

Committee Name:
Senate Committee –
Judiciary, Corrections and Privacy
(SC–JCP)

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**WISCONSIN STATE SENATE COMMITTEE ON JUDICIARY,
CORRECTIONS AND PRIVACY
SEN. DAVE ZIEN, CHAIR
AND
WISCONSIN STATE ASSEMBLY COMMITTEE ON JUDICIARY
REP. MARK GUNDRUM, CHAIR**

**PUBLIC HEARING ON
ASSEMBLY BILL 423 AND SENATE BILL 229
August 21, 2003**

**TESTIMONY OF
ROBERT L. JASKULSKI
ON BEHALF OF THE
WISCONSIN ACADEMY OF TRIAL LAWYERS**

Good morning, Senator Zien, Representative Gundrum and committee members. My name is Robert L. Jaskulski. I am a partner in the Milwaukee law firm, Domnitz, Mawicke and Goisman, S.C. Today I appear on behalf of the Wisconsin Academy of Trial Lawyers (WATL), where I currently serve as Treasurer of the organization. On behalf of WATL, I thank you for the opportunity to appear today to testify in opposition to Assembly Bill 423 and Senate Bill 229.

WATL, established as a voluntary trial bar, is a non-profit corporation with approximately 1,000 members located throughout the state. The objectives and goals of WATL are the preservation of the civil jury trial system, the improvement of the administration of justice, the provision of

facts and information for legislative action, and the training of lawyers in all fields and phases of advocacy.

At common law, owners of animals were liable without fault for the activity of animals likely to roam (cattle, horses, sheep), wild or dangerous animals and domestic animals with vicious propensities.

Under Wis. Stat. § 174.02(1)(a), if a dog owner has no notice, liability for injury can be imposed on the owner of a dog for a person's full amount of damages if a dog injures or causes injury to a person, domestic animal or property.

Under Wis. Stat. § 174.02(1)(b), if a dog owner had notice his or her dog caused a previous injury; the dog's owner is liable for two times the full amount of damages.

The purpose of Wis. Stat. §174.02 is to protect those people who are not in a position to control the dog.

The current statute protects the public from dangerous dogs. Once owners learn they can be liable for double damages the second time a dog injures another person, domestic animal or property, there is a strong incentive for the owners to take steps to avoid future problems — training, leashing it or keeping it away from doors. We understand the attachment many individuals have with their dogs, but a dangerous dog is a threat to public safety. The double damages provision is an important safety feature and WATL opposes the changes in AB 423/SB 229.

We understand more insurance companies are looking hard at covering injuries caused by dogs. This is more of an insurance issue than a liability issue. Insurance companies may exclude coverage for dog injuries, especially if a dog has caused more than one injury. They also write policies excluding coverage for certain breeds of dogs. A recent *Wall Street Journal* article (Article attached) outlines how insurance companies are reevaluating risks in homeowner insurance policies. The article says,

Nationwide Insurance, for instance, won't insure homes where certain breeds of dog are present. Those include pit bulls, Dobermans, Rottweilers, chow-chows, Presa Carnarios and wolf hybrids. Nationwide says those dogs present an "increased risk of injury or death to children, adults or other animals."

Insurance companies know, probably better than most, which dogs are the biggest risks to cause injuries. When owners of dogs who harm people learn that their insurance carriers will no longer insure further dog injuries, the owners must make a decision — keep the dog that may attack again and lose your homeowners insurance or dispose of the dog.

If insurance availability is the main problem facing dog owners, this bill does nothing to address that problem. Nothing in AB 423/SB 229 guarantees insurers offer insurance coverage for all dogs. As the *Wall Street Journal* article reports, insurance coverage for dogs is an issue being faced across the country, not just in Wisconsin. Many of the insurance companies appear to have taken a position nationally on this issue. An insurance company writing insurance in several states is not likely to change its policy from jurisdiction to jurisdiction. Therefore, AB 423/SB 229 serves only to punish victims of dog attacks.

Dog injuries are not isolated problems. Dog injuries have reached epidemic levels in the U.S. Nearly 2% of the U.S. population is injured by a dog each year according to the Centers for Disease Control and Prevention in Atlanta, Georgia. This is more than 4.7 million people per year, most of who are children.

Ten to twenty people die each year as a result of dog injuries in the U.S. By far, the majority of victims are children. But for each fatality the researchers estimate there are 670 hospitalizations; 16,000 emergency room visits, 21,000 doctor and clinic visits; and 187,000 injuries that didn't require medical attention. Researchers estimate dog injuries cost more than \$100 million a year. The median age of a dog injury victim is 15, with children aged 5 to 9 having the highest rate of incidence.

We have seen numerous instances where a dog can injure a person, without biting or breaking the skin of a person. For example:

- A dog jumped through a screen door at a visitor and knocked her down the stairs backward and she suffered a severe head injury.
- A similar case, where a dog jumped through a screen door at a visitor and knocked her off the front steps causing back injuries.

- A dog jumped up and knocked over a bicyclist and bit him, but did not break the skin.
- A dog jumped up and knocked over an elderly person causing serious injury, but did not bite her.
- A dog ran into a person on a beach and blew out his knee.

In many of these instances, the owner knew the dog in question had these propensities and had done it in the past. There is no rhyme or reason why the first injury to give rise to double damages has to be a “bite that breaks the skin.” Aggressive dogs can cause injury by jumping on/knocking down, or causing a person to be injured while trying to escape. The fortuity of an actual bite does not necessarily reflect either the aggressive nature of the dog or the awareness of the owner.

AB 423/SB 229 also require not only there be a dog bite, which “breaks the skin,” but that the bite causes “permanent physical scarring or disfigurement.” What happens if a minor child is viciously attacked and bitten, but then undergoes plastic surgery, which reduces the size and scope of the injury so it is hardly noticeable. Is it a “permanent” injury with the plastic surgery?

Also, why must not one, but two people virtually undergo dog maulings before double damages are allowed? That is like saying to count as attempted murder a person must be physically injured, but if the criminal misses his target he gets a free pass. It does not make sense.

We are perplexed by the addition of the “without provocation” language under proposed § 174.02(1)(b). The statute is already subject to § 895.045, Wis. Stat., the comparative negligence statute, which takes into account the actions of the dog, dog owner and the person bitten. It would appear the “without provocation” language is unnecessary. It is also uncertain how the court would view the additional “without provocation” language. For example, we envision a dog owner arguing his or her dog was provoked meaning he or she will be off the hook for any damages. An injured party would argue, it should be reviewed inside the framework of § 895.045 and reduce, but not eliminate liability entirely. The Court would have to decide what the Legislature intended.

The change may also be an important factor when dogs bite young children because under § 891.44, Wis. Stat., a child under age seven cannot be contributorily negligent. Does the Legislature intend by adding the “without provocation” language to hold children under age seven responsible when a dog bites them?

WATL has taken no position on the legislation raising the amount a dog owner can be fined when a dog causes injury by biting a person. We think it is a bit ironic that the fines are more than double when an owner has notice and a dog bites more than once, yet this bill limits the double damages provision for victims of dog bites. Why should the municipality recover a double fine, but the victim not be allowed double damages if a dog bites a second, third or fourth time?

WATL would support allowing any person to petition to have a dog killed if the dog caused serious injury on two occasions. This could save time and money for municipalities and allow people injured or threatened by dangerous dogs to be involved in protecting public safety.

A vicious attack by a dog is a frightening experience, which can result in serious injury and life-long scars. Owners of dogs who have injured someone should recognize the dog’s dangerousness and take necessary steps to prevent it from happening again. If the owner does not take action and the dog injures again, we believe double damages are entirely appropriate because the purpose of Wis. Stat. §174.02 is to protect those people who are not in a position to control the dog. We urge committee members to reject AB 423/SB 229.



Lou Beach

The Legal Minefield In Your Own Backyard

*More Insurers Quit Covering
The Staples of Suburbia;
One Free Dog Bite Per Policy*

By CHRISTOPHER OSTER

PLANNING ON a little backyard fun this summer? Your insurance company may have something to say about that.

Over the past year, homeowners insurers have gotten much stricter about who and what they will cover, as they try to turn around a business line that suddenly has become a huge money loser. That effort, which began with refusing to insure houses that had histories of water damage or multiple claims of any sort, is now spreading to a crackdown on some of the staples of suburban life. Among the targets: trampolines, swimming pools (especially those with diving boards) and even the family pet.

Insurers have become fixated on the tools of summer fun as a means of reducing their risks. While in the past a home inspection involved little more than an insurance-company employee taking a picture of a mailbox with an address number,

this summer those reps are wandering into backyards to check for any risky apparatuses. Companies have in the past year added questions about trampolines to their policy application forms.

The result is that thousands of homeowners are being forced to scramble for basic coverage, some-

times paying hundreds of dollars a year in higher premiums in the process. Most insurers sell one-size-fits-all policies, which means that when certain items are creating outside losses, they simply refuse to cover homes where those items are present. Nationwide Insurance, for instance, won't insure homes where certain breeds of dog are present. Those include pit bulls, Dobermans, Rottweilers, chow-chows, Presa Canarios and wolf hybrids. Nationwide says those dogs present an "increased risk of injury or death to children, adults or other animals."

But there are ways to get—or keep—coverage without spending a fortune on premiums. One is to turn the tables on your insurer. If they're giving you extra scrutiny, do the same to them by shopping around for coverage rather than staying loyal to one carrier. For example, Allstate Corp. covers diving boards while State Farm Mutual Automobile Insurance Co. doesn't, and Allstate will cover homes with pit bulls in some regions, but not in others.

Another tactic is to make sure they've got all the facts. If you've got a screen around your trampoline, make sure the insurer knows it; State Farm prefers screens around trampolines, and Nationwide requires the yard be fenced. Some of these rules are included in policies as ironclad rules, but others are merely guidelines that underwriters will consider when deciding whether to insure a home. Farmers Insurance Group has instituted a one-free-bite policy, which stipulates that the company will pay on one dog-bite claim for a policyholder, but after that won't cover any liability.

If your insurer finds out you have a banned item, they can't cancel the policy immediately. What they typically do is send you a nonrenewal notice when your policy comes up for renewal. At

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Plus
What some major insurers will and won't cover
See Page D2

Protecting Yourself from Your Neighbor

Insurers are cutting back on what they're willing to cover in a homeowners policy. Here's what the major insurers will and won't cover.



COMPANY	TRAMPOLINES	POOLS	BOATS	DOGS
State Farm	Case-by-case underwriting, prefers netting around trampoline.	Won't cover diving boards. May cancel policy.	Covers boat and related property for \$1,000. Limited liability coverage with amount depending on horsepower, type of boat and motor.	No exclusions, but will consider a dog's history when underwriting policies.
Allstate	No exclusions or prohibitions.	Covers pools with diving boards.	Covers boat and related property for \$1,000. Offers liability coverage on many boats under 26 feet in length.	In some regions, company won't insure homes possessing certain breeds including pit bulls, Rottweilers.
Farmers	No exclusions or prohibitions.	Covers pools with diving boards, if yard is fenced.	Offers limited coverage for sailboats up to 25 feet. No jetskis.	Company pays claim for one dog bite, but future bites are not covered.
Nationwide	Will cover if yard is fenced.	Covers pools with diving boards, if yard is fenced.	No property coverage for boats. Offers liability coverage for selected low-power watercraft.	Won't cover homes with chows, Dobermans, pit bulls and Rottweilers.

More Insurers Quit Covering the Staples of Suburbia

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that point, policyholders have little recourse but to get rid of the banned item or find another insurer.

Trying to hide a diving board or trampoline from your insurer isn't a great idea. If there's an accident on a device that you're not supposed to have, the insurer may argue in court that you don't have coverage. And if your policy has clear language banning that device, you may be out of luck.

Homeowner insurers pull in more than \$30 billion a year in premiums, the second-biggest line of insurance, behind only auto coverage. In the past, it was considered a loss leader for that auto business, which is roughly four times as large and considered much more profitable.

Now, after losing \$11 billion writing homeowner policies over the past two years, insurers have sworn to make a profit on the business. One way of doing so is by steering clear of items they consider liability time bombs.

In response, some homeowners have simply chosen to get rid of the offending items and modify their backyards. Insurance agent Trey Hutt, in Panama City, Fla., recently had to drive to a client's home and photograph a backyard swimming pool after an insurer said it wouldn't cover the home that had a pool-side diving board. Mr. Hutt not only had

to show that the board had been removed, but that the attaching bolts were gone. After seeing the pictures, Tower Hill Insurance Group, of Gainesville, Fla., reinstated the policy.

Insurers say the sheer increase in the number of trampolines has created a liability problem. In 1989, there were 140,000 trampolines sold. By 1998, that number had jumped to 640,000. The number of trampoline injuries in that period nearly tripled, to 100,000 in 1999.

Just the same, homeowners aren't likely to ditch their backyard diversions. Robert Hartwig, chief economist for the Insurance Information Institute, says people are putting jungle gyms and trampolines in their backyards to better keep an eye on their kids in response to Elizabeth Smart-type kidnapping stories.

In Chicago, agent Rebecca Woan said Hartford Financial Services Group Inc. wouldn't renew the policy for one of her clients late last year after the insurer discovered the policyholder had a trampoline in the backyard. "Up until that point, I wasn't aware they didn't want trampolines," says Ms. Woan. "Now it's part of their application process."

Hartford says it has declined to insure homes with trampolines and pool-side diving boards since 1996, although it says underwriters can consider loss history for policyholders renewing policies.

Some insurers simply won't cover cer-

tain items—as with Nationwide and certain dog breeds or State Farm with diving boards. If that's the case, a midsize insurer, such as Safeco Corp., may be perfectly willing to cover your trampoline.

The best way to find out who covers what is by shopping online—at sites such as insurance.com and insure.com—and by checking with an independent agent.

You might wind up paying more, however, no matter how hard you check. James Armitage, an independent agent in South Pasadena, Calif., recently replaced his client's insurers with Safeco because of problems with a trampoline. But in doing so, the person wound up paying \$200 more a year in premiums, because the client no longer had his home and auto insurance with the same insurer, which had earned him a discount.

For some items, the best bet may be to buy a separate policy. If it's a Jet Ski or Ski-Doo—or a bigger powerboat—you're after, plan on finding a separate policy.

One thing that isn't an option, getting a policy that excludes the one thing at your house the insurer doesn't want to cover. "If they decide they're not comfortable with a trampoline, they'll decline the entire house," says Ms. Woan. "We've asked companies to add a surcharge for something that's a higher risk. They tell us they just don't want them."

**Testimony of Sharon Tague
601 S. Pine Street
Weyauwega, Wisconsin 54983**

Speaking Against Assembly Bill 423 and Senate Bill 229

May 23, 1995 started as an ordinary day for my husband, John Tague, a U.S. postal worker. As usual, John was walking from house-to-house delivering the mail to the residents of Appleton, Wisconsin. However, something startling happened that day.

While on his route, two dogs broke through a screen door and ran to where my husband was delivering mail, two doors down from where the dogs escaped. Obviously frightened, John turned to ward off the dogs. As the two dogs were barking, they came within a foot and a half of John's feet and he collapsed backwards down the steps. Because of the stress placed on my husband's heart by the surprise dog attack, he died of sudden cardiac death due to ventricular fibrillation. John was only 45 years old when he died.

Apparently the dog owner had just left his house to go to the grocery store leaving the front door to his house open, with only a thin, mesh, screen door keeping his two dogs inside. The dogs easily broke through the mesh to chase my husband.

Initially the dog owner denied responsibility and claimed this was an isolated incident. However, prior to this incident, the dog owner was repeatedly placed on notice about his dogs' disturbing conduct. On 8/21/94, 11/1/94, 12/24/94, 1/2/95, and again on 3/4/95, the dog owner received notice from the police that his barking dogs were creating a public nuisance. Several days after the 3/4/95 notice, the owner told the police that he would make sure his dogs did not get outside when he was not present. Weeks later, on 3/24/95, he received notice from the police that his two dogs were running at large.

After all of these complaints, after all the dog owner's assurances, and after his two dogs caused the death of John, the conduct did not change. On 6/13/95, the dog

owner received a citation because his dogs were again running at large. On that particular instance, the dogs came through the front door, just as they had for John. Although a police officer came to the owner's house to ask questions, he refused to answer the door. The officer noted in his report that the dog owner had also received a prior summons for a dog at large on 9/15/94. Days later, on 6/17/95, Roth again received a citation because his dogs were running at large. On 7/2/95, Roth received a citation because his barking dogs were creating a public nuisance.

In other words, the dog owner knew that his dogs had a tendency to run at large. He also knew that his dogs continuously bark at all hours, disturbing the neighbors. While the owner knew the propensities of his dogs, he failed to take the reasonable step of closing the front door to his house and preventing his dogs from escaping to chase my husband.

I believe the dog owner was negligent. Whether he is home, away, or leaves his dog with another keeper, the owner consistently fails to keep his dogs under control. Because of the owner's negligence, his neighbors are disturbed and society is at risk. Moreover, because of his conduct, my husband is dead.

In this instance, the dogs did not bite, but they did kill my husband. Under Assembly Bill 423 and Senate Bill 229, this injury would not be subject to double damages. I think that is wrong. Dogs can cause serious injuries and even death without biting someone.

Thank you for the opportunity to testify.

~~AB~~
AB 423
SB 229

Gundram Δ 's
w/ Rep Stachursas

Ins Co's = Δ 1st "attack" to
really mean an attack, eliminate
property - (puppy chew turquoise,
dog scratch paint on car)

→ Surcharge for people who own dogs?