senators Grothman and Galloway on March 13, 2012. On the same day, the Senate adopted Senate Amendment 1 and concurred in the bill, as amended, on voice votes.

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