



1995 SENATE BILL 292

August 9, 1995 - Introduced by LAW REVISION COMMITTEE. Referred to Committee on Judiciary.

1 **AN ACT to amend** 895.52 (2) (b), 895.52 (3) (a) and (b), 895.52 (4) (a) and (b),
2 895.52 (5), 895.52 (6) (a) (intro.), 895.52 (6) (b) and (c), 895.52 (6) (d) (intro.) and
3 (e) and 895.525 (1), (3) and (4) (a) 4. of the statutes; **relating to:** creating
4 immunity from liability for the owner of recreational property if a person dies
5 while involved in a recreational activity on the property.

Analysis by the Legislative Reference Bureau

Under current law, an owner of recreational property is immune from liability for the injury to a person if the injury occurs while the person is engaged in a recreational activity on the recreational property. The property owner is not required to keep the recreational property safe for recreational activities, to inspect the property or to give warning of an unsafe condition, use or activity on the property.

In *Moua v. Northern States Power Co.*, 157 Wis. 2d 177 (1990), the court of appeals declared that the statute granting immunity to recreational property owners is ambiguous because it is unclear whether "death" is included in the term "injury". The court concluded that the term "death" is included in the term "injury".

This bill codifies the decision in *Moua* by granting the owner of recreational property immunity from liability for the death of a person if the death occurs while the person is engaged in a recreational activity on the property.

For further information, see the NOTES provided by the law revision committee of the joint legislative council.

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

LAW REVISION COMMITTEE PREFATORY NOTE: This bill is introduced by the law revision committee under s. 13.83 (1) (c) 1., stats. After careful consideration of the decision in

Moua v. Northern States Power Co., 157 Wis. 2d 177 (1990), the law revision committee has determined that codifying that decision is desirable as a matter of public policy.

1 **SECTION 1.** 895.52 (2) (b) of the statutes is amended to read:

2 895.52 (2) (b) Except as provided in subs. (3) to (6), no owner and no officer,
3 employe or agent of an owner is liable for the death of, any injury to, or any death
4 or injury caused by, a person engaging in a recreational activity on the owner's
5 property or for any death or injury resulting from an attack by a wild animal.

6 **SECTION 2.** 895.52 (3) (a) and (b) of the statutes are amended to read:

7 895.52 (3) (a) ~~An~~ A death or injury that occurs on property of which this state
8 or any of its agencies is the owner at any event for which the owner charges an
9 admission fee for spectators.

10 (b) ~~An~~ A death or injury caused by a malicious act or by a malicious failure to
11 warn against an unsafe condition of which an officer, employe or agent knew, which
12 occurs on property designated by the department of natural resources under s.
13 23.115 or designated by another state agency for a recreational activity.

14 **SECTION 3.** 895.52 (4) (a) and (b) of the statutes are amended to read:

15 895.52 (4) (a) ~~An~~ A death or injury that occurs on property of which a
16 governmental body is the owner at any event for which the owner charges an
17 admission fee for spectators.

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

22 **SECTION 4.** 895.52 (5) of the statutes is amended to read:

1 895.52 (5) LIABILITY; PROPERTY OF NONPROFIT ORGANIZATIONS. Subsection (2) does
2 not limit the liability of a nonprofit organization or any of its officers, employees or
3 agents for ~~an~~ a death or injury caused by a malicious act or a malicious failure to warn
4 against an unsafe condition of which an officer, employee or agent of the nonprofit
5 organization knew, which occurs on property of which the nonprofit organization is
6 the owner.

7 **SECTION 5.** 895.52 (6) (a) (intro.) of the statutes is amended to read:

8 895.52 (6) (a) (intro.) The private property owner collects money, goods or
9 services in payment for the use of the owner's property for the recreational activity
10 during which the death or injury occurs, and the aggregate value of all payments
11 received by the owner for the use of the owner's property for recreational activities
12 during the year in which the death or injury occurs exceeds \$2,000. The following
13 do not constitute payment to a private property owner for the use of his or her
14 property for a recreational activity:

15 **SECTION 6.** 895.52 (6) (b) and (c) of the statutes are amended to read:

16 895.52 (6) (b) The death or injury is caused by the malicious failure of the
17 private property owner or an employee or agent of the private property owner to warn
18 against an unsafe condition on the property, of which the private property owner
19 knew.

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

22 **SECTION 7.** 895.52 (6) (d) (intro.) and (e) of the statutes are amended to read:

23 895.52 (6) (d) (intro.) The death or injury occurs on property owned by a private
24 property owner to a social guest who has been expressly and individually invited by

1 the private property owner for the specific occasion during which the death or injury
2 occurs, if the death or injury occurs on any of the following:

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

5 **SECTION 8.** 895.525 (1), (3) and (4) (a) 4. of the statutes are amended to read:

6 895.525 (1) LEGISLATIVE PURPOSE. The legislature intends by this section to
7 establish the responsibilities of participants in recreational activities in order to
8 decrease uncertainty regarding the legal responsibility for deaths or injuries that
9 result from participation in recreational activities and thereby to help assure the
10 continued availability in this state of enterprises that offer recreational activities to
11 the public.

12 (3) APPRECIATION OF RISK. A participant in a recreational activity engaged in
13 on premises owned or leased by a person who offers facilities to the general public
14 for participation in recreational activities accepts the risks inherent in the
15 recreational activity of which the ordinary prudent person is or should be aware. In
16 a negligence action for recovery of damages for death, personal injury or property
17 damage, conduct by a participant who accepts the risks under this subsection is
18 contributory negligence, to which the comparative negligence provisions of s.
19 895.045 shall apply.

20 (4) (a) 4. Refrain from acting in any manner that may cause or contribute to
21 the death or injury to himself or herself or to other persons while participating in the
22 recreational activity.

NOTE: This bill clarifies that the owner of recreational property is immune from
liability for the death of a person if the death occurs while the person is engaged in a
recreational activity on the property.