

2013 DRAFTING REQUEST

Senate Amendment (SA-SB321)

Received: 10/15/2013 Received By: phurley
Wanted: As time permits Same as LRB:
For: Joseph Leibham (608) 266-2056 By/Representing: Luke
May Contact: Drafter: phurley
Subject: Courts - immunity liability Addl. Drafters:
Extra Copies:

Submit via email: YES
Requester's email: Sen.Leibham@legis.wisconsin.gov
Carbon copy (CC) to:

Pre Topic:

No specific pre topic given

Topic:

Immunity for use on private property only

Instructions:

clarify that this doesn't cover public use airports.

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	phurley 10/22/2013	jdyer 10/16/2013	jfrantze 10/16/2013	_____	sbasford 10/16/2013		
/1		wjackson 10/22/2013	rschluet 10/22/2013	_____	lparisi 10/22/2013	lparisi 10/22/2013	

FE Sent For:

<END>

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1 WLJ 10/22
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13
END
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/P1	phurley	P1 10/16 jld	Jb	10/14			

FE Sent For:

<END>



2013 SENATE BILL 321

October 2, 2013 – Introduced by Senators LEIBHAM, GROTHMAN, GUDEX, HANSEN, HARSDORF and LASSA, cosponsored by Representatives TITTL, BIES, BROOKS, KAUFERT, KESTELL, KNODL, T. LARSON, MURPHY, MURTHA, RIPP, SMITH and THIESFELDT. Referred to Committee on Judiciary and Labor.

1 **AN ACT to amend** 895.52 (1) (g) and 895.525 (2) of the statutes; **relating to:**
2 limitation of a property owner's liability when lands are used for
3 noncommercial aviation.

Analysis by the Legislative Reference Bureau

Under current law, a private property owner is not generally liable for injuries sustained by a person engaging in recreational activities on the property. Under current law, a private property owner generally owes no duty to keep the property safe for recreational activities or to give recreational users a warning of an unsafe condition on the property. In order to avoid liability for injuries sustained by a person engaging in a recreational activity, the private property owner may not accept payment of more than \$2,000 in one year for allowing persons to engage in recreational activities on the property, and he or she may not maliciously act or fail to act in a manner that causes the injury.

Under current law, a person who engages in a recreational activity generally assumes the risks inherent in participating in that activity and has a duty to take certain measures to ensure his or her own safety while engaging in the activity. If a person is injured while participating in a recreational activity, he or she may be held partially or wholly liable for his or her injuries, depending on the nature of the activity and the measures the person took or failed to take to ensure his or her safety.

This bill adds noncommercial aviation as a recreational use for which a private property owner owes no duty to keep his or her property safe or to give recreational users a warning of an unsafe condition on his or her property. Under the bill, a person

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who engages in noncommercial aviation is engaged in a recreational activity and assumes the risks inherent in the activity and is responsible for taking measures to ensure his or her own safety.

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

1 **SECTION 1.** 895.52 (1) (g) of the statutes, as affected by 2013 Wisconsin Act 20,
2 is amended to read:

3 895.52 (1) (g) "Recreational activity" means any outdoor activity undertaken
4 for the purpose of exercise, relaxation or pleasure, including practice or instruction
5 in any such activity. "Recreational activity" includes hunting, fishing, trapping,
6 camping, picnicking, exploring caves, nature study, bicycling, horseback riding,
7 bird-watching, motorcycling, operating an all-terrain vehicle or utility terrain
8 vehicle, operating a vehicle, as defined in s. 340.01 (74), on a road designated under
9 s. 23.115, noncommercial aviation, ballooning, hang gliding, hiking, tobogganing,
10 sledding, sleigh riding, snowmobiling, skiing, skating, water sports, sight-seeing,
11 rock-climbing, cutting or removing wood, climbing observation towers, animal
12 training, harvesting the products of nature, sport shooting and any other outdoor
13 sport, game or educational activity. "Recreational activity" does not include any
14 organized team sport activity sponsored by the owner of the property on which the
15 activity takes place.

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

17 895.525 (2) DEFINITION. In this section, "recreational activity" means any
18 activity undertaken for the purpose of exercise, relaxation or pleasure, including
19 practice or instruction in any such activity. "Recreational activity" does not include
20 participating in a snow sport at a ski area, as those terms are defined in s. 167.33,

SENATE BILL 321

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52(1)(b)*

1 but includes hunting, fishing, trapping, camping, bowling, billiards, picnicking,
2 exploring caves, nature study, dancing, bicycling, horseback riding,
3 horseshoe-pitching, bird-watching, motorcycling, operating an all-terrain vehicle
4 or utility terrain vehicle, noncommercial aviation, ballooning, curling, throwing
5 darts, hang gliding, hiking, sleigh riding, snowmobiling, skating, participation in
6 water sports, weight and fitness training, sight-seeing, rock-climbing, cutting or
7 removing wood, climbing observation towers, animal training, harvesting the
8 products of nature, sport shooting, and participating in a snow sport outside a ski
9 area, as those terms are defined in s. 167.33, and any other sport, game or
10 educational activity.

11

(END)

Hurley, Peggy

From: Petrovich, Luke
Sent: Tuesday, October 15, 2013 10:27 AM
To: Hurley, Peggy
Subject: SB 321 Amendment

895.52
(10)(5m)
for purps of this def.

Hello Peggy,

After speaking with our constituent and the flying groups I think we are in agreeance that an amendment would be best to clarify the intent of this legislation. You previously suggested this amendment:

The amendment would create a definition of "noncommercial aviation." In this section, "noncommercial aviation" means the use, navigation, or piloting of a noncommercial aircraft upon privately owned land. In this section, "privately owned land" does not include a public-use airport, as defined in s. 114.002 (18m)."

18m) "Public-use airport" means any of the following as provided in 49 USC 2202:

114.002(18m)(a)(a) Any public airport.

114.002(18m)(b)(b) Any privately owned reliever airport.

114.002(18m)(c)(c) Any privately owned airport used for public purposes and determined by the secretary of the U.S. department of transportation to enplane annually 2,500 or more passengers and receive scheduled passenger service of aircraft.

I underlined noncommercial aircraft because I have been told that there is no such thing as a "noncommercial aircraft". To my understanding an aircraft can generally be used commercially or non commercially. For instance if you are flying a small plane but charging money for passengers, that would be commercial aviation.

Therefore I would like your opinion on switchng the language to "piloting of an aircraft upon privately owned land" or "piloting of small aircraft operations upon privately owned land". I am not sure which one is better. But I think that the recreational use statute would limit "aircraft" enough to be used.

In the Wisconsin Statutes "Aircraft" is defined under 114.002(3) as such:

"Aircraft" means any contrivance invented, used, or designed for navigation of or flight in the air, but does not include spacecraft.

Sorry for the lengthy email. I appreciate all your help on this issue.

Luke Petrovich

Office of Senator Joe Leibham

9th Senate District

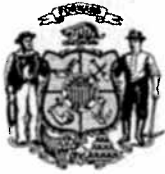
(608) 266-2056

Luke Petrovich

Office of Senator Joe Leibham

9th Senate District

(608) 266-2056



SOON

jld

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION
SENATE AMENDMENT ,
TO SENATE BILL 321

10-15-13

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

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

3 "SECTION 1g. 895.52 (1) (bn) of the statutes is created to read:

4 895.52 (1) (bn) "Noncommercial aviation" means the use, navigation, or
5 piloting of an aircraft upon privately owned land. For purposes of this definition,

6 "privately owned land" does not include a public-use airport, as defined in s. 114.

7 002 (18m)." ✓

8 2. Page 2, line 1: delete "SECTION 1" and substitute "SECTION 1g."

9 3. Page 3, line 4: after "aviation," insert "as defined in s. 895.52 (1) (bn)."

10

(END)

114.00

CS

CS

Hurley, Peggy

From: Hurley, Peggy
Sent: Tuesday, October 22, 2013 3:28 PM
To: Petrovich, Luke
Subject: RE: LRBa1020/P1 - SB 321 Amendment

Yes. Unfortunately, I confused myself by offering two alternatives. I will go with this one. Sorry about that!

From: Petrovich, Luke
Sent: Tuesday, October 22, 2013 3:27 PM
To: Hurley, Peggy
Subject: RE: LRBa1020/P1 - SB 321 Amendment

I thought you wanted to eliminate the business phrase and have the amendment be:

“noncommercial aviation” means the use of an aircraft, other than to provide transportation to persons or property for compensation or hire, upon privately owned land. For the purpose of this definition, “privately owned land” does not include a public-use airport, as defined in s. 114.002 (18m).

From: Hurley, Peggy
Sent: Tuesday, October 22, 2013 3:25 PM
To: Petrovich, Luke
Subject: RE: LRBa1020/P1 - SB 321 Amendment

Or did you prefer the first language I suggested, which just references being for compensation or hire, and doesn't mention business at all?

From: Petrovich, Luke
Sent: Tuesday, October 22, 2013 3:21 PM
To: Hurley, Peggy
Subject: RE: LRBa1020/P1 - SB 321 Amendment

I understand your concerns completely. I am not trying to be difficult either. For timing purposes I wanted to check and see if that option worked by chance, since I already have the approval of our constituent and the aviation guys on it. As far as Senator Leibham's intent goes, the amendment you are suggesting works well. We will move forward with the amendment you suggested. Please draft it as a /1.

Thanks,

Luke Petrovich
Office of Senator Joe Leibham
9th Senate District
(608) 266-2056

From: Hurley, Peggy
Sent: Tuesday, October 22, 2013 3:06 PM
To: Petrovich, Luke
Subject: RE: LRBa1020/P1 - SB 321 Amendment

Hi Luke,

I think the same problem arises – either “in a business” means something other than “for compensation or hire” or it is redundant. If a hobby pilot, who does not own a business or corporation, flies 20 people, on separate days, for \$100 a pop, is he “in a business of transporting persons or property for compensation or hire”? He is being compensated, but it is unclear to me whether he is “in a business” and whether the statute would apply to him or not.

I really am not trying to be difficult, but I am having trouble making the intent clear with the language you forwarded.

Peggy

From: Petrovich, Luke
Sent: Tuesday, October 22, 2013 2:57 PM
To: Hurley, Peggy
Subject: RE: LRBa1020/P1 - SB 321 Amendment

Hi Peggy,

One of the aircraft groups suggested that amendment. I believe the phrase “in the course of business” was added for extra emphasis of intent. Apparently there are issues on the federal level with the distinction between commercial and noncommercial that they are trying to avoid or make clear. I personally do not think that phrase is needed and didn't understand the difference myself.

Also most of them have agreed to the following amendment language as well:

In this section, "noncommercial aviation" means the use of an aircraft, other than in a business of transporting persons or property for compensation or hire by air upon, privately owned land. In this section, "privately owned land" does not include a public-use airport, as defined in s. 114.002 (18m)."

Do you think that one is better? Anne Sappenfield at legislative council, who has been advising on this issue, believes either would work.

Thanks,

Luke Petrovich
Office of Senator Joe Leibham
9th Senate District
(608) 266-2056

From: Hurley, Peggy

Sent: Tuesday, October 22, 2013 2:08 PM
To: Petrovich, Luke
Subject: RE: LRBa1020/P1 - SB 321 Amendment

Hi Luke,

I can get the amendment to your office by this afternoon or tomorrow morning. I would like to keep the phrasing "For the purpose of this definition" rather than use "In this section" because we refer back to the definition on page 3, line 4 of the bill. May I also restructure the phrasing just a bit to read:

"noncommercial aviation" means the use of an aircraft, other than to provide transportation to persons or property for compensation or hire, upon privately owned land. For the purpose of this definition, "privately owned land" does not include a public-use airport, as defined in s. 114.002 (18m).

I'd like to tie the "other than" language more closely to the phrase "the use of an aircraft," and additionally eliminate the phrase "in the course of a business." I believe that saying "in the course of a business" is either redundant to "for compensation or hire" or it means something in addition to "for compensation or hire." If it means something in addition to "for compensation or hire," then you may want to say something like "Noncommercial aviation" means the use of an aircraft, other than by a business, as defined in [choose a statutory cite-see below] upon privately owned land. For the purposes of this definition . . .

Then you'd want to choose a definition of "business,": commonly cited definitions are found in s. 16.08 (1) (a), 16.283 (1) (a), depending on whether you want to include non-profit businesses. Please let me know your thoughts.

Peggy

From: Petrovich, Luke
Sent: Tuesday, October 22, 2013 1:09 PM
To: Hurley, Peggy
Subject: LRBa1020/P1 - SB 321 Amendment

Hello Peggy,

After continuing discussion on the amendment to SB 321, we would like to make the amendment to look like this:

In this section, "noncommercial aviation" means the use of an aircraft upon privately owned land, other than in the course of a business that provides transportation to persons or property for compensation or hire. In this section, "privately owned land" does not include a public-use airport, as defined in s. 114.002 (18m)."

Could you draft it as a /1? Unless you have any concerns with the language above, I believe we are ready for introduction. Also SB 321 is scheduled for an exec this **Thursday** so we would like this drafted ASAP. Sometime today or early tomorrow would be great if you are able.

Thanks for your help!

Luke Petrovich
Office of Senator Joe Leibham
9th Senate District
(608) 266-2056



PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION
SENATE AMENDMENT ,
TO SENATE BILL 321

today

other than to provide transportation
to persons or property for
compensation or hire

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At the locations indicated, amend the bill as follows:

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

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2. Page 2, line 1: delete "SECTION 1" and substitute "SECTION 1m".

3. Page 3, line 4: after "aviation," insert "as defined in s. 895.52 (1) (bn).".

(END)