



2011 SENATE BILL 382

January 18, 2012 - Introduced by Senators GALLOWAY, LAZICH and GROTHMAN, cosponsored by Representatives BIES, BERNIER, BROOKS, JACQUE, KESTELL, KOOYENGA, LEMAHIEU, MARKLEIN, A. OTT, PETROWSKI, SPANBAUER, STRACHOTA, STROEBEL and THIESFELDT. Referred to Committee on Education.

1 **AN ACT to amend** 120.13 (17) and 895.525 (5); and **to create** 895.523 of the
2 statutes; **relating to:** providing immunity from liability to a school board or the
3 governing body of a charter school that provides public access to school grounds
4 for certain recreational activities.

Analysis by the Legislative Reference Bureau

Under current law, a school board may permit any responsible person to use the school grounds, buildings, facilities, or equipment of the school district for lawful nonschool purposes when that use does not interfere with school purposes. Also under current law, school boards may enter into contracts with individuals, groups, businesses, or governmental bodies to establish charter schools, which operate with fewer constraints than traditional public schools. Current law also permits the University of Wisconsin–Milwaukee, University of Wisconsin–Parkside, the Milwaukee Area Technical College, and the city of Milwaukee to operate charter schools (independent charter schools) directly or to contract for the operation of charter schools.

This bill provides immunity from liability to a school board for death or injury that occurs on the school grounds of the school district when the death or injury results from a recreational activity held on the school grounds pursuant to a recreational agreement between the school board and a person. The bill provides identical liability protections to the governing body of a charter school that enters into a recreational agreement with a person. The bill defines recreational activity as any indoor or outdoor physical activity, sport, team sport, or game, whether

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organized or unorganized, undertaken for the purpose of exercise, relaxation, diversion, or pleasure. The bill defines recreational agreement as a written authorization granted by a school board or the governing body of a charter school to a person permitting public access to all or a specified part of the school grounds for the purpose of any recreational activity.

The bill also provides that, when a school board or governing body of a charter school has entered into a recreational agreement with a person, neither the school board, the governing body of the charter school, nor an employee, officer or agent of the school board or governing body owes any of the following duties to a person that participates in the recreational activity: 1) a duty to keep the school grounds safe for the recreational activity; 2) a duty to inspect the school grounds; or 3) a duty to give warning of an unsafe condition, use, or activity on the school grounds. The bill provides an exception to the liability protection granted to a school board and the governing body of a charter school in an instance in which an injury or death is caused by a malicious act or malicious failure to warn against an unsafe condition about which an officer, employee, or agent of the school board or governing body of the charter school knew.

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

1 **SECTION 1.** 120.13 (17) of the statutes is amended to read:

2 120.13 **(17)** TEMPORARY USE OF SCHOOL PROPERTY. Grant the temporary use of
3 school grounds, buildings, facilities, or equipment, upon such conditions, including
4 fees not to exceed actual costs, as determined by the school board, to any responsible
5 person for any lawful nonschool purpose if such use does not interfere with use for
6 school purposes or school-related functions. Fees received under this subsection
7 shall be paid into the school district treasury and accounted for as prescribed under
8 s. 115.28 (13). The user shall be primarily liable, and, except as provided in s.
9 895.523, the school board secondarily liable, for any damage to property and for any
10 expense incurred in consequence of any use of school grounds, buildings, facilities,
11 or equipment under this subsection.

12 **SECTION 2.** 895.523 of the statutes is created to read:

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1 **895.523 Recreational activities in a school building or on school**
2 **grounds; limitation of liability. (1) DEFINITIONS.** In this section:

3 (a) “Governing body of a charter school” means the person that operates a
4 charter school established under s. 118.40 (2) or (2m) or the entity that operates a
5 charter school established under s. 118.40 (2r).

6 (b) “Injury” means an injury to a person or to property.

7 (c) “Recreational activity” means any indoor or outdoor physical activity, sport,
8 team sport, or game, whether organized or unorganized, undertaken for the purpose
9 of exercise, relaxation, diversion, or pleasure.

10 (d) “Recreational agreement” means a written authorization granted by a
11 school board or the governing body of a charter school to a person permitting public
12 access to all or a specified part of the school grounds for the purpose of any
13 recreational activity.

14 (e) “School board” means the school board or board of school directors in charge
15 of the public schools of a school district.

16 (f) “School building” means a building designed for and used as a school by a
17 school board or by the governing body of a charter school.

18 (g) “School grounds” means real property, and any school buildings, accessory
19 buildings, structures, and improvements thereon, owned, leased, or rented by a
20 school board or by the governing body of a charter school and used primarily for
21 public school purposes.

22 (h) “Sport” means an activity requiring physical exertion and skill and which,
23 by its nature and organization, is competitive and includes a set of rules for play.

24 **(2) NO DUTY; IMMUNITY FROM LIABILITY.** (a) Except as provided in sub. (3), no
25 school board, no governing body of a charter school, and no officer, employee, or agent

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1 of a school board or of a governing body of a charter school, owes to any person who
2 enters the school grounds of the school board or of the governing body of a charter
3 school to engage or participate in a recreational activity held pursuant to a
4 recreational agreement any of the following:

- 5 1. A duty to keep the school grounds safe for the recreational activity.
- 6 2. A duty to inspect the school grounds.
- 7 3. A duty to give warning of an unsafe condition, use, or activity on the school
8 grounds.

9 (b) Except as provided in sub. (3), no school board, no governing body of a
10 charter school, and no officer, employee, or agent of a school board or of a governing
11 body of a charter school, is liable for the death of, any injury to, or any death or injury
12 caused by, a person engaging or participating in a recreational activity held pursuant
13 to a recreational agreement and taking place on the school grounds of the school
14 board or of the governing body of a charter school.

15 **(3) LIABILITY.** Subsection (2) does not limit the liability of a school board, a
16 governing body of a charter school, or an officer, employee, or agent of the school
17 board or of the governing body of a charter school for a death or injury caused by a
18 malicious act or by a malicious failure to warn against an unsafe condition of which
19 an officer, employee, or agent of the school board or of the governing body of a charter
20 school knew, which occurs on the school grounds of the school board or of the
21 governing body of a charter school designated for use in a recreational agreement and
22 being used by a person for a recreational activity held pursuant to the recreational
23 agreement.

24 **(4) NO DUTY OR LIABILITY CREATED.** Except as expressly provided in this section,
25 nothing in this section or s. 101.11 nor the common law attractive nuisance doctrine

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1 creates any duty of care or ground of liability toward any person who uses school
2 grounds to engage or participate in a recreational activity held pursuant to a
3 recreational agreement.

4 **SECTION 3.** 895.525 (5) of the statutes is amended to read:

5 895.525 (5) ~~EFFECT ON RELATED PROVISION~~ PROVISIONS. Nothing in this section
6 affects the limitation of property owners' liability under s. 895.52 or the limitation
7 of school boards' liability and of liability of governing bodies of charter schools under
8 s. 895.523.

9 **SECTION 4. Initial applicability.**

10 (1) In this section:

11 (a) "Recreational activity" has the meaning given in section 895.523 (1) (c) of
12 the statutes, as created by this act.

13 (b) "School grounds" has the meaning given in section 895.523 (1) (g) of the
14 statutes, as created by this act.

15 (2) This act first applies to the death of or any injury to, or any death or injury
16 caused by, a person engaging or participating in a recreational activity on school
17 grounds on the effective date of this subsection.

18 (END)