



WISCONSIN LEGISLATIVE COUNCIL AMENDMENT MEMO

2011 Senate Bill 388

Senate Substitute Amendment 2

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2011 Senate Bill 388 relates to duties of ski area operators and participants in snow sports and liability of ski area operators.

Current Law

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:

- Act within the limits of his or her ability.
- Heed all warnings regarding participation 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.]

- Maintain control of his or her person and the equipment, devices, or animals the person is using while participating in the recreational activity.
- 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.

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

Senate Bill 388

Senate Bill 388 creates duties of ski area operators and participants in snow sports, and provides immunity from liability to ski area operators.

The bill defines “ski area” as trails, terrains, and other 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

For purposes of the provisions of the bill, conditions and risks consist of all of the following:

- Snow, ice, crust, slush, soft spots, holes, grooves, bare spots, cuts, rocks, boulders, or tracks from ski area vehicles.
- Forest growth or debris, including stumps, logs, or brush.
- Ridges, sharp corners, bumps, moguls, valleys, rollers, dips, cliffs, ravines, and double fall lines.
- Variations in the difficulty of terrain, surface conditions, or substrate conditions on a single trail or terrain or among trails or terrains that are designated the same level of difficulty at the ski area or at another ski area.
- The risk of injury or death on trails and terrains that fall away or drop off toward hazards.
- The risk of collision with other participants in snow sports, employees of a ski area operator, ski area infrastructure, or ski area vehicles.
- Variation in the location, construction, configuration, or steepness of trails or terrains.
- The greater risk of collision, injury, or death in treed areas, in areas where competitions are held, and in areas where freestyleing is allowed.

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 bill 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 bill, ski area operators have the following duties:

Notice on tickets: Each ski area operator must print on each ticket or season pass that it issues to participants in snow sports a warning as specified in the bill.

Signs – generally: Each ski operator must post and maintain a sign that is at least 10 square feet in size at or near each of the sites where tickets in the ski area are sold, at or near each of the entrances or lift loading areas for areas that are open to snow sports, and at or near each area open to sledding or tubing that is not served by a lift. The sign must contain the warning required by the bill.

Copies of the law: Each ski operator must post and maintain a copy of the law relating to snow sports at the main site where tickets to the ski area are sold and must make a copy of it for any individual upon request.

Signs required -- skiing or sledding areas: In addition to the general sign requirement, described above, each ski area operator must post and maintain a sign that is at least 10 square feet in size at or near each entrance to a loading area of a lift that serves areas open to skiing or sledding. The sign must contain the warning regarding the duties of each individual engaged in skiing or sledding, as set forth in the bill.

Signs required -- tubing areas: In addition to the general sign requirement, each ski area operator must post and maintain a sign that is at least 10 square feet in size at or near each entrance to a loading area of a lift that serves areas open to tubing. The sign must contain the warning regarding the duties of each individual engaged in tubing, as set forth in the bill.

Signs required -- trails and terrains: Each ski area operator must designate the trails that are open for skiing in its ski area and must determine the difficulty level of each trail. The ski area operator must post and maintain a sign at or near the beginning of each trail. The sign must contain the name of the trail and all of the applicable wording and emblems specified in the bill to describe the difficulty level of the trail or terrain. The sign must be at least four square feet in size.

Areas open to freestyling -- signs and barricades required: A ski area operator must designate an area as an area for freestyling if it contains one or more freestyle features.² A ski area operator must construct and maintain a barricade with fencing, roping, or similar means at the entrance to such an area. The opening in the barricade may not be wider than 30 feet. The ski area operator must post and maintain a sign at or near the entrance to the area that is at least three square feet in size and that shows the boundaries of the area open to freestyling. The sign must contain emblems consisting of a stop sign and an orange oval. The sign must contain both of the following: (a) the words “freestyling skills required”; and (b) the words “helmets are recommended” or “consider wearing a helmet.”

Lifts -- signs required: For each lift that is used by individuals engaged in skiing and that does not serve any trail that is described as “easier,” the ski operator must post and maintain a sign that is at least 10 square feet in size near or at the entrance of the loading area for the lift. The sign must contain the warning set forth in the bill.

Maps: Each ski area operator must post and maintain a map of the trails and terrains in the ski area that are designated for any snow sport at all of the sites where tickets to the ski area are sold if the ski area has more than three trails. The map must contain the names of each trail or terrain and a description of the level of difficulty for each trail as determined by the ski area operator. The sign must be at least 32 square feet in size.

Ski area vehicles: Each ski area operator must ensure that each ski area vehicle that is present on a trail during the hours in which a lift is being operated displays a flashing light and, for some vehicles, a flag, as specified in the bill.

Lift inspections: 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.

Duties of Individuals

The bill provides that individuals engaged in snow sports have the duties set forth below:

Safety rules -- skiing and sledding: Under the bill, each individual engaged in skiing or sledding at a ski area has a duty to do all of the following:

- Obey all posted warnings and signs.
- Keep off of closed trails and out of closed areas.
- Know the range of his or her ability and engage in skiing or sledding within that ability.
- Assess the difficulty of the trails and terrains that are open to skiing or sledding.

² The substitute amendment defines “freestyling” as mogul jumping, mogul skiing, ski jumping, aerial skiing, ski cross, ski ballet, snowboarding, and any other similar snow sport and defines “freestyle features” as man-made features that include boxes, jumps, hits, jibs, tabletops, spikes, take-off ramps, landings, banks, half pipes, picnic tables, logs, and pipes.

- Maintain control of his or her speed and direction.
- Comply with any posted limits that are imposed on the number of passengers or on the amount of weight of the sled or other sledding device while it is being ridden.
- Be able to stop or avoid other individuals or objects.
- Yield to other individuals engaged in skiing or sledding who are ahead or who are down the slope.
- Be able to safely board, ride, and disembark any lift serving an area open to skiing or sledding.
- Board and disembark a lift only at designated sites.
- If involved in a collision with another participant in a snow sport that results in injury or death, not leave the vicinity of the collision before giving his or her name and current address to an employee of the ski area operator or a member of the ski patrol, except for the purpose of securing aid for a person injured in the collision. A person who leaves the scene of the collision for the purpose of securing aid shall give his or her name and current address after securing the aid.

Safety rules – tubing: The bill provides that each individual engaged in tubing at a ski area has a duty to do all of the following:

- Obey all posted signs and warnings.
- Keep out of closed areas.
- Know the range of his or her ability and engage in tubing within that ability.
- Assess the difficulty of terrain that is open to tubing.
- Maintain control of his or her speed and direction.
- Comply with any posted limits that are imposed on the number of passengers or on the amount of weight of the tube or other tubing device while it is being ridden.
- Be able to safely board, ride, and disembark a lift serving an area open to tubing.
- Board and disembark a lift only at designated sites.
- Yield to other individuals engaged in tubing who are ahead or who are down the slope.
- Look uphill and yield to oncoming tubes before leaving the bottom of the hill at the end of a run.
- If involved in a collision with another participant in a snow sport that results in injury or death, not leave the vicinity of the collision before giving his or her name and current address

to an employee of the ski area operator or a member of the ski patrol, except for the purpose of securing aid for a person injured in the collision. A person who leaves the scene of the collision for the purpose of securing aid shall give his or her name and current address after securing the aid.

Restrictions on Liability and Assumption of Risk

The bill 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 bill provides that every participant in a snow sport at a ski area accepts the following: (a) the conditions and risks of the snow sport, as described above; (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 bill provides that every participant in a snow sport is responsible to do both of the following: (a) fulfill his or her duties, as described above; 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 bill, a ski operator who fulfills all of his or her duties, as described above, 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 bill provides that an exculpatory release of liability is enforceable against an adult participant who signs the release and against a minor participant on whose behalf a release has been signed by the minor participant's parent, legal guardian, or other person authorized by the parent or legal guardian to sign the release.

The bill provides that the provisions relating to liability must be construed broadly.

Senate Substitute Amendment 2

Senate Substitute Amendment 2 makes the following changes to the bill:

- Specifies that the definition of "ski area" includes only outdoor areas.
- Removes from the listed conditions and risks of snow sports the risk of collision with ski area vehicles.
- Permits a ski area operator to vary from the specific wording, size, and location requirements for signs in a ski area with fewer than 100 acres in use for a snow sport.

- Requires ski area operators to mark hydrants, water pipes, and any other man-made structures on a ski area that are not readily visible to participants in a snow sport under conditions of ordinary visibility from a distance of at least 100 feet. A ski area operator may use any type of marker, including a wooden or bamboo pole, flag, or sign if the marker is visible from a distance of 100 feet and if the marker itself does not constitute a serious hazard to participants in a snow sport. Variations in steepness or terrain, whether natural or as a result of slope design, snowmaking, or grooming operations, including roads, catwalks, or other terrain modifications, are not man-made structures for the purpose of this provision.
- Requires a ski area operator to post and maintain signs on various trails or lift towers throughout the ski area that are at least four square feet in size that contain the following statement: “Caution: Ski are vehicles may be in operation at any time.”
- Requires ski area operators to adopt a written policy determining which man-made ski area infrastructures require protective padding and determining the type, height, thickness, and color of the padding. The policy must take into consideration factors including the infrastructure’s size and location at the ski area and its visibility to the public under conditions of normal visibility.
- If any grooming operations take place on a ski trail during hours in which a lift is being operated, requires a ski area operator to close that trail to the public until the grooming operations are complete. If a groomer is traversing part of a ski area that is not part of a ski trail during hours in which a lift is being operated, the ski area operator must provide an escort to warn guests of the approaching groomer.
- Requires a ski area operator to have a written policy that specifies the training required for anyone to operate a snowmobile or an all-terrain vehicle (ATV) within the ski area, and a written policy addressing recommended routes for snowmobiles and ATVs to follow when used during the hours in which a lift is being operated.
- Prohibits a ski area operator from allowing anyone under the age of 18 to operate a snowmobile or an ATV.
- Requires an employee of a ski area operating a snowmobile or ATV to possess a valid driver’s license.
- Requires a ski area operator to prohibit the use of privately owned snowmobiles or ATVs within the ski area during the hours in which a lift is being operated.
- Prohibits the operator of a snowmobile or ATV from operating the vehicle at a rate of speed greater than is reasonable.
- Whenever possible, requires the person operating a snowmobile or ATV within a ski area during the hours in which a lift is being operated to give skiers the right-of-way.
- Requires a participant in a snow sport, if involved in a collision with another participant in a snow sport that results in injury or death, to not leave the vicinity of the collision before

giving his or her name and current address to an employee of the ski area operator or a member of the ski patrol, except for the purpose of securing aid for a person injured in the collision. A person who leaves the scene of a collision to secure aid must give his or her name and address after securing the aid.

- Deletes the provision under which an exculpatory release of liability is enforceable against an adult who signs the release and against a minor on whose behalf a release is signed.

Legislative History

Senator Grothman offered Senate Substitute Amendment 2. On March 1, 2012, the Senate Committee on Judiciary, Utilities, Commerce and Government Operations unanimously recommended adoption of Senate Substitute Amendment 2 and recommended passage of the bill, as amended, on a vote of Ayes, 3; Noes, 2.

AS:ksm