



## WISCONSIN LEGISLATIVE COUNCIL ACT MEMO

**2011 Wisconsin Act 162**  
[2011 Assembly Bill 497]

**School Immunity for Recreational  
Activities Held on School Grounds**

### **LIABILITY IMMUNITY TO SCHOOL PROVIDING PUBLIC ACCESS FOR RECREATIONAL ACTIVITIES**

#### **Extent of Liability Immunity**

Under current law, a school board may permit any responsible person to use the school grounds, buildings, facilities, or equipment of the school district for lawful non-school purposes when that use does not interfere with school purposes.

2011 Wisconsin Act 162 (the Act) provides immunity from liability to a school district, school board, and any officer, employee, or agent of a school board, for death or injury suffered or caused by a person participating in a recreational activity held on the school grounds pursuant to a recreational agreement entered into by the school board. The Act provides identical liability protections to the governing body of a charter school that enters into a recreational agreement and any officer, employee, or agent of the governing body of the charter school.

The Act also provides that, when a school board or governing body of a charter school has entered into a recreational agreement that provides access to the school grounds for a recreational activity, neither the school board, the governing body of the charter school, nor an employee, officer, or agent of the school board or governing body owes any of the following duties to a person who enters the school grounds to participate in the recreational activity:

- 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.

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This memo provides a brief description of the Act. For more detailed information, consult the text of the law and related legislative documents at the Legislature's Web site at: <http://www.legis.state.wi.us/>.

### **Types of Activities Covered**

The immunity provisions of the Act apply to all of the activities described below when held on school grounds pursuant to a recreational agreement. The Act does not apply to 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.

#### ***Indoor Activities***

The provisions of the Act apply to any indoor physical activity, sport, team sport, or game, whether organized or unorganized, undertaken for the purpose of exercise, relaxation, diversion, education, or pleasure.

#### ***Outdoor Activities***

The provisions of the Act apply to any outdoor activity undertaken for the purpose of exercise, relaxation, or pleasure, including practice or instruction in any such activity. These 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 Agreement Required**

The immunity provisions of the Act do not apply unless the school board or the governing body of the charter school has provided written authorization to the person using the school property that permits public access to all or a specified part of the school grounds for a recreational activity. This authorization is referred to in the Act as a “recreational agreement,” and must include all of the following elements:

- 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.
- A statement of whether and, if so, to what extent, participants who are minors will be supervised.
- A clear statement describing a participant’s assumption of risk.

### **Assessment of Fees**

A school board may impose fees when granting temporary use of the school grounds for a recreational activity held pursuant to a recreational agreement. The fees may not exceed reasonable costs for maintenance, security, supervision of participants who are minors, if applicable, and cleaning.

### **EXCEPTIONS FROM LIABILITY PROTECTION**

The liability protections created by the Act do not limit the liability of a school board, a governing body of a charter school, or an officer, employee, or agent of the school board or of the governing body of a charter school in certain situations, which are described below.

#### **Malicious Act or Malicious Failure to Warn**

The liability protections do not apply if an injury or death is caused by a malicious act or malicious failure to warn against an unsafe condition about which an officer, employee, or agent of the school board, or of the governing body of the charter school knew, and occurred on the school grounds being used by a person for a recreational activity held pursuant to a recreational agreement.

#### **Death or Injury of a Spectator**

The liability protections do not apply in the case of the death of, or injury to, a spectator that occurs on school grounds designated for use in a recreational agreement during the recreational activity.

#### **Death or Injury of Person Participating in Certain Activities**

The liability protections do not apply in the case of 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.

### **NOTICE REQUIREMENTS AND LIMITATIONS ON CLAIMS AGAINST GOVERNMENTAL BODIES**

Section 893.80, Stats., imposes certain notice requirements and certain limitations on claims and damages in a lawsuit brought or maintained against a volunteer fire company, political corporation, governmental subdivision or agency thereof, or any officer, official, agent or employee of the corporation, subdivision, or agency. The Act provides that, for the purposes of s. 893.80, Stats., an *agent* includes a “volunteer,” which the Act defines as a person to whom all of the following apply:

- The person provides services or performs duties for and with the express or implied consent of a volunteer fire company, political corporation, or governmental subdivision or agency thereof.
- The person is subject to the right of control of the volunteer fire company, political corporation, or governmental subdivision or agency thereof.
- The person is not paid a fee, salary, or other compensation by any person for the services or duties described above, other than reimbursement of expenses.

In addition, the Act provides that the procurement or maintenance of insurance or self-insurance by a volunteer fire company, political corporation, or governmental subdivision or agency thereof, irrespective of the extent or type of coverage or the persons insured, may not do any of the following:

- Constitute a waiver of any provisions of s. 893.80, Stats., pertaining to claims against governmental bodies, officers, agents, or employees.
- Be relied upon to deny a person status as an officer, official, agent, or employee of the volunteer fire company, political corporation, or governmental subdivision or agency that is procuring or maintaining the insurance or self-insurance.

***Effective date:*** April 12, 2012. The provisions of the Act first apply to the death of, or any injury to, a spectator and to the death of, or any injury to, or any death or injury caused by, a person engaging or participating in a recreational activity on school grounds on April 12, 2012.

***Prepared by:*** Mary Matthias, Senior Staff Attorney and Brian Larson, Staff Attorney      April 10, 2012

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