



WISCONSIN LEGISLATIVE COUNCIL ACT MEMO

2011 Wisconsin Act 199
[2011 Senate Bill 388]

**Liability of Ski Area Operators
and Snow Sport Duties**

2011 Wisconsin Act 199 relates to duties of ski area operators and participants in snow sports and liability of ski area operators.

Background

Current statutes contain an assumption-of-risk provision that applies to recreational activities, including skiing, sledding, and tobogganing, engaged in on premises owned or leased by a person who offers facilities to the general public for participation in recreational activities.

The assumption-of-risk statute provides that a participant in a recreational activity, as described above, accepts the risks inherent in the recreational activity of which the ordinary prudent person is or should be aware. In a negligence action for recovery of damages for death, personal injury, or property damage, conduct by the participant who accepts the risks under this provision is contributory negligence.¹

Such a participant in a recreational activity also is responsible to do all of the following: (a) act within the limits of his or her ability; (b) heed all warnings regarding participation in the recreational activity; (c) maintain control of his or her person and the equipment, devices, or animals the person is using while participating in the recreational activity; and (d) refrain from acting in any manner that may cause or contribute to the death or injury to himself or herself or to other persons while participating in the recreational activity.

¹ Current law provides that contributory negligence does not bar recovery in an action to recover damages for negligence resulting in death or in injury to the person or property, if that negligence was *not greater* than the negligence of the person against whom the recovery is sought. However, any damages must be diminished in the proportion to the amount of negligence attributed to the person recovering the damages. [s. 895.045 (1), Stats.]

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/>.

A violation of these responsibilities constitutes negligence, and the contributory negligence provisions apply to negligence under the above provision. [s. 895.525, Stats.]

2011 Wisconsin Act 199

Act 199 creates duties of ski area operators and participants in snow sports, and provides immunity from liability to ski area operators.

The Act defines “ski area” as trails, terrains, and other outdoor areas that are used by individuals engaged in snow sports and that is administered as a single enterprise by a ski area operator.

Conditions and Risks of Snow Sports

The Act sets forth conditions and risks of snow sports which include snow, ice, crust, slush, soft spots, holes, grooves, bare spots, cuts, rocks, boulders, or tracks from ski area vehicles and risk of collision with other participants in snow sports, employees of a ski area operator, ski area infrastructure, or ski area vehicles.

Duties of Ski Area Operators

A “ski area operator” is defined as a person that owns or is responsible for operating a ski area or its affiliates (e.g., partners in a partnership). “Ski area operator” includes the employees and agents of a ski area operator.

The Act defines “participant in a snow sport” to include all of the following: (a) an individual who is engaged in a snow sport or who is walking or otherwise traveling within a ski area for purposes of engaging in the sport; (b) an individual who is present at a ski area to observe others engaged in a snow sport or who is a passenger on a lift; and (c) an individual that is an employee of a ski area operator when he or she is acting outside the scope of his or her employment.

Under the Act, ski area operators have various duties including notice on tickets and signs, including specified warnings and other information.

The Act also includes as a duty that, annually, a ski area operator must have all of the lifts located in its ski area inspected by a qualified lift inspector to determine whether the lift is in compliance with rules promulgated by the Department of Safety and Professional Services. There are also duties relating to marking or padding certain hazards and relating to operation of ATVs and snowmobiles in ski areas.

The Act provides that individuals engaged in snow sports have the duties relating to skiing, sledding, and tubing, including obeying all posted warnings and signs, keeping off of closed trails and out of closed areas, knowing the range of their ability and engaging in skiing, sledding, or tubing, within that ability, and not leaving the vicinity if involved in a collision.

Restrictions on Liability and Assumption of Risk

The Act removes participation in a snow sport in a ski area as a recreational activity that is governed by the assumption-of-risk statute. Instead, the Act provides that every participant in a snow sport at a ski area accepts the following: (a) the conditions and risks of the snow sport; (b) that failure to wear a helmet or wearing a helmet that is improperly sized, fitted, or secured increases the risk of injury

or death or the risk of a more severe injury and that a helmet may not be available for purchase or for rent at a ski area; and (c) that natural or man-made items or obstacles within a ski area, including ski area infrastructure and ski area vehicles, may be unpadded or not heavily padded and that there may be a higher risk of injury or death or a more severe injury associated with a collision with an item or obstacle that is unpadded or not heavily padded.

The Act provides that every participant in a snow sport is responsible to do both of the following: (a) fulfill his or her duties, as described in the Act; and (b) choose whether to wear a helmet while participating in a snow sport. If the participant chooses to wear a helmet, he or she has the responsibility to ensure the helmet is of the correct size and fit and to ensure that it is properly secured while he or she participates in the snow sport.

Under the Act, a ski operator who fulfills all of his or her duties, as described in the Act, 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. A participant involved in a collision with any other participant or with a nonparticipant may be held liable for an injury or death that occurs as a result of the collision. The Act provides that the provisions relating to liability must be construed broadly.

Effective date: Act 199 takes effect on April 17, 2012.

Prepared by: Anne Sappenfield, Senior Staff Attorney

April 13, 2012

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