



## 2011 ASSEMBLY BILL 497

1     **AN ACT** *to renumber* 893.80 (1); *to amend* 60.44 (1) (a), 120.13 (17), 893.80 (1g),  
2           893.80 (1m), 893.80 (1p) and 895.525 (5); and *to create* 893.80 (1b), 893.80 (9)  
3           and 895.523 of the statutes; **relating to:** providing immunity from liability to  
4           a school board or the governing body of a charter school that provides public  
5           access to school grounds for certain recreational activities, making notice of  
6           claim provisions applicable to claims against certain volunteers, and  
7           procurement or maintenance of insurance by volunteer fire companies and  
8           governmental bodies.

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*Analysis by the Legislative Reference Bureau*

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

9           **SECTION 1b.** 60.44 (1) (a) of the statutes is amended to read:  
10           60.44 (1) (a) Claims for money against a town or against officers, officials,  
11           agents or employees of the town arising out of acts done in their official capacity shall

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1 be filed with the town clerk as provided under s. 893.80 ~~(1)~~ (1d) (b). This paragraph  
2 does not apply to actions commenced under s. 19.37, 19.97 or 281.99.

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

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

16 **SECTION 1g.** 893.80 (1) of the statutes is renumbered 893.80 (1d).

17 **SECTION 1gm.** 893.80 (1b) of the statutes is created to read:

18 893.80 **(1b)** In this section, “agent” includes a volunteer. In this subsection,  
19 “volunteer” means a person who satisfies all of the following:

20 (a) The person provides services or performs duties for and with the express or  
21 implied consent of a volunteer fire company organized under ch. 181 or 213, political  
22 corporation, or governmental subdivision or agency thereof. A person satisfies the  
23 requirements under this paragraph even if the activities of the person with regard  
24 to the services and duties and the details and method by which the services are  
25 provided and the duties are performed are left to the discretion of the person.

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1 (b) The person is subject to the right of control of the volunteer company,  
2 political corporation, or governmental subdivision or agency described in par. (a).

3 (c) The person is not paid a fee, salary, or other compensation by any person for  
4 the services or duties described in par. (a). In this paragraph, “compensation” does  
5 not include the reimbursement of expenses.

6 **SECTION 1h.** 893.80 (1g) of the statutes is amended to read:

7 893.80 (1g) Notice of disallowance of the claim submitted under sub. (1) (1d)  
8 shall be served on the claimant by registered or certified mail and the receipt  
9 therefor, signed by the claimant, or the returned registered letter, shall be proof of  
10 service. Failure of the appropriate body to disallow a claim within 120 days after  
11 presentation of the written notice of the claim is a disallowance. No action on a claim  
12 under this section against any defendant fire company, corporation, subdivision or  
13 agency nor against any defendant officer, official, agent or employee, may be brought  
14 after 6 months from the date of service of the notice of disallowance, and the notice  
15 of disallowance shall contain a statement to that effect.

16 **SECTION 1L.** 893.80 (1m) of the statutes is amended to read:

17 893.80 (1m) With regard to a claim to recover damages for medical malpractice,  
18 the provisions of sub. (1) (1d) do not apply. The time periods that apply for  
19 commencing an action under this section for damages for medical malpractice are the  
20 time periods under ss. 893.55 (1m), (2), and (3) and 893.56.

21 **SECTION 1p.** 893.80 (1p) of the statutes is amended to read:

22 893.80 (1p) No action may be brought or maintained with regard to a claim to  
23 recover damages against any political corporation, governmental subdivision or  
24 agency thereof for the negligent inspection of any property, premises, place of  
25 employment or construction site for the violation of any statute, rule, ordinance or

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1 health and safety code unless the alleged negligent act or omission occurred after  
2 November 30, 1976. In any such action, the time period under sub. (1) (1d) (a) shall  
3 be one year after discovery of the negligent act or omission or the date on which, in  
4 the exercise of reasonable diligence the negligent act or omission should have been  
5 discovered.

6 **SECTION 1y.** 893.80 (9) of the statutes is created to read:

7 **893.80 (9)** The procurement or maintenance of insurance or self-insurance by  
8 a volunteer fire company organized under ch. 181 or 213, political corporation, or  
9 governmental subdivision or agency thereof, irrespective of the extent or type of  
10 coverage or the persons insured, shall not do any of the following:

11 (a) Constitute a waiver of the provisions of this section.

12 (b) Be relied upon to deny a person status as an officer, official, agent, or  
13 employee of the volunteer fire company, political corporation, or governmental  
14 subdivision or agency thereof.

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

16 **895.523 Recreational activities in a school building or on school**  
17 **grounds; limitation of liability. (1) DEFINITIONS.** In this section:

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

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

22 (c) 1. Except as provided in subd. 2., “recreational activity” means all of the  
23 following:

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1           a. Any indoor physical activity, sport, team sport, or game, whether organized  
2 or unorganized, undertaken for the purpose of exercise, relaxation, diversion,  
3 education, or pleasure.

4           b. Any outdoor activity undertaken for the purpose of exercise, relaxation, or  
5 pleasure, including practice or instruction in any such activity. In this subd. 1. b.,  
6 “outdoor activity” includes hunting, fishing, trapping, camping, picnicking,  
7 exploring caves, nature study, bicycling, horseback riding, bird-watching,  
8 motorcycling, operating an all-terrain vehicle, ballooning, hang gliding, hiking,  
9 tobogganing, sledding, sleigh riding, snowmobiling, skiing, skating, water sports,  
10 sight-seeing, rock-climbing, cutting or removing wood, climbing observation  
11 towers, animal training, harvesting the products of nature, sport shooting, and any  
12 other outdoor sport, game, or educational activity.

13           2. “Recreational activity” does not include any indoor or outdoor organized  
14 team sport or activity organized and held by a school district, school board, or  
15 governing body of a charter school.

16           (d) “Recreational agreement” means a written authorization granted by a  
17 school board or the governing body of a charter school to a person that permits public  
18 access to all or a specified part of the school grounds for the purpose of any  
19 recreational activity and that satisfies the requirements under sub. (5).

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

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

24           (g) “School grounds” means real property, and any school buildings, accessory  
25 buildings, structures, and improvements thereon, owned, leased, or rented by a

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1 school district, by a school board, or by the governing body of a charter school and  
2 used primarily for public school purposes.

3 (gm) “Spectator” means a person who attends or watches a recreational activity  
4 but does not engage or participate in or intend to engage or participate in the  
5 recreational activity.

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

8 **(2) NO DUTY; IMMUNITY FROM LIABILITY.** (a) Except as provided in sub. (3), no  
9 school district, no school board, no governing body of a charter school, and no officer,  
10 employee, or agent of a school board or of a governing body of a charter school, owes  
11 to any person who enters the school grounds of the school board or of the governing  
12 body of a charter school to engage or participate in a recreational activity held  
13 pursuant to a recreational agreement any of the following:

- 14 1. A duty to keep the school grounds safe for the recreational activity.
- 15 2. A duty to inspect the school grounds.
- 16 3. A duty to give warning of an unsafe condition, use, or activity on the school  
17 grounds.

18 (b) Except as provided in sub. (3), no school district, no school board, no  
19 governing body of a charter school, and no officer, employee, or agent of a school board  
20 or of a governing body of a charter school, is liable for the death of, any injury to, or  
21 any death or injury caused by, a person engaging or participating in a recreational  
22 activity held pursuant to a recreational agreement and taking place on the school  
23 grounds of the school board or of the governing body of a charter school.

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1           **(3) LIABILITY.** Subsection (2) does not limit the liability of a school district, a  
2 school board, a governing body of a charter school, or an officer, employee, or agent  
3 of the school board or of the governing body of a charter school for any of the following:

4           (a) A death or injury caused by a malicious act or by a malicious failure to warn  
5 against an unsafe condition of which an officer, employee, or agent of the school board  
6 or of the governing body of a charter school knew, which occurs on the school grounds  
7 of the school board or of the governing body of a charter school designated for use in  
8 a recreational agreement and being used by a person for a recreational activity held  
9 pursuant to the recreational agreement.

10           (b) The death of or injury to a spectator that occurs on the school grounds of the  
11 school board or of the governing body of a charter school designated for use in a  
12 recreational agreement during the recreational activity.

13           (c) The death of or injury to a person participating in a recreational activity  
14 involving any of the following pursuant to a recreational agreement:

- 15           1. A weight room.
- 16           2. A swimming pool.
- 17           3. Gymnastic equipment.

18           **(4) NO DUTY OR LIABILITY CREATED.** Except as expressly provided in this section,  
19 nothing in this section or s. 101.11 nor the common law attractive nuisance doctrine  
20 creates any duty of care or ground of liability toward any person who uses school  
21 grounds to engage or participate in a recreational activity held pursuant to a  
22 recreational agreement.

23           **(5) RECREATIONAL AGREEMENT.** Each recreational agreement shall include all of  
24 the following:

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1 (a) A description of the recreational activity or activities to be held on the school  
2 grounds pursuant to the agreement.

3 (b) The time and place of the recreational activity or activities.

4 (c) Any eligibility requirements for participation in the recreational activity or  
5 activities.

6 (d) Whether and, if so, to what extent participants who are minors will be  
7 supervised.

8 (e) A clear statement describing a participant's assumption of risk.

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

10 **895.525 (5)** ~~EFFECT ON RELATED PROVISION~~ PROVISIONS. Nothing in this section  
11 affects the limitation of property owners' liability under s. 895.52 or the limitation  
12 of school districts' liability, of school boards' liability, and of liability of governing  
13 bodies of charter schools under s. 895.523.

14 **SECTION 4. Initial applicability.**

15 (1) In this section:

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

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

20 (c) "Spectator" has the meaning given in section 895.523 (1) (gm) of the statutes,  
21 as created by this act.

22 (2) This act first applies to the death of or any injury to a spectator and to the  
23 death of or any injury to, or any death or injury caused by, a person engaging or



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1 participating in a recreational activity on school grounds on the effective date of this  
2 subsection.

3 (END)