

2015 DRAFTING REQUEST

Bill

Received: **2/18/2015** Received By: **phurley**
 Wanted: **As time permits** Same as LRB: **-1789**
 For: **Devin LeMahieu (608) 266-2056** By/Representing: **Luke**
 May Contact: Drafter: **swalkenh**
 Subject: **Courts - immunity liability** Addl. Drafters:
 Extra Copies:

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

Pre Topic:

No specific pre topic given

Topic:

Immunity liability for private campgrounds

Instructions:

redraft 05 AB 55

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>
/?	swalkenh 2/18/2015	kfollett 2/18/2015	jfrantze 2/19/2015	_____			
/1	swalkenh 4/2/2015			_____	sbasford 2/19/2015		
/2	swalkenh 4/14/2015	eweiss 4/3/2015		_____	mbarman 4/3/2015		
/3		eweiss		_____	mbarman	mbarman	

Vers. Drafted

Reviewed
4/14/2015

Typed

Proofed

Submitted
4/14/2015

Jacketed
4/14/2015

Required

FE Sent For:

↳ Not
Needed

<END>



State of Wisconsin
2015 - 2016 LEGISLATURE

LRB-17880

SWB: *[Handwritten initials]*

IN 2/18/15

WANTED 2/19/15 (2/20 need be)

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

Gen

1 **AN ACT ...; relating to: immunity of private campground owners and operators.**

Analysis by the Legislative Reference Bureau

This bill provides immunity from civil liability to owners and operators of private campgrounds and to their employees and agents. The immunity applies to property damage or personal injury or death of an individual if the damage, injury, or death is the proximate result of the act or omission of a person other than the owner or operator of the private campground or the employees or agents of the owner or operator.

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

2 **SECTION 1.** 895.519 of the statutes is created to read:

3 **895.519 Civil liability exemption; private campgrounds.** (1) In this
4 section:

5 (a) "Private campground" means a facility that is issued a campground permit
6 under s. 254.47 and that is owned and operated by someone other than a public
7 agency.

1 (b) “Public agency” has the meaning given in s. 66.0825 (3) (h). ✓

2 (2) The owner or operator of a private campground and the employees and
3 agents of the owner or operator are immune from civil liability for damage to property
4 or for the death of or injury to an individual if that damage, death, or injury is a
5 proximate result of the acts or omissions of a person other than the owner or operator
6 of the campground or the employees or agents of the owner or operator.

7 **SECTION 2. Initial applicability.**

8 (1) This act first applies to acts or omissions that occur on the effective date of
9 this subsection. ✓

10 (END)

T/C with Zachary

3/26

Redraft to parallel level of immunity in 895.512
(or other similar provision, if any)

Per follow up call

4/2

Include coverage of entity

Walkenhorst Barber, Sarah

From: Bemis, Zach
Sent: Thursday, March 26, 2015 1:18 PM
To: Walkenhorst Barber, Sarah
Subject: FW: Campsite Bill

From: Karls-Ruplinger, Jessica
Sent: Friday, March 13, 2015 8:33 AM
To: Sen.LeMahieu
Subject: RE: Campsite Bill

Zach,

I forgot to add the word "apply" in my prior email. See below.

Jessica

Jessica Karls-Ruplinger
Deputy Director
Wisconsin Legislative Council
(608) 266-2230

From: Karls-Ruplinger, Jessica
Sent: Friday, March 13, 2015 8:28 AM
To: Sen.LeMahieu
Subject: RE: Campsite Bill

Zach,

I think you're right, at least in instances where a person other than a campground owner/employee is a cause of the injury or death. In those instances, the language in s. 895.512, Stats. (immunity except for willful or wanton acts or omissions) provides a lower level of immunity than what's provided in LRB-1788/1. However, in instances where only the action of a campground owner is the cause of the injury, the language in s. 895.512, Stats., provides a higher level of immunity than what's provided in LRB-1788/1.

Hypothetically, if an injury occurs at a private campground and the actions of both a campground owner and another person are causes of the injury: (1) under LRB-1788/1, the campground owner is immune (I think the immunity for civil liability might even apply for malicious or willful conduct); and (2) under language similar to s. 895.512, Stats., the campground owner is immune unless the injury results from a willful or wanton act or omission of an owner/employee. If an injury occurs at a private campground and only the action of a campground owner is the cause of the injury: (1) under LRB-1788/1, the campground owner is not immune; and (2) under language similar to s. 895.512, Stats., the campground owner is immune unless the injury results from a willful or wanton act or omission of an owner/employee.

Jessica

Jessica Karls-Ruplinger
Deputy Director

Wisconsin Legislative Council
(608) 266-2230

From: Sen. LeMahieu
Sent: Thursday, March 12, 2015 3:00 PM
To: Karls-Ruplinger, Jessica
Subject: RE: Campsite Bill

Hey Jessica,

Thanks again for coming by today and your work on this.

The ski area language doesn't seem to be as natural of a fit. I noticed something in 895.512 on willful and wanton conduct.

895.512 Civil liability exemption; access to toilet facility. If an employee of a retail establishment permits a person to use the establishment's toilet facility, under the requirements of s. 146.29, the employee and the establishment are immune from civil liability for the death of or injury to the person, or an individual other than an employee who accompanies the person, that is caused by or during the use of the facility, unless the death or injury was caused by a willful or wanton act or omission of the employee.

My reading is that if we matched this language it would be a lower level of immunity than the "proximate result/substantial factor" language as currently drafted or with the revision you identified.

Thoughts?

Thanks,

Zach

From: Karls-Ruplinger, Jessica
Sent: Thursday, March 12, 2015 11:22 AM
To: Bemis, Zach
Subject: RE: Campsite Bill

Zach,

The immunity for ski operators is in s. 895.526 (4), Stats., which reads:

(4) LIMITS ON LIABILITY FOR A SKI AREA OPERATOR; RELEASE AND LIABILITY OF A PARTICIPANT.

(a) A ski operator who fulfills all of his or her duties under s. 167.33 (3) and (4) owes no further duty of care to a participant in a snow sport and is not liable for an injury or death that occurs as a result of any condition or risk accepted by the participant under sub. (2).

(b) A participant involved in a collision with any other participant or with a nonparticipant may be liable for an injury or death that occurs as a result of the collision.

(c) This subsection shall be construed broadly.

The immunity is based on an operator fulfilling certain duties and the immunity extends to certain injuries or deaths. It appears to be different than the general immunity provided in the bill draft. If Sen. LeMahieu is interested in modeling

the campground owner immunity after the ski operator immunity, the immunity could be written to: (1) require the campground owner to fulfill certain duties relating to risks involved in camping; (2) recognize that a camper accepts certain conditions and risks in camping; and (3) provide immunity for injury or death that occurs as a result of any condition or risk identified in (2).

Jessica

Jessica Karls-Ruplinger
Deputy Director
Wisconsin Legislative Council
(608) 266-2230

From: Karls-Ruplinger, Jessica
Sent: Thursday, March 12, 2015 9:07 AM
To: Bemis, Zach
Subject: RE: Campsite Bill

Zach,

You might want to review *Fandrey v. American Family*: <http://wicourts.gov/sc/opinion/DisplayDocument.pdf?content=pdf&seqNo=16675>. It's a Wisconsin Supreme Court case from 2004. Specifically, I think you might find the discussion of "proximate cause" in P10 to P13 helpful. We'll talk more about it at 9:45am. See you then.

Jessica

Jessica Karls-Ruplinger
Deputy Director
Wisconsin Legislative Council
(608) 266-2230

From: Bemis, Zach
Sent: Wednesday, March 11, 2015 10:18 AM
To: Karls-Ruplinger, Jessica
Subject: RE: Campsite Bill

Very interesting. Glad to see I wasn't the only one confused by proximate result.

Thanks!

From: Karls-Ruplinger, Jessica
Sent: Wednesday, March 11, 2015 9:54 AM
To: Bemis, Zach
Subject: RE: Campsite Bill

Zach,

I found the written testimony submitted at the Senate hearing on this bill. I thought you might be interested in it.

Jessica

Jessica Karls-Ruplinger
Deputy Director
Wisconsin Legislative Council
(608) 266-2230

From: Bemis, Zach
Sent: Wednesday, March 11, 2015 9:08 AM
To: Karls-Ruplinger, Jessica
Subject: Campsite Bill

Hi Jessica,

So this bill is a redraft of a bill from 2005 that was vetoed by Governor Doyle. Here is a link to the bill history, including the veto message.

<http://docs.legis.wisconsin.gov/2005/proposals/ab55>

Thanks,

Zach Bemis
Chief of Staff
Senator Devin LeMahieu
608-266-2056
zach.bemis@legis.wi.gov



State of Wisconsin
2015 - 2016 LEGISLATURE

LRB-1788/1 1/2
SWB:kjf
RMB
lemw

IN 4/2/15
4/3/15 if possible

2015 BILL

INSERT

S.A. ✓
Wep ✓
1
2

AN ACT to create 895.519 of the statutes; relating to: immunity of private campgrounds. campground owners and operators. ✓

Analysis by the Legislative Reference Bureau

*
INS ANALYSIS

This bill provides immunity from civil liability to owners and operators of private campgrounds, and to their employees and agents. The immunity applies to property damage or personal injury or death of an individual if the damage, injury, or death is the proximate result of the act or omission of a person other than the owner or operator of the private campground or the employees or agents of the owner or operator. ✓

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

3 SECTION 1. 895.519 of the statutes is created to read:
4 895.519 Civil liability exemption; private campgrounds. (1) In this
5 section:
6 (a) "Private campground" means a facility that is issued a campground permit
7 under s. 254.47 and that is owned and operated by someone other than a public
8 agency.

BILL

1 (b) "Public agency" has the meaning given in s. 66.0825 (3) (h).

2 (2) The ^{private campground, the} owner or operator of a private campground, and the employees and

3 agents of the owner or operator are immune from civil liability for damage to property

4 or for the death of or injury to an individual if that damage, death, or injury is a

5 proximate result of the acts or omissions of a person other than the owner or operator

6 of the campground or the employees or agents of the owner or operator.

7 **SECTION 2. Initial applicability.**

8 (1) This act first applies to acts or omissions that occur on the effective date of
9 this subsection.

10 (END)

→ that is caused by or occurred during the use of the campground, unless the damage to property, death, or injury is caused by a willful or wanton act or omission of the owner or operator of the campground or an employee or agent of the owner or operator of the campground.

INSERT

2015-2016 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-1788/2ins
SWB:kjf:jf

INSERT ANALYSIS

NOFF

← Under the bill, a private campground, an owner or operator of a private campground, and the employees and agents of that owner or operator are immune from civil liability for property damage or for the death of or injury to an individual that is caused by or occurred during use of the campground, unless the property damage, death, or injury is caused by a willful or wanton act or omission of the owner or operator of the campground or of an employee or agent of the owner or operator of the campground.

(END INSERT ANALYSIS)

Per Sen Lemahieu's office

4/14/15

Follow up to email issues/questions

- Make changes suggested in parts 1 and 3 for now
- Confirmed that could be interacting/overlap between bill and existing 895.52. Our view that more specific likely to apply, so decision not to add any alternative language at this point.

Walkenhorst Barber, Sarah

From: Sen.LeMahieu
Sent: Friday, April 10, 2015 2:55 PM
To: Walkenhorst Barber, Sarah
Cc: Karls-Ruplinger, Jessica
Subject: FW: campsite liability bill draft

Hi Sarah,

Do you have some time to discuss these potential issues identified by Jessica?

Thanks,

Zach
266-2056

From: Karls-Ruplinger, Jessica
Sent: Thursday, April 09, 2015 3:00 PM
To: Bemis, Zach
Subject: RE: campsite liability bill draft

Zach,

Do you intend that the bill draft apply to any campground that is not covered by the immunity provisions in s. 895.52 (3), (4), and (5), Stats. (relating to recreational immunity for governmental bodies and nonprofit organizations)? If so, you might want to think about defining "private campground" as "a facility that is issued a campground permit under s. 254.47 and that is owned and operated by a private property owner, as defined in s. 895.52 (1) (e)" and omitting the definition of "public agency". [Upon first glance, it seems as though the definition of "public agency" might create a conflict with s. 895.52, Stats. – for example, in the treatment of campgrounds owned by nonprofit organizations.]

Also, in circumstances where the bill draft and s. 895.52 (6), Stats., might conflict, you might want to state which one supersedes the other. For example, under s. 895.52 (6), Stats., a private campground that collects less than \$2,000 for recreational activities is generally immune from liability, unless the death or injury is caused by a malicious failure to warn or a malicious act. Under the bill draft, the same campground is immune from liability, unless the death or injury is caused by a willful or wanton act. *Decided not to do anything on this issue*

Lastly, "cause" on page 2, line 9 should be "caused", and you might want to change the first three "the" in sub. (2) to "A", "an", and "any".

Jessica

Jessica Karls-Ruplinger
Deputy Director
Wisconsin Legislative Council
(608) 266-2230

From: Bemis, Zach
Sent: Wednesday, April 08, 2015 2:56 PM
To: Karls-Ruplinger, Jessica
Subject: campsite liability bill draft

Hi Jessica,

Here is the redraft of language on campsite liability. Let me know if you have any thoughts or suggestions.

Thanks,

Zach Bemis
Chief of Staff
Senator Devin LeMahieu
608-266-2056
zach.bemis@legis.wi.gov



State of Wisconsin
2015 - 2016 LEGISLATURE

LRB-1788/2
SWB:kjf&emw:ew

13

TODAY ASAP PLEASE
2015 BILL

S.A. ✓
tree ✓

- Regen.

1 AN ACT *to create* 895.519 of the statutes; relating to: immunity of private
2 campgrounds.

Analysis by the Legislative Reference Bureau

This bill provides immunity from civil liability to private campgrounds, to owners and operators of private campgrounds, and to their employees and agents. Under the bill, a private campground, an owner or operator of a private campground, and the employees and agents of that owner or operator are immune from civil liability for property damage or for the death of or injury to an individual that is caused by or occurred during use of the campground, unless the property damage, death, or injury is caused by a willful or wanton act or omission of the owner or operator of the campground or of an employee or agent of the owner or operator of the campground.

private campground
or
private campground

campground or
campground

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

3 SECTION 1. 895.519 of the statutes is created to read:

4 **895.519 Civil liability exemption; private campgrounds.** (1) In this

5 section: 1

BILL

SECTION 1

- 1
- 2
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No #
No caps
P
A

(a) "Private campground" means a facility that is issued a campground permit under s. 254.47 and that is owned and operated by someone other than a public agency *a private property owner, as defined in s. 895.52 (1)(e)*

(b) "Public agency" has the meaning given in s. 66.0825 (3)(h).

(2) ~~The~~ ^{an} private campground, ~~the~~ ^{an} owner or operator of a private campground, and ~~the~~ ^{any} employees and agents of ~~the~~ ^{a private campground or private campground} owner or operator are immune from civil liability for damage to property or for the death of or injury to an individual that is caused by or occurred during the use of the campground, unless the damage to property, death, or injury is ~~cause~~ ^{caused} by a willful or wanton act or omission of the owner or operator of the campground or an employee or agent of ~~the~~ ^{campground or campground} owner or operator of ~~the~~ ^{campground} the campground.

SECTION 2. Initial applicability.

(1) This act first applies to acts or omissions that occur on the effective date of this subsection.

(END)

Barman, Mike

From: Sen.LeMahieu
Sent: Tuesday, April 14, 2015 3:34 PM
To: LRB.Legal
Subject: Draft Review: LRB -1788/3 Topic: Immunity liability for private campgrounds

Thanks!

Please Jacket LRB -1788/3 for the SENATE.