



State of Wisconsin
2011 – 2012 LEGISLATURE



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**SENATE SUBSTITUTE AMENDMENT 2,
TO 2011 SENATE BILL 388**

February 29, 2012 – Offered by Senator GROTHMAN.

1 **AN ACT** *to amend* 101.12 (1) (c), 101.19 (1) (b), 101.981 (1) (c) and 895.525 (2);
2 and *to create* 101.19 (1) (bm), 167.33 and 895.526 of the statutes; **relating to:**
3 duties of ski area operators and participants in snow sports, liability of ski area
4 operators, and granting rule-making authority.

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

5 **SECTION 1.** 101.12 (1) (c) of the statutes is amended to read:

6 101.12 (1) (c) Elevators, escalators, ~~ski lift and towing devices~~ lifts, as defined
7 in s. 167.33 (1) (f), and power dumbwaiters.

8 **SECTION 2.** 101.19 (1) (b) of the statutes is amended to read:

9 101.19 (1) (b) The required inspection of boilers, pressure vessels, refrigeration
10 plants, liquefied petroleum gas vessels, anhydrous ammonia tanks and containers,
11 ~~ski lift and towing devices~~, escalators, dumbwaiters, and amusement or thrill rides
12 but not of amusement attractions.

1 **SECTION 3.** 101.19 (1) (bm) of the statutes is created to read:

2 101.19 **(1)** (bm) The inspection by the department of lifts, as defined in s. 167.33
3 (1) (f).

4 **SECTION 4.** 101.981 (1) (c) of the statutes, as affected by 2011 Wisconsin Act 32,
5 is amended to read:

6 101.981 **(1)** (c) “Conveyance” means an elevator, an escalator, a dumbwaiter,
7 a belt manlift, a moving walkway, a platform lift, and a stairway chair lift, and any
8 other similar device, such as an automated people mover, used to elevate or move
9 people or things, as provided in the rules of the department. “Conveyance” does not
10 include a personnel hoist; a material hoist; a grain elevator; a lift or towing device
11 as defined in s. 167.33 (1) (f); an amusement or thrill ride; or a vertical platform lift,
12 inclined platform lift, or a stairway chair lift that serves an individual residential
13 dwelling unit.

14 **SECTION 5.** 167.33 of the statutes is created to read:

15 **167.33 Snow sports. (1) DEFINITIONS.** In this section:

16 (a) “Affiliate” means:

- 17 1. With respect to a partnership, each partner thereof.
18 2. With respect to a limited liability company, each member thereof.
19 3. With respect to a corporation, each officer, director, principal stockholder,
20 and controlling member thereof.

21 (b) “Competition” means any event authorized by a ski area operator, or by an
22 agent of a ski area operator, that involves a comparison of skills used in one or more
23 snow sports. “Competition” includes training sessions for such an event.

1 (c) “Freestyle features” means man-made features that include boxes, jumps,
2 hits, jibs, tabletops, spikes, take-off ramps, landings, banks, half pipes, picnic tables,
3 logs, and pipes.

4 (d) “Freestyling” means mogul jumping, mogul skiing, ski jumping, aerial
5 skiing, ski cross, ski ballet, snowboarding, and any other similar snow sport.

6 (e) “Hazard” means any man-made or natural obstacle or hazard. “Hazard”
7 includes ridges, sharp corners, jumps, bumps, moguls, valleys, dips, cliffs, ravines,
8 and bodies of water.

9 (f) “Lift” means any aerial tramway or lift, a surface lift, a tow, or a conveyor
10 used by a ski area operator to transport participants in snow sports at a ski area.

11 (g) “Participant in a snow sport” means an individual who is engaged in a snow
12 sport or who is walking or otherwise traveling within a ski area for purposes of
13 engaging in the sport. “Participant in a snow sport” also means an individual who
14 is present at a ski area to observe others engaged in a snow sport or who is a
15 passenger on a lift. “Participant in a snow sport” includes an individual that is an
16 employee of a ski area operator when he or she is acting outside the scope of his or
17 her employment.

18 (h) “Ski area” means trails, terrains, and other outdoor areas that are used by
19 individuals engaged in snow sports and that is administered as a single enterprise
20 by a ski area operator.

21 (i) “Ski area infrastructure” means lifts and any associated components,
22 snowmaking equipment and any associated components, and utility structures,
23 buildings, huts, signs, lift mazes, fences, or other structures located within a ski area.

1 (j) “Ski area operator” means a person that owns or is responsible for operating
2 a ski area or its affiliates. “Ski area operator” includes the employees and agents of
3 a ski area operator.

4 (k) “Ski area vehicle” means a motorized vehicle used in the operation and
5 maintenance of a ski area or used as transportation within a ski area.

6 (L) “Skiing” means downhill skiing, alpine skiing, nordic skiing, cross-country
7 skiing, telemarking, snowshoeing, or snowboarding.

8 (m) “Sledding” means sliding down a prepared course on sleds, toboggans, ski
9 bikes, or comparable devices. “Sledding” excludes tubing.

10 (n) “Snowmaking equipment” includes pipes, hoses, hydrants, snow guns, fans,
11 wands, pumps, and any other equipment associated with making snow.

12 (o) “Snow sport” means skiing, sledding, tubing, or freestyling.

13 (p) “Tree skiing area” means an area open to skiing, that is not groomed for
14 skiing, and that is forested.

15 (q) “Tubing” means sliding down a prepared course on inflatable tubes,
16 minibobs, or comparable devices.

17 **(2) CONDITIONS AND RISKS OF SNOW SPORTS.** For purposes of this section,
18 conditions and risks consist of all of the following:

19 (a) Changes in weather or visibility.

20 (b) The presence of surface or subsurface conditions, including any of the
21 following:

22 1. Snow, ice, crust, slush, soft spots, holes, grooves, bare spots, cuts, rocks,
23 boulders, or tracks from ski area vehicles.

24 2. Forest growth or debris, including stumps, logs, or brush.

1 (c) Ridges, sharp corners, bumps, moguls, valleys, rollers, dips, cliffs, ravines,
2 and double fall lines.

3 (d) Variations in the difficulty of terrain, surface conditions, or subsurface
4 conditions on a single trail or terrain or among trails or terrains that are designated
5 the same level of difficulty at the ski area or at another ski area.

6 (e) The risk of injury or death on trails and terrains that fall away or drop off
7 toward hazards.

8 (f) The risk of collision with other participants in snow sports, employees of a
9 ski area operator, or ski area infrastructure.

10 (g) Variation in the location, construction, configuration, or steepness of trails
11 or terrains.

12 (h) The greater risk of collision, injury, or death in treed areas, in areas where
13 competitions are held, and in areas where freestyling is allowed.

14 **(3) DUTIES OF SKI AREA OPERATORS; SIGNAGE; NOTICE.** (a) *Notice on tickets*
15 *required.* Each ski area operator shall print on each ticket or season pass that it
16 issues to participants in snow sports the following warning:

17 “WARNING: Under Wisconsin law, each participant in a snow sport assumes
18 the risk of injury or death to person or injury to property resulting from the
19 conditions and risks that are considered to be inherent in a snow sport, has a number
20 of duties that must be met while engaging in a snow sport, and is subject to
21 limitations on the ability to recover damages from a ski area operator for injuries or
22 death to a person or to property. A complete copy of this law is available for review
23 at the main site where tickets to this ski area are sold.”

24 (b) *Signs required; generally.* Each ski area operator shall post and maintain
25 a sign that is at least 10 square feet in size at or near each of the sites where tickets

1 to the ski area are sold, at or near each of the entrances or lift loading areas for areas
2 that are open to snow sports, and at or near each area open to sledding or tubing
3 which is not served by a lift. The sign shall contain the following warning:

4 “WARNING — ASSUMPTION OF RISKS: Under Wisconsin law, each
5 participant in a snow sport is considered to have accepted and to have knowledge of
6 the risk of injury or death to person or injury to property that may result. Under
7 Wisconsin law, each participant in a snow sport has the duty to take the precautions
8 that are necessary to avoid injury or death to person or injury to property. Wisconsin
9 law sets forth certain other limitations on the liability of ski area operators for
10 injuries or death to person or injury to property. A complete copy of this law is
11 available for review at the main site where tickets to this ski area are sold.”

12 (c) *Copies of law.* Each ski area operator shall post and maintain a current copy
13 of all of the provisions of this section at the main site where tickets to the ski area
14 are sold and shall make a copy of it for any individual upon request.

15 (d) *Signs required; skiing or sledding areas.* In addition to the sign required
16 under par. (b), each ski area operator shall post and maintain a sign that is at least
17 10 square feet in size at or near each entrance to a loading area of a lift that serves
18 areas open to skiing or sledding. The sign shall contain the following warning:

19 “WARNING — DUTIES OF INDIVIDUALS ENGAGED IN SKIING OR
20 SLEDDING: Under Wisconsin law, each individual engaged in skiing or sledding
21 has a duty to do all of the following:

- 22 1. Obey all posted warnings and signs.
- 23 2. Keep off of closed trails and out of closed areas.
- 24 3. Know the range of his or her ability and engage in skiing or sledding within
25 that ability.

1 4. Assess the difficulty of the trails and terrains that are open to skiing or
2 sledding.

3 5. Maintain control of his or her speed and direction.

4 6. Be able to stop or avoid other individuals or objects.

5 7. Yield to other individuals engaged in skiing or sledding who are ahead or who
6 are down the slope.

7 8. Not stop at a point that will result in the individual obstructing a trail or not
8 being visible from above.

9 9. Yield to other individuals engaged in skiing or sledding who are uphill when
10 starting downhill or when merging onto a trail.

11 10. Be able to safely board, ride, and disembark any lift serving an area open to
12 skiing or sledding.

13 11. Board and disembark a lift only at designated sites.”

14 (e) *Signs required; tubing areas.* In addition to the sign required under par. (b),
15 each ski area operator shall post and maintain a sign that is at least 10 square feet
16 in size at or near each entrance to a loading area of a lift that serves areas open to
17 tubing or at or near an entrance of an area open to tubing that is not served by a lift.
18 The sign shall contain the following warning:

19 “WARNING — DUTIES OF INDIVIDUALS ENGAGED IN TUBING: Under
20 Wisconsin law, each individual engaged in sledding has a duty to do all of the
21 following:

22 1. Obey all posted warnings and signs.

23 2. Keep out of closed areas.

24 3. Know the range of his or her ability and engage in tubing within that ability.

25 4. Assess the difficulty of the terrain that is open to tubing.

1 5. Maintain control of the speed and direction of the tube or other device that
2 is being used.

3 6. Comply with any posted limits imposed on the number of passengers or on
4 the amount of weight of the tube or other device while it is being ridden.

5 7. Be able to safely board, ride, and disembark any lift serving an area open to
6 tubing.

7 8. Board and disembark a lift only at designated sites.

8 9. Yield to other individuals engaged in tubing who are ahead or who are down
9 the the slope.

10 10. Look uphill and yield to oncoming tubes before leaving the bottom of the
11 hill at the end of a run.

12 (f) *Signs required; trails and terrains.* Each ski area operator shall designate
13 the trails that are open for skiing in its ski area and shall determine the difficulty
14 level of each trail. The ski area operator shall post and maintain a sign at or near
15 the beginning of each trail. The sign shall contain the name of the trail and all of the
16 applicable wording and emblems specified in this paragraph to describe the difficulty
17 level of the trail or terrain. The sign shall be at least 4 square feet in size. Each sign
18 shall contain one or more of the following designations that are applicable:

19 1. The word “easier” with an emblem consisting of a green circle.

20 2. The words “difficult” or “more difficult” with an emblem consisting of a blue
21 square.

22 3. The words “most difficult” with an emblem consisting of a black diamond.

23 4. The word “expert” or “extreme” with an emblem consisting of 2 black
24 diamonds.

1 5. The words “freestyling area ahead” with an emblem consisting of an orange
2 oval.

3 6. The words “tree skiing — caution.” The sign shall have an orange
4 background or orange lettering with a black or white background and shall contain
5 the additional statement: “This back country trail is not groomed or patrolled —
6 Never ski here alone.”

7 (g) *Areas open to freestyling; signs and barricades required.* A ski area operator
8 shall designate an area as an area for freestyling if it contains one or more freestyle
9 features. A ski area operator shall construct and maintain a barricade with fencing,
10 roping, or similar means at the entrance to such an area. The opening in the
11 barricade may not be wider than 30 feet. The ski area operator shall post and
12 maintain a sign at or near the entrance of the area that is at least 3 square feet in
13 size and that shows the boundaries of the area open to freestyling. The sign shall
14 contain emblems consisting of a stop sign and orange oval. The sign shall contain
15 all of the following:

- 16 1. The words “freestyling skills required.”
17 2. The words “helmets are recommended” or “consider wearing a helmet.”

18 (h) *Lifts; signs required.* For each lift that is used by individuals engaged in
19 skiing and that does not serve any trail that is described under par. (f) as “easier,”
20 the ski operator shall post and maintain, at or near the loading area for the lift a sign
21 that is at least 10 square feet in size near or at the entrance of the loading area. The
22 sign shall contain the following warning:

23 “WARNING: This lift does not serve any trails that are “easier” (marked with
24 a green circle emblem). All of the trails served by this lift are “difficult” or “more
25 difficult” (marked with a blue square emblem), “most difficult” (marked with a black

1 diamond emblem), “expert” or “extreme terrain” (marked with an emblem consisting
2 of 2 black diamonds), or “freestyling terrain ahead” (marked with an orange oval).”

3 (i) *Ski area vehicles; signs required.* A ski area operator shall post and maintain
4 signs on various trails or lift towers throughout the ski area that are at least 4 square
5 feet in size that contain the following statement: “Caution: Ski area vehicles may
6 be in operation at any time.”

7 (j) *Variation of signs.* 1. In lieu of posting and maintaining each of the separate
8 signs required under par. (b) and par. (d) or (e), a ski area operator may post and
9 maintain a single sign that is at least 12 square feet in size and that contains all of
10 the required warnings.

11 2. A ski area operator may, in a ski area with fewer than 100 acres in use for
12 a snow sport vary from the specific wording, size, and location requirements for signs
13 specified under this subsection, but any variation may not preclude a reasonably
14 prudent participant in a snow sport from finding or understanding the contents of
15 the sign.

16 (4) DUTIES OF SKI AREA OWNERS; OTHER DUTIES. (a) *Maps.* Each ski area operator
17 shall post and maintain a map of the trails and terrains in the ski area that are
18 designated for any snow sport at all of the sites where tickets to the ski area are sold
19 if the ski area has more than 3 trails. The map shall contain the names of each trail
20 or terrain and a description of the level of difficulty for each trail as determined by
21 the ski area operator under sub. (3) (f). The sign shall be at least 32 square feet in
22 size.

23 (ag) *Markings.* Each ski area operator shall mark hydrants, water pipes, and
24 any other man-made structures on a ski area that are not readily visible to
25 participants in a snow sport under conditions of ordinary visibility from a distance

1 of at least 100 feet. A ski area operator may use any type of marker, including a
2 wooden or bamboo pole, flag, or sign if the marker is visible from a distance of 100
3 feet and if the marker itself does not constitute a serious hazard to participants in
4 a snow sport. Variations in steepness or terrain, whether natural or as a result of
5 slope design, snowmaking, or grooming operations, including roads, catwalks, or
6 other terrain modifications, are not man-made structures for the purpose of this
7 paragraph.

8 (ar) *Padding policies.* A ski area operator shall adopt a written policy
9 determining which man-made ski area infrastructures require protective padding
10 and determining the type, height, thickness, and color of the padding. The policy
11 shall take into consideration factors including the infrastructure’s size and location
12 at the ski area and its visibility to the public under conditions of normal visibility.

13 (b) *Ski area vehicles.* 1. Each ski area operator shall ensure that each ski area
14 vehicle that is present on a trail during the hours in which a lift is being operated
15 shall display all of the following:

16 a. A flashing light on or near the top of the ski area vehicle whenever the ski
17 area vehicle’s engine is on.

18 b. If the ski area vehicle is an all-terrain vehicle, a snowmobile, or a similarly
19 sized motorized vehicle, in addition to the flashing light as specified in subd. 1., a red
20 or orange flag that is at least 40 square inches in size and that is mounted at least
21 5 feet from the bottom of the tracks or tires.

22 2. If any grooming operations take place on a ski trail during hours in which
23 a lift is being operated, the ski area operator shall close that trail to the public at the
24 top entrance to the trail until the grooming operations are complete on that trail. If
25 a groomer is traversing part of a ski area that is not part of a ski trail during hours

1 in which a lift is being operated, the ski area operator shall provide an escort for the
2 groomer to warn guests of the approaching groomer.

3 3. A ski area operator shall have a written policy that specifies the training
4 required for anyone to operate a snowmobile or an all-terrain vehicle within the ski
5 area, and shall have a written policy addressing recommended routes for
6 snowmobiles or all-terrain vehicles to follow when used during the hours in which
7 a lift is being operated.

8 4. No ski area operator may allow anyone under the age of 18 to operate a
9 snowmobile or an all-terrain vehicle within the ski area.

10 5. Any employee of a ski area operating a snowmobile or an all-terrain vehicle
11 shall possess a valid driver's license.

12 6. A ski area operator shall prohibit the use of privately owned snowmobiles
13 or all-terrain vehicles within the ski area during the hours in which a lift is being
14 operated.

15 7. The operator of a snowmobile or an all-terrain vehicle may not operate the
16 vehicle at a rate of speed greater than is reasonable.

17 8. Whenever possible, the person operating a snowmobile or an all-terrain
18 vehicle within a ski area during the hours in which a lift is being operated shall give
19 skiers the right-of-way.

20 (c) *Lift inspections.* Annually, a ski area operator shall have all of the lifts
21 located in its ski area inspected by a qualified lift inspector to determine whether the
22 lift is in compliance with the rules promulgated by the department of safety and
23 professional services.

24 (d) *Lift inspectors.* In order to be a qualified lift inspector for purposes of par.
25 (c), an individual shall be either or both of the following:

1 1. An individual authorized by the department of safety and professional
2 services to make inspections of lifts pursuant to ch. 101.

3 2. An individual who has knowledge of the requirements of the rules specified
4 in par. (c) and of the design and operation of lifts and who has one of the following:

5 a. A degree of engineering from a recognized university.

6 b. Experience as an inspector of lifts for an insurance company that has
7 provided liability insurance coverage to any ski area.

8 **(5) DUTIES OF INDIVIDUALS ENGAGED IN SNOW SPORTS.** (a) *Safety rules; skiing and*
9 *sledding.* Each individual engaged in skiing or sledding at a ski area has a duty to
10 do all the following:

11 1. Obey all posted warnings and signs.

12 2. Keep off of closed trails and out of closed areas.

13 3. Know the range of his or her ability and engage in skiing or sledding within
14 that ability.

15 4. Assess the difficulty of the trails and terrains that are open to skiing or
16 sledding.

17 5. Maintain control of his or her speed and direction.

18 6. Comply with any posted limits that are imposed on the number of passengers
19 or on the amount of weight of the sled or other sledding device while it is being ridden.

20 7. Be able to stop or avoid other individuals or objects.

21 8. Yield to other individuals engaged in skiing or sledding who are ahead or who
22 are down the slope.

23 9. Not stop at a point that will result in the individual obstructing a trail or not
24 being visible from above.

1 10. Yield to other individuals engaged in skiing or sledding who are uphill when
2 starting downhill or merging onto a trail.

3 11. Be able to safely board, ride, and disembark any lift serving an area open to
4 skiing or sledding.

5 12. Board and disembark a lift only at designated sites.

6 13. If involved in a collision with another participant in a snow sport that
7 results in injury or death, not leave the vicinity of the collision before giving his or
8 her name and current address to an employee of the ski area operator or a member
9 of the ski patrol, except for the purpose of securing aid for a person injured in the
10 collision. A person who leaves the scene of the collision for the purpose of securing
11 aid shall give his or her name and current address after securing the aid.

12 (b) *Safety rules; tubing.* Each individual engaged in tubing at a ski area has
13 a duty to do all of the following:

14 1. Obey all posted signs and warnings.

15 2. Keep out of closed areas.

16 3. Know the range of his or her ability and engage in tubing within that ability.

17 4. Assess the difficulty of terrain that is open to tubing.

18 5. Maintain control of his or her speed and direction.

19 6. Comply with any posted limits that are imposed on the number of passengers
20 or on the amount of weight of the tube or other tubing device while it is being ridden.

21 7. Be able to safely board, ride, and disembark a lift serving an area open to tubing.

22 8. Board and disembark a lift only at designated sites.

23 9. Yield to other individuals engaged in tubing who are ahead or who are down
24 the slope.

1 10. Look uphill and yield to oncoming tubes before leaving the bottom of the
2 hill at the end of a run.

3 11. If involved in a collision with another participant in a snow sport that
4 results in injury or death, not leave the vicinity of the collision before giving his or
5 her name and current address to an employee of the ski area operator or a member
6 of the ski patrol, except for the purpose of securing aid for a person injured in the
7 collision. A person who leaves the scene of the collision for the purpose of securing
8 aid shall give his or her name and current address after securing the aid.

9 **SECTION 6.** 895.525 (2) of the statutes is amended to read:

10 895.525 (2) DEFINITION. In this section, “recreational activity” means any
11 activity undertaken for the purpose of exercise, relaxation or pleasure, including
12 practice or instruction in any such activity. “Recreational activity” does not include
13 participating in a snow sport at a ski area, as those terms are defined in s. 167.33,
14 but includes hunting, fishing, trapping, camping, bowling, billiards, picnicking,
15 exploring caves, nature study, dancing, bicycling, horseback riding,
16 horseshoe-pitching, bird-watching, motorcycling, operating an all-terrain vehicle,
17 ballooning, curling, throwing darts, hang gliding, hiking, ~~tobogganing, sledding,~~
18 sleigh riding, snowmobiling, ~~skiing,~~ skating, participation in water sports, weight
19 and fitness training, sight-seeing, rock-climbing, cutting or removing wood,
20 climbing observation towers, animal training, harvesting the products of nature,
21 sport shooting, and participating in a snow sport outside a ski area, as those terms
22 are defined in s. 167.33, and any other sport, game or educational activity.

23 **SECTION 7.** 895.526 of the statutes is created to read:

1 **895.526 Participation in a snow sport; restrictions on civil liability,**
2 **assumption of risk. (1) DEFINITIONS.** All definitions in s. 167.33 apply to this
3 section unless the context otherwise requires.

4 **(2) APPRECIATION OF CONDITIONS AND RISK OF PARTICIPATION IN A SNOW SPORT. (a)**
5 Every participant in a snow sport at a ski area accepts the conditions and risks of the
6 snow sport as set forth in s. 167.33 (2).

7 (b) Every participant in a snow sport at a ski area is presumed to have seen and
8 understood signage provided by the ski area operator pursuant to s. 167.33 (3).

9 (c) Every participant in a snow sport at a ski area accepts that failure to wear
10 a helmet or wearing a helmet that is improperly sized, fitted, or secured increases
11 the risk of injury or death or the risk of a more severe injury. Every participant in
12 a snow sport at a ski area accepts that a helmet may not be available for purchase
13 or for rent at a ski area.

14 (d) Every participant in a snow sport at a ski area accepts that natural or
15 man-made items or obstacles within a ski area, including ski area infrastructure
16 and ski area vehicles, may be unpadded or not heavily padded and accepts that there
17 may be a higher risk of injury or death or of a more severe injury associated with a
18 collision with an item or obstacle that is unpadded or not heavily padded.

19 **(3) RESPONSIBILITIES OF A PARTICIPANT IN A SNOW SPORT.** Every participant in a
20 snow sport is responsible to do all of the following:

21 (a) Fulfill his or her duties set forth in s. 167.33 (5).

22 (b) Choose whether to wear a helmet while participating in the snow sport. If
23 the participant chooses to wear a helmet, he or she has the responsibility to ensure
24 the helmet is of the correct size and fit and to ensure that it is properly secured while
25 he or she participates in the snow sport.

