

2011 DRAFTING REQUEST

Assembly Amendment (AA-AB497)

Received: 02/01/2012

Received By: tkuczens

Wanted: As time permits

Companion to LRB:

For: Garey Bies (608) 266-5350

By/Representing:

May Contact:

Drafter: tkuczens

Subject: Education - school boards
Courts - immunity liability

Addl. Drafters:

Extra Copies: pg

Submit via email: YES

Requester's email: Rep.Bies@legis.wisconsin.gov

Carbon copy (CC:) to: tracy.kuczenski@legis.wisconsin.gov

Pre Topic:

No specific pre topic given

Topic:

Modify definition of recreational activity, define actual costs, exempt spectators

Instructions:

See attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?							
/P1	tkuczens 02/09/2012	jdyer 02/10/2012	rschluet 02/10/2012	_____	sbasford 02/10/2012		
	tkuczens 02/15/2012	jdyer 02/15/2012		_____			
/P2	tkuczens 02/16/2012	jdyer 02/16/2012	jfrantze 02/15/2012	_____	mbarman 02/15/2012		
/P3			jfrantze	_____	sbasford		

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			02/16/2012 _____		02/16/2012		
/1	tkuczens 02/17/2012	mduchek 02/17/2012	rschluet 02/17/2012 _____		lparisi 02/17/2012	lparisi 02/17/2012	

FE Sent For:

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/P3			jfrantze	_____	sbasford		

Handwritten notes:
M
2/17/12
11
JFR

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/?		<i>P3 2/10 jld</i>	<i>2/16</i>	<i>jm + jf 2/16</i>			
/P1	tkuczens 02/09/2012	jdyer 02/10/2012	rschluet 02/10/2012	_____	sbasford 02/10/2012		
	tkuczens 02/15/2012	jdyer 02/15/2012		_____			
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1?	tkuczens	PI 2/10 jld		Km 2/10			

FE Sent For:

<END>

Kuczenski, Tracy

From: Nowlan, Andrew
Sent: Tuesday, January 31, 2012 4:09 PM
To: Kuczenski, Tracy
Subject: FW: AB 497 Open Gym Act Changes
Tracy,

Here is the suggested language from the Heart Association. We'd like to incorporate this into an amendment for both AB 497 and SB 382.

Thanks,

2/6/12 Per Andrew:

Andrew Nowlan
Research Assistant
Office of Rep. Garey Bies

1. add reference to school district (the entity) in addition to school board (governing body)
2. Use only last sentence of "recreational activity" definition below (in body of Melissa Horn's email)
3. don't define actual costs but instead modify

From: Melissa Horn [mailto:melissa.horn@heart.org]
Sent: Monday, January 30, 2012 4:44 PM
To: Nowlan, Andrew
Subject: AB 497 Open Gym Act Changes

s. 120.13(17) to include reasonable costs for maintenance, security & cleanup

Hi Andrew!

4. ~~Ex~~ Permit spectators to see? or see 895.481(1)(g) and (3m)

In follow-up to our conversation earlier this morning, here are the areas we discussed changing.

1. "Recreational Activity" definition. Use the same definition contained in current outdoor statute language in 895.52(1)(g) to avoid conflict of law: ^{and} ^{895.52(4)} ?

"Recreational activity" means any indoor or outdoor physical activity, sport, game, whether organized or unorganized, undertaken for the purpose of exercise, relaxation, diversion, or pleasure. "Recreational activities" are further defined in 895.52(1)(g) to include 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. "Recreational activity" does not include any organized team sport activity sponsored by the owner of the property on which the activity takes place.

def added to rec activity?

In the first part of the bill, the request is to define "actual costs".
Current bill language: 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.

Our suggestion is to describe actual costs as "actual ^{including} and reasonable costs for maintenance, security, or cleanup".

3. Lastly, the request is to create a new provision that exempts application to all spectators. We probably want to define "spectator" along the lines of "a person on the premises not participating or intending to participate in recreational activity" but we can leave the exact language to LRB.

meaning a spectator who is injured could sue

Let me know if you need any further information from me on any of these, but as I said I don't think these requests are major. Thanks!

Melissa Horn

Government Relations Director - Wisconsin

American Heart Association and American Stroke Association, Midwest Affiliate

2850 Dairy Dr., Ste. 300

Madison, WI 53718-6751

Office: 608-221-8866 ext. 2336

Fax: 608-221-9233

Cell: 314.952.4742

Melissa.Horn@heart.org



P!
Jld

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION
ASSEMBLY AMENDMENT ,
TO 2011 ASSEMBLY BILL 497

2/9/12

~~Sen~~ (by 2/13/12)

1
2
3
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9

At the locations indicated, amend the bill as follows:

- 1. Page 2, line 4: delete "not to exceed actual costs" and substitute "not to exceed actual sufficient to cover reasonable costs".
- 2. Page 2, line 4: after "school board," insert "including costs for maintenance, security, and cleaning".
- 3. Page 3, line 9: after "pleasure." insert "Recreational activity" does not include any organized team sport or activity sponsored by a school district, school board, or governing body of a charter school."

****NOTE: Is "sponsored" the best word here? Is there a possibility that a school would sponsor or co-sponsor a recreational activity with a person who has entered into a recreational agreement?

4. Page 3, line 21: after that line insert:

1 “(gm) “Spectator”[✓] means a person who attends or watches a recreational
2 activity but does not engage or participate in or intend to engage or participate in the
3 recreational activity.”

****NOTE: Are you comfortable with this definition for spectator?

4 **5.** Page 3, line 24: after “no” insert “school district, no”[✓]

5 *Fix component* **6.** Page 4, line 9: after “no” insert “school district, no”[✓]
before “school”

6 **7.** Page 4, line 15: after “liability of a” insert “school district, a”[✓]

7 **8.** Page 4, line 17: delete that line and substitute *g* “board or of the governing

8 body of a charter school for any of the following:”
9. Page 4, line 18: before “malicious act” insert:

9 *#* (a) A death or injury caused by a”[✓]

10 **9.** Page 4, line 23: after that line insert:[✓]

11 “(b) The death of or injury to a spectator *e that* which occurs on the school grounds of
12 the school board or of the governing body of a charter school designated for use in a
13 recreational agreement during the recreational activity.”[✓]

****NOTE: Does this provision accomplish your intent to “exempt application to all spectators?”

14 **10.** Page 5, line 6: after “limitation” insert “of school districts’ liability.”[✓]
or the

15 **11.** Page 5, line 7: delete “boards’ liability”[✓] and substitute “boards’ liability.”[✓]

16 **12.** Page 5, line 14: after that line insert:

17 “(c) “Spectator” has the meaning given in section[✓] 895.523 (1) (gm) of the
18 statutes, as created by this act.”[✓]

19 **13.** Page 5, line 15: after “injury to” insert “a spectator and to the death of or
20 any injury to”.

check Δ

(END)

d-note
↓

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRBa2232/3dn

TKK: x:...

date

PA
JK

Representative Bies: ✓

Please note that I have embedded drafters notes, with questions, in the text of the amendment.

Let me know if you have any questions about the draft, wish to make any changes, or are comfortable with the amendment as drafted.

Tracy K. Kuczenski
Legislative Attorney
Phone: (608) 266-9867
E-mail: tracy.kuczenski@legis.wisconsin.gov

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRBa2232/P1dn
TKK:jld:rs

February 10, 2012

Representative Bies:

Please note that I have embedded drafter's notes, with questions, in the text of the amendment.

Let me know if you have any questions about the amendment, wish to make any changes, or are comfortable with the amendment as drafted.

Tracy K. Kuczenski
Legislative Attorney
Phone: (608) 266-9867
E-mail: tracy.kuczenski@legis.wisconsin.gov

LRB a 2232/PI

2-14-2012

T. cont. w/ Andrew (Rep. Pres)

- incorporate reasonable and actual costs in s. 120.13(17)
- use definition for "recreational activity" found under s. 895.52(1)(g) (*) SEE BELOW
- require recreational agreements to describe specific activities, times, eligible participants, address registration of minors, and clearly disclose participant assumption of risk

T. cont w/ Melissa Horn (♥ Assn.)

221-8866 / 2336

(314) 952-4742 (cell)

- concern from trial lawyers about what definitions for outdoor activity will apply
- incorporate s. 895.52(1)(g) definition as well as proposed definition ~~in~~ under s. 895.523(1)(d)
- > also keep exception from recreational activity for organized ^{team} sport or activity held by school



RMN12
insert

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION
ASSEMBLY AMENDMENT ,
TO 2011 ASSEMBLY BILL 497

2/15/12
Today

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

6 2 **1.** Page 2, line 4: delete "not to exceed actual costs" and substitute "not to
3 exceed actual sufficient to cover reasonable costs".

4 5 **2.** Page 2, line 4: after "school board," insert "including costs for maintenance,
security, and cleaning." reasonable

✓
Insert
1-6

6 **3.** Page 3, line 9: after "pleasure." insert "'Recreational activity" does not
7 include any organized team sport or activity sponsored by a school district, school
8 board, or governing body of a charter school."

****NOTE: Is "sponsored" the best word here? Is there a possibility that a school would sponsor or co-sponsor a recreational activity with a person who has entered into a recreational agreement?

9 **4.** Page 3, line 21: after that line insert:

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

****NOTE: Are you comfortable with this definition for spectator?

- 4 **5.** Page 3, line 24: after “no” insert “school district, no”.
- 5 **6.** Page 4, line 9: before “school” insert “school district, no”.
- 6 **7.** Page 4, line 15: after “liability of a” insert “school district, a”.
- 7 **8.** Page 4, line 17: delete that line and substitute “board or of the governing
8 body of a charter school for any of the following:”.
- 9 **9.** Page 4, line 18: before “malicious act” insert:
10 “(a) A death or injury caused by a”.
- 11 **10.** Page 4, line 23: after that line insert:
12 “(b) The death of or injury to a spectator that occurs on the school grounds of
13 the school board or of the governing body of a charter school designated for use in a
14 recreational agreement during the recreational activity.”.
- 15 ****NOTE: Does this provision accomplish your intent to “exempt application to all
16 spectators?”
- 17 **11.** Page 5, line 6: after “or the limitation” insert “of school districts’ liability.”.
- 18 **12.** Page 5, line 7: delete “boards’ liability” and substitute “boards’ liability.”.
- 19 **13.** Page 5, line 14: after that line insert:
 “(c) “Spectator” has the meaning given in section 895.523 (1) (gm) of the
statutes, as created by this act.”.

Insert 2-15

**2011-2012 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRBa2232/P1ins
TKK:jld:rs

1 **Insert 1-6**

2 **1.** Page 3, line 7: delete lines 7 to 9 and substitute:

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

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

8 b. Any outdoor activity undertaken for the purpose of exercise, relaxation, or
9 pleasure, including practice or instruction in any such activity. In this subd. 1. b.,

10 “outdoor activity” includes hunting, fishing, trapping, camping, picnicking, exploring
11 caves, nature study, bicycling, horseback riding, bird-watching, motorcycling,
12 operating an all-terrain vehicle, ballooning, hang gliding, hiking, tobogganing,
13 sledding, sleigh riding, snowmobiling, skiing, skating, water sports, sight-seeing,
14 rock-climbing, cutting or removing wood, climbing observation towers, animal
15 training, harvesting the products of nature, sport shooting, and any other outdoor
16 sport, game, or educational activity. ✓

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

20 **2.** Page 3, line 11: delete “permitting” and substitute “that permits”. ✓

21 **3.** Page 3, line 13: after “activity” insert “and that satisfies the requirements
22 under sub. (5)”. ✓



INS 1-6
Cont

1 **4.** Page 3, line 17: delete "school board" and substitute "school district, by a
2 school board,". ✓

3 **5.** Page 3, line 20: delete "school board" and substitute "school district, by a
4 school board,". ✓ (end ins 1-6)

5 **Insert 2-15**

6 **6.** Page 5, line 4: after that line insert:

⑤ RECREATIONAL AGREEMENT

7 "**(5)** Each recreational agreement shall include all of the following: ✓

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

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

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

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

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

(end ins 2-15)



PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION
ASSEMBLY AMENDMENT,
TO 2011 ASSEMBLY BILL 497

2/16/12
Today

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

2 1. Page 2, line 4: after "school board" insert "including reasonable costs for

3 maintenance, security, and cleaning". supervision of participants who are minors, if applicable

4 2. Page 3, line 7: delete lines 7 to 9 and substitute: score

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

6 following:

7 a. Any indoor physical activity, sport, team sport, or game, whether organized

8 or unorganized, undertaken for the purpose of exercise, relaxation, diversion,

9 education, or pleasure.

10 b. Any outdoor activity undertaken for the purpose of exercise, relaxation, or

11 pleasure, including practice or instruction in any such activity. In this subd. 1. b.,

12 "outdoor activity" includes hunting, fishing, trapping, camping, picnicking,

6

functions

For purposes of
§ 895.523, "actual
costs" means

school board insert including reasonable costs for
keep scored period

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".

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

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

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

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

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."

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

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

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

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:

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

5 **13.** Page 4, line 23: after that line insert:

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.”.

9 **14.** Page 5, line 4: 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.

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.”.

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”.

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



Stamp *RMR*

~~PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION~~

ASSEMBLY AMENDMENT ,

TO 2011 ASSEMBLY BILL 497

Bh ✓

*2/17/12 Today
(no changes)*

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

2 **1.** Page 2, line 6: after “functions.” insert “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:

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.,

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5 sight-seeing, rock-climbing, cutting or removing wood, climbing observation
6 towers, animal training, harvesting the products of nature, sport shooting, and any
7 other outdoor sport, game, or educational activity.

8 2. “Recreational activity” does not include any indoor or outdoor organized
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10 governing body of a charter school.”.

11 **3.** Page 3, line 11: delete “permitting” and substitute “that permits”.

12 **4.** Page 3, line 13: after “activity” insert “and that satisfies the requirements
13 under sub. (5)”.

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15 school board,”.

16 **6.** Page 3, line 20: delete “school board” and substitute “school district, by a
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14 grounds pursuant to the agreement.

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