

2005 Assembly Bill 923

Date of enactment: **May 10, 2006**
Date of publication*: **May 24, 2006**

2005 WISCONSIN ACT 395

AN ACT *to renumber* 167.26 (1); *to renumber and amend* 167.26 (2) and 167.26 (3); *to amend* 167.26 (1m) and 167.26 (6); and *to create* 167.26 (1b), 167.26 (2) (a) 2., 167.26 (2m) and 167.26 (3) (b) and (c) of the statutes; **relating to:** warning methods for ice holes or openings in streams, ponds, and lakes, liability resulting from the creation of ice holes or openings, and providing a penalty.

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

SECTION 1. 167.26 (1) of the statutes is renumbered 167.26 (1g).

SECTION 2. 167.26 (1b) of the statutes is created to read:

167.26 (1b) In this section:

(a) "Nonprofit membership corporation" means a corporation as described in s. 779.70 (1).

(b) "Qualified lake association" means an association that meets the qualifications under s. 281.68 (3m) (a).

(c) "Water quality project" means a project that improves water quality, including a project that improves fish habitat or that reduces or prevents any of the following:

1. Blue-green algae.
2. The release of anoxic gases or nutrients.

SECTION 3. 167.26 (1m) of the statutes is amended to read:

167.26 (1m) Instead of the requirements under sub. (1) (1g), any person who removes ice or causes its removal from Lake Butte des Morts, Lake Poygan, Lake Winnebago or Lake Winneconne for the spearing of sturgeon may mark the opening made by the removal without using fencing if the person uses at least 2 strips of wood

that protrude at least 3 feet above the surface of the ice. The strips of wood may not exceed approximately 1.5 inches in width and approximately 0.25 inch in thickness.

SECTION 4. 167.26 (2) of the statutes is renumbered 167.26 (2) (a) (intro.) and amended to read:

167.26 (2) (a) (intro.) ~~Any~~ Instead of the requirements under sub. (1g), any person creating ice holes by aeration of water may, ~~in lieu of the requirements of sub. (1), erect~~ do any of the following:

1. Erect and maintain a barricade around such the holes consisting of uprights that are spaced every 25 feet or less, at adequate intervals to maintain the barricade and that are connected by a continuous rope, cord, or similar material placed 3-1/2 at least 2.5 feet and not more than 4.5 feet off the surface of the ice.

(b) The connecting rope, cord, or similar material specified in par. (a) 1. shall have reflectorized, fluorescent, or lighted ribbon or tape or other reflectorized devices attached to it, so as to be highly visible, and shall be of sufficient strength to permit retrieval of the barricade following melting of the ice.

(c) Any person erecting ~~such a~~ a barricade or warning mechanism under this subsection shall remove the barricade and all parts ~~thereof from the ice or water of the barricade or mechanism~~ immediately after the ice has melted.

* Section 991.11, WISCONSIN STATUTES 2003-04 : 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].

SECTION 5. 167.26 (2) (a) 2. of the statutes is created to read:

167.26 (2) (a) 2. Erect and maintain a visual warning mechanism that is highly visible and that is reflectorized, fluorescent, or lighted.

SECTION 6. 167.26 (2m) of the statutes is created to read:

167.26 (2m) (a) Instead of the requirements under subs. (1g) and (2), any public inland lake protection and rehabilitation district or any nonprofit membership corporation that is creating ice holes for a lake by aeration of water for purposes of a water quality project that has been approved by the department of natural resources may provide alternative warning methods by doing all of the following:

1. Posting highly visible warning notices at each shoreline area through which the public has access to the lake.

2. Providing a written warning notice to each owner of riparian property on the lake.

(b) Each warning notice placed by a public inland lake protection and rehabilitation district or a nonprofit membership corporation under par. (a) 1. shall meet all of the following requirements:

1. The size, lettering, and format of each notice shall be designed so as to make the notice readable by the public at a distance of 60 feet.

2. Each notice shall contain the wording "DANGER—OPEN WATER," "WARNING—ICE HOLES," or "DANGER—THIN ICE" or wording of a similar nature.

3. Each notice shall replicate the wording required under subd. 2. so that the wording on each notice is visible from the shoreline and from the water.

4. Each notice shall be made of durable material and lettering and shall be replaced as necessary so that the notice remains readable throughout the winter season.

5. The notices shall be placed no later than December 15 of each winter season.

(c) The written notices provided to each owner of riparian property by a public inland lake protection and rehabilitation district or a nonprofit membership corporation under par. (a) 2. shall be provided no later than December 15 of each winter season.

SECTION 7. 167.26 (3) of the statutes is renumbered 167.26 (3) (a) and amended to read:

167.26 (3) (a) ~~Persons~~ Except as provided in par. (b), a person barricading or marking an ice holes hole or opening in the manner specified in this section, or erecting a warning device or posting a notice for an ice hole or opening in the manner specified in this section, shall not be liable for damages suffered by persons who enter the barricaded or marked area be exempt from liability for injury to or the death of any person or for damage to any property that results from creating the ice hole or opening.

SECTION 8. 167.26 (3) (b) and (c) of the statutes are created to read:

167.26 (3) (b) Except as provided in par. (c), a member of a qualified lake association or of a nonprofit membership corporation shall be exempt from any liability incurred by the qualified lake association or nonprofit membership corporation in creating an ice hole or opening that is subject to the barricading, fencing, or warning requirements under this section.

(c) Any riparian property owner who is aware of the existence of an ice hole or opening in the stream, pond, or lake to which his or her riparian property abuts shall not be exempt from liability as provided in par. (a) if the owner fails to warn a person to whom the owner has given permission to cross the property in order to have access to the stream, pond, or lake by doing one of the following:

1. Directly warning the person of the existence of the ice hole or opening.

2. Posting a warning notice on the property that complies with the requirements specified under sub. (2m) (b) 1. to 5.

SECTION 9. 167.26 (6) of the statutes is amended to read:

167.26 (6) ~~Persons~~ Any person violating this section sub. (1g), (1m), (2), or (2m) shall be imprisoned for not more than 6 months or fined not more than \$100. Any person who removes a barricade, fencing, a warning notice, or a warning mechanism or other barrier or marking that complies with this section during the period beginning with December 15 of a given year and ending on March 30 of the following year may be imprisoned for not more than 6 months or fined not more than \$100.