



WISCONSIN LEGISLATIVE COUNCIL AMENDMENT MEMO

2011 Senate Bill 382

**Senate
Amendment 1, as Amended**

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Senate Bill 382 provides 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.

Current Law

Under current law, a school board may grant the temporary use of school grounds, buildings, facilities, or equipment, upon such conditions, including fees not to exceed the 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. Under this provision, the user is primarily liable and the school board secondarily liable for any damage to property and for any expense incurred as the consequence of the use of property under this provision.

Senate Bill 382

Senate Bill 382 provides that school boards and governing bodies of charter schools, and their officers, employees and agents, do not owe to a person who enters the school grounds to engage or participate in a recreational activity held pursuant to a recreational activity agreement, any of the following:

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

In addition, none of those entities or persons 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.

The above provisions do not limit the liability of those entities or persons for 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 board or governing body knew, which occurs on the school grounds designated for use in a recreational agreement and being used by a person for a recreational activity held pursuant to the recreational agreement.

Senate Amendment 1

Senate Amendment 1 to the bill provides that, for purposes of the newly created provision relating to recreational activities, “actual costs” means reasonable costs for maintenance, security, supervision of participants who are minors, if applicable, and cleaning.

The amendment adds school districts to the entities to which the bill’s provisions apply.

The bill defines “recreational activity” as any indoor or outdoor physical activity, sport, team sport, or game, whether organized or unorganized, undertaken for the purpose of exercise, relaxation, diversion, or pleasure. The amendment deletes this definition and instead provides that “recreational activity” means both of the following:

- Any indoor physical activity, sport, team sport, or game, whether organized or unorganized, undertaken for the purpose of exercise, relaxation, diversion, education, or pleasure.
- Any outdoor activity undertaken for the purpose of exercise, relaxation, or pleasure, including practice or instruction in any such activity. In this instance, “outdoor activity” includes hunting, fishing, trapping, camping, picnicking, exploring caves, nature study, bicycling, horseback riding, bird-watching, motorcycling, operating an ATV, 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.

Under the amendment, “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.

The amendment creates a definition of “spectator.” Under the amendment, it 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.

The amendment also provides that, in addition to death or injury caused by a malicious act or by a malicious failure to warn against an unsafe condition, the immunity provisions do not apply to the death or injury to a spectator that occurs on the school grounds designated for use in a recreational agreement during the recreational activity.

The amendment requires a recreational agreement to include all of the following:

- A description of the recreational activity or activities to be held on the school grounds pursuant to the agreement.
- The time and place of the recreational activity or activities.
- Any eligibility requirements for participation in the recreational activity or activities.
- Whether and, if so, to what extent participants who are minors will be supervised.
- A clear statement describing a participant's assumption of risk.

Senate Amendment 1 to Senate Amendment 1

Senate Amendment 1 to Senate Amendment 1 creates an additional circumstance to which the immunity provisions do not apply. Specifically, under the amendment, the immunity provisions do not apply to the death of or injury to a person participating in a recreational activity involving any of the following pursuant to a recreational agreement:

- A weight room.
- A swimming pool.
- Gymnastic equipment.

Legislative History

Senator Galloway offered Senate Amendment 1 and Senate Amendment 1 to Senate Amendment 1. On March 7, 2012, the Senate Committee on Education voted unanimously to recommend adoption of Senate Amendment 1 to Senate Amendment 1 and Senate Amendment 1, as amended, and to recommend passage of the bill, as amended.

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