

State of Wisconsin



1995 Senate Bill 292

Date of enactment: **April 16, 1996**
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1995 WISCONSIN ACT 223

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

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.

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

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

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

895.52 (3) (a) ~~An~~ A death or 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~~ A death or 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 re-

sources under s. 23.115 or designated by another state agency for a recreational activity.

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

895.52 (4) (a) ~~An~~ A death or 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~~ A death or 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.

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

895.52 (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~~ a death or 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.

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

* Section 991.11, WISCONSIN STATUTES 1993-94: Effective date of acts. "Every act and every portion of an act enacted by the legislature over the governor's partial veto which does not expressly prescribe the time when it takes effect shall take effect on the day after its date of publication as designated" by the secretary of state [the date of publication may not be more than 10 working days after the date of enactment].

895.52 (6) (a) (intro.) 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 death or 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 death or injury occurs exceeds \$2,000. The following do not constitute payment to a private property owner for the use of his or her property for a recreational activity:

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

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

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

895.52 (6) (d) (intro.) The death or 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 death or injury occurs, if the death or injury occurs on any of the following:

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

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

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

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

(4) (a) 4. 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.

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.