

State of Wisconsin



2011 Assembly Bill 497

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2011 WISCONSIN ACT 162

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

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

SECTION 1b. 60.44 (1) (a) of the statutes is amended to read:

60.44 (1) (a) Claims for money against a town or against officers, officials, agents or employees of the town arising out of acts done in their official capacity shall be filed with the town clerk as provided under s. 893.80 (+) (1d) (b). This paragraph does not apply to actions commenced under s. 19.37, 19.97 or 281.99.

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

120.13 (17) TEMPORARY USE OF SCHOOL PROPERTY. Grant the temporary use of school grounds, buildings, facilities, or equipment, upon such conditions, including fees not to exceed actual costs, as determined by the school board, to any responsible person for any lawful nonschool purpose if such use does not interfere with use for school purposes or school-related functions. For purposes of s. 895.523, "actual costs" means reasonable costs for maintenance, security, supervision of participants who are minors, if applicable, and cleaning. Fees received under this subsection shall be paid into the

school district treasury and accounted for as prescribed under s. 115.28 (13). The user shall be primarily liable, and, except as provided in s. 895.523, the school board secondarily liable, for any damage to property and for any expense incurred in consequence of any use of school grounds, buildings, facilities, or equipment under this subsection.

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

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

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

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

* Section 991.11, WISCONSIN STATUTES 2009-10: 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].

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

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

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

893.80 (1g) Notice of disallowance of the claim submitted under sub. (4) (1d) shall be served on the claimant by registered or certified mail and the receipt therefor, signed by the claimant, or the returned registered letter, shall be proof of service. Failure of the appropriate body to disallow a claim within 120 days after presentation of the written notice of the claim is a disallowance. No action on a claim under this section against any defendant fire company, corporation, subdivision or agency nor against any defendant officer, official, agent or employee, may be brought after 6 months from the date of service of the notice of disallowance, and the notice of disallowance shall contain a statement to that effect.

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

893.80 (1m) With regard to a claim to recover damages for medical malpractice, the provisions of sub. (4) (1d) do not apply. The time periods that apply for commencing an action under this section for damages for medical malpractice are the time periods under ss. 893.55 (1m), (2), and (3) and 893.56.

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

893.80 (1p) No action may be brought or maintained with regard to a claim to recover damages against any political corporation, governmental subdivision or agency thereof for the negligent inspection of any property, premises, place of employment or construction site for the violation of any statute, rule, ordinance or health and safety code unless the alleged negligent act or omission occurred after November 30, 1976. In any such action, the time period under sub. (4) (1d) (a) shall be one year after discovery of the negligent act or omission or the date on which, in the exercise of reasonable diligence the negligent act or omission should have been discovered.

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

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

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

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

SECTION 2. 895.523 of the statutes is created to read:
895.523 Recreational activities in a school building or on school grounds; limitation of liability. (1) DEFINITIONS. In this section:

(a) "Governing body of a charter school" means the person that operates a charter school established under s. 118.40 (2) or (2m) or the entity that operates a charter school established under s. 118.40 (2r).

(b) "Injury" means an injury to a person or to property.

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

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

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

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

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

(e) "School board" means the school board or board of school directors in charge of the public schools of a school district.

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

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

(gm) "Spectator" means a person who attends or watches a recreational activity but does not engage or participate in or intend to engage or participate in the recreational activity.

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

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

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

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

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

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

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

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

1. A weight room.
2. A swimming pool.
3. Gymnastic equipment.

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

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

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

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

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

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

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

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

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

SECTION 4. Initial applicability.

(1) In this section:

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

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

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

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