

ASSEMBLY BILL 497 (LRB -2786)

An Act to amend 120.13 (17) and 895.525 (5); and to create 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.

2012

01-25.	A.	Introduced by Representatives Bies, Bernier, Brooks, Jacque, Kestell, Kooyenga, LeMahieu, Marklein, A. Ott, Petrowski, Spanbauer, Strachota, Stroebel and Thiesfeldt ; cosponsored by Senators Galloway, Grothman and Lazich.	
01-25.	A.	Read first time and referred to committee on Public Health and Public Safety	752
02-07.	A.	Public hearing held.	
02-17.	A.	Assembly amendment 1 offered by Representative Bies (LRB a2232)	813
02-21.	A.	Executive action taken.	
02-22.	A.	Report Assembly Amendment 1 adoption recommended by committee on Public Health and Public Safety, Ayes 8, Noes 0	850
02-22.	A.	Report passage as amended recommended by committee on Public Health and Public Safety, Ayes 7, Noes 1	850
02-22.	A.	Referred to committee on Rules	850
02-23.	A.	Assembly amendment 1 to Assembly amendment 1 offered by Representative Bies (LRB a2436)	851
03-02.	A.	Placed on calendar 3-6-2012 by committee on Rules.	
03-06.	A.	Read a second time	889
03-06.	A.	Assembly amendment 1 to Assembly amendment 1 adopted	889
03-06.	A.	Assembly amendment 1 adopted	889
03-06.	A.	Ordered to a third reading	889
03-06.	A.	Rules suspended	889
03-06.	A.	Read a third time and passed	889
03-06.	A.	Ordered immediately messaged	889
03-07.	S.	Received from Assembly	774
03-07.	S.	Read first time and referred to committee on Senate Organization	774
03-07.	S.	Available for scheduling.	
03-12.	S.	Public hearing requirement waived by committee on Senate Organization, pursuant to Senate Rule 18 (1m), Ayes 3, Noes 2	788
03-12.	S.	Placed on calendar 3-13-2012 pursuant to Senate Rule 18(1)	789
03-13.	S.	Senator Lassa added as a cosponsor	2
03-13.	S.	Read a second time	0
03-13.	S.	Senate amendment 1 offered by Senators Grothman and Galloway (LRB a2837)	0
03-13.	S.	Senate amendment 1 adopted	0
03-13.	S.	Ordered to a third reading	0
03-13.	S.	Rules suspended	0
03-13.	S.	Read a third time and concurred in as amended	0
03-13.	S.	Ordered immediately messaged	0
03-13.	A.	Received from Senate amended and concurred in as amended (Senate amendment 1 adopted)	911
03-13.	A.	Referred to committee on Rules	913
03-13.	A.	Made a special order of business at 9:06 A.M. on 3-14-2012 pursuant to Assembly Resolution 24	929
03-15.	A.	Senate amendment 1 adopted.	
03-15.	A.	Action ordered immediately messaged.	

2011
ENROLLED BILL

11en A B-497 ✓

ADOPTED DOCUMENTS:

Orig Engr SubAmdt

11-2786/1 ✓


Amendments to above (if none, write "NONE"): AA1 a 2232/1 ✓
AA1 to AA1 a 2436/1 ✓
SA1 a 2837/1 ✓

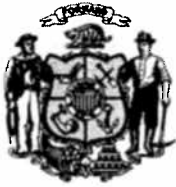
Corrections - show date (if none, write "NONE"): ~~NONE~~

CCC in enrolling (ccc to AA1; 3/23/12)

limiting liability for recreational activities on school grounds, making notice
Topic of claim provisions applicable to claims against certain volunteers, and retention
of insurance by a volunteer fire company or governmental body

3-20-12
Date


Enrolling Drafter



2011 ASSEMBLY BILL 497

January 25, 2012 - Introduced by Representatives BIES, BERNIER, BROOKS, JACQUE, KESTELL, KOOYENGA, LEMAHIEU, MARKLEIN, A. OTT, PETROWSKI, SPANBAUER, STRACHOTA, STROEBEL and THIESFELDT, cosponsored by Senators GALLOWAY, GROTHMAN and LAZICH. Referred to Committee on Public Health and Public Safety.

1 AN ACT *to amend* 120.13 (17) and 895.525 (5); and *to create* 895.523 of the
 2 statutes; **relating to:** providing immunity from liability to a school board or the
 3 governing body of a charter school that provides public access to school grounds
 4 for certain recreational activities.

INS. SAI-1 ✓

Analysis by the Legislative Reference Bureau

Under current law, a school board may permit any responsible person to use the school grounds, buildings, facilities, or equipment of the school district for lawful nonschool purposes when that use does not interfere with school purposes. Also under current law, school boards may enter into contracts with individuals, groups, businesses, or governmental bodies to establish charter schools, which operate with fewer constraints than traditional public schools. Current law also permits the University of Wisconsin-Milwaukee, University of Wisconsin-Parkside, the Milwaukee Area Technical College, and the city of Milwaukee to operate charter schools (independent charter schools) directly or to contract for the operation of charter schools.

This bill provides immunity from liability to a school board for death or injury that occurs on the school grounds of the school district when the death or injury results from a recreational activity held on the school grounds pursuant to a recreational agreement between the school board and a person. The bill provides identical liability protections to the governing body of a charter school that enters into a recreational agreement with a person. The bill defines recreational activity as any indoor or outdoor physical activity, sport, team sport, or game, whether

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organized or unorganized, undertaken for the purpose of exercise, relaxation, diversion, or pleasure. The bill defines recreational agreement as a written authorization granted by a school board or the governing body of a charter school to a person permitting public access to all or a specified part of the school grounds for the purpose of any recreational activity.

The bill also provides that, when a school board or governing body of a charter school has entered into a recreational agreement with a person, neither the school board, the governing body of the charter school, nor an employee, officer or agent of the school board or governing body owes any of the following duties to a person that participates in the recreational activity: 1) a duty to keep the school grounds safe for the recreational activity; 2) a duty to inspect the school grounds; or 3) a duty to give warning of an unsafe condition, use, or activity on the school grounds. The bill provides an exception to the liability protection granted to a school board and the governing body of a charter school in an instance in which an injury or death is caused by a malicious act or malicious failure to warn against an unsafe condition about which an officer, employee, or agent of the school board or governing body of the charter school knew.

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

INS. SA1-2 ✓

INS. SA1-3 ✓✓

SECTION 1. 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. 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.

INS. AA1-1 ✓

INS. SA1-4 ✓✓

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

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

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

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

7 (c) "Recreational activity" means any indoor or outdoor physical activity, sport,
8 team sport, or game, whether organized or unorganized, undertaken for the purpose
9 of exercise, relaxation, diversion, or pleasure. *INS. AA1-2* ✓✓

10 (d) "Recreational agreement" means a written authorization granted by a
11 school board or the governing body of a charter school to a person ~~permitting~~ public
12 access to all or a specified part of the school grounds for the purpose of any
13 recreational activity. *INS. AA1-4* ✓✓

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

16 (f) "School building" means a building designed for and used as a school by a
17 school board or by the governing body of a charter school. *INS. AA1-5* ✓✓

18 (g) "School grounds" means real property, and any school buildings, accessory
19 buildings, structures, and improvements thereon, owned, leased, or rented by a
20 school board or by the governing body of a charter school and used primarily for
21 public school purposes. *INS. AA1-7* ✓✓

22 (h) "Sport" means an activity requiring physical exertion and skill and which,
23 by its nature and organization, is competitive and includes a set of rules for play. *INS AA1-6* ✓✓

24 (2) NO DUTY; IMMUNITY FROM LIABILITY. (a) Except as provided in sub. (3), no
25 school board, no governing body of a charter school, and no officer, employee, or agent *INS AA1-8* ✓✓

ASSEMBLY BILL 497

SECTION 2

1 of a school board or of a governing body of a charter school, owes to any person who
2 enters the school grounds of the school board or of the governing body of a charter
3 school to engage or participate in a recreational activity held pursuant to a
4 recreational agreement any of the following:

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

INS. AAI-9 ✓

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

INS. AAI-10 ✓

15 (3) LIABILITY. Subsection (2) does not limit the liability of a school board, a
16 governing body of a charter school, or an officer, employee, or agent of the school
17 board or of the governing body of a charter school for a death or injury caused by a

INS. AAI-11 ✓

18 malicious act or by a malicious failure to warn against an unsafe condition of which
19 an officer, employee, or agent of the school board or of the governing body of a charter
20 school knew, which occurs on the school grounds of the school board or of the
21 governing body of a charter school designated for use in a recreational agreement and
22 being used by a person for a recreational activity held pursuant to the recreational
23 agreement.

INS. AAI-12 ✓

INS. AAI-13 (NOB. INS. AAI-AAI-2) ✓

24 (4) NO DUTY OR LIABILITY CREATED. Except as expressly provided in this section,
25 nothing in this section or s. 101.11 nor the common law attractive nuisance doctrine

*Editor:
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covr. in enrolling*

1 creates any duty of care or ground of liability toward any person who uses school
2 grounds to engage or participate in a recreational activity held pursuant to a
3 recreational agreement.

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

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

9 SECTION 4. Initial applicability.

10 (1) In this section:

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

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

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

18 (END)

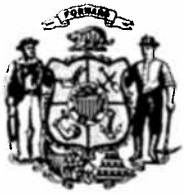
INS. AA1-14

INS. AA1-15

INS. AA1-16

INS. AA1-17

INS. AA1-18



State of Wisconsin
2011-2012 LEGISLATURE

CORRECTIONS IN:

**ASSEMBLY AMENDMENT 1,
TO 2011 ASSEMBLY BILL 497**

Prepared by the Legislative Reference Bureau
(March 23, 2012)

In enrolling, the following correction was made:

- 1.** Page 3, line 9: delete “4” and substitute “3”.

NOTE: Corrects line number.

(END)



ASSEMBLY AMENDMENT 1,
TO 2011 ASSEMBLY BILL 497

February 17, 2012 - Offered by Representative BIES.

1 At the locations indicated, amend the bill as follows:

2 ✓ 1. Page 2, line 6: after "functions." insert AA1-1 For purposes of s. 895.523, "actual
3 costs" means reasonable costs for maintenance, security, supervision of participants
4 who are minors, if applicable, and cleaning."

5 ✓ 2. Page 3, line 7: delete lines 7 to 9 and substitute: AA1-2

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

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

11 b. Any outdoor activity undertaken for the purpose of exercise, relaxation, or
12 pleasure, including practice or instruction in any such activity. In this subd. 1. b.,
13 "outdoor activity" includes hunting, fishing, trapping, camping, picnicking,

1 exploring caves, nature study, bicycling, horseback riding, bird-watching,
 2 motorcycling, operating an all-terrain vehicle, ballooning, hang gliding, hiking,
 3 tobogganing, sledding, sleigh riding, snowmobiling, skiing, skating, water sports,
 4 sight-seeing, rock-climbing, cutting or removing wood, climbing observation
 5 towers, animal training, harvesting the products of nature, sport shooting, and any
 6 other outdoor sport, game, or educational activity.

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

10 ✓✓ 3. Page 3, line 11: delete "permitting" and substitute "that permits".

AA1-3

11 ✓✓ 4. Page 3, line 13: after "activity" insert "and that satisfies the requirements
 12 under sub. (5)".

AA1-4

13 ✓✓ 5. Page 3, line 17: delete "school board" and substitute "school district, by a
 14 school board".

AA1-5

15 ✓✓ 6. Page 3, line 20: delete "school board" and substitute "school district, by a
 16 school board".

AA1-6

17 ✓✓ 7. Page 3, line 21: after that line insert:

AA1-7

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

AA1-8

21 ✓✓ 8. Page 3, line 24: after "no" insert "school district, no".

22 ✓✓ 9. Page 4, line 9: before "school" insert "school district, no".

AA1-9

23 ✓✓ 10. Page 4, line 15: after "liability of a" insert "school district, a".

AA1-10

AA1-11

1 ✓ 11. Page 4, line 17: delete that line and substitute "board or of the governing
2 body of a charter school for any of the following".

3 ✓ 12. Page 4, line 18: before "malicious act" insert: AA1-12 ✓

4 (a) A death or injury caused by a.

5 ✓ 13. Page 4, line 23: after that line insert: AA1-13

6 (b) The death of or injury to a spectator that occurs on the school grounds of
7 the school board or of the governing body of a charter school designated for use in a
8 recreational agreement during the recreational activity." INS. AA1-AA1-1 ✓
INS. AA1-AA1-

9 ✓ 14. Page 5, line 6: ³ before ~~after~~ that line insert:

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

12 (a) A description of the recreational activity or activities to be held on the school
13 grounds pursuant to the agreement. AA1-14

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

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

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

19 (e) A clear statement describing a participant's assumption of risk." AA1-15

20 ✓ 15. Page 5, line 6: after "or the limitation" insert "of school districts' liability".

21 ✓ 16. Page 5, line 7: delete "boards' liability" and substitute "boards' liability". AA1-1

22 ✓ 17. Page 5, line 14: after that line insert:

Editor: please enter correction in enrolling.

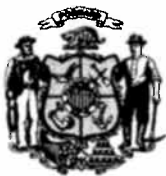
AA1-17

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

3 ✓ **18.** Page 5, line 15: after "injury to" insert "a spectator and to the death of or
4 any injury to".

5 (END)

AA1-18



**ASSEMBLY AMENDMENT 1,
TO ASSEMBLY AMENDMENT 1,
TO 2011 ASSEMBLY BILL 497**

February 23, 2012 - Offered by Representative BIES.

1 At the locations indicated, amend the amendment as follows:

2 ✓✓ 1. Page 3, line 8: delete "activity." and substitute "activity".

3 ✓✓ 2. Page 3, line 8: after that line insert:

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

6 1. A weight room.

7 2. A swimming pool.

8 3. Gymnastic equipment.

9 (END)



SENATE AMENDMENT 1,
TO 2011 ASSEMBLY BILL 497

March 13, 2012 - Offered by Senators GROTHMAN and GALLOWAY.

1 At the locations indicated, amend the bill as follows:

2 ✓✓ 1. Page 1, line 4: after "activities" insert ", making notice of claim provisions
3 applicable to claims against certain volunteers, and procurement or maintenance of
4 insurance by volunteer fire companies and governmental bodies".

SAI-1

5 ✓✓ 2. Page 2, line 1: before that line insert:

6 SECTION 1b. 60.44 (1) (a) of the statutes is amended to read:
7 60.44 (1) (a) Claims for money against a town or against officers, officials,
8 agents or employees of the town arising out of acts done in their official capacity shall
9 be filed with the town clerk as provided under s. 893.80 (1) (1d) (b). This paragraph
10 does not apply to actions commenced under s. 19.37, 19.97 or 281.99.

SAI-2

11 ✓✓ 3. Page 2, line 1: delete "SECTION 1" and substitute SECTION 1e.

SAI-3

12 ✓✓ 4. Page 2, line 11: after that line insert:

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

SAI-4

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

2 893.80 **(1b)** In this section, "agent" includes a volunteer. In this subsection,
3 "volunteer" means a person who satisfies all of the following:

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

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

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

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

16 893.80 **(1g)** Notice of disallowance of the claim submitted under sub. (~~1~~) **(1d)**
17 shall be served on the claimant by registered or certified mail and the receipt
18 therefor, signed by the claimant, or the returned registered letter, shall be proof of
19 service. Failure of the appropriate body to disallow a claim within 120 days after
20 presentation of the written notice of the claim is a disallowance. No action on a claim
21 under this section against any defendant fire company, corporation, subdivision or
22 agency nor against any defendant officer, official, agent or employee, may be brought
23 after 6 months from the date of service of the notice of disallowance, and the notice
24 of disallowance shall contain a statement to that effect.

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

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

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

6 893.80 (1p) No action may be brought or maintained with regard to a claim to
7 recover damages against any political corporation, governmental subdivision or
8 agency thereof for the negligent inspection of any property, premises, place of
9 employment or construction site for the violation of any statute, rule, ordinance or
10 health and safety code unless the alleged negligent act or omission occurred after
11 November 30, 1976. In any such action, the time period under sub. (1) (1d) (a) shall
12 be one year after discovery of the negligent act or omission or the date on which, in
13 the exercise of reasonable diligence the negligent act or omission should have been
14 discovered.

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

16 893.80 (9) The procurement or maintenance of insurance or self-insurance by
17 a volunteer fire company organized under ch. 181 or 213, political corporation, or
18 governmental subdivision or agency thereof, irrespective of the extent or type of
19 coverage or the persons insured, shall not do any of the following:

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

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

24 (END)