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# Wisconsin Legislative Council

## AMENDMENT MEMO

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### 2023 Senate Bill 52

### Senate Substitute Amendment 2

## 2023 SENATE BILL 52

2023 Senate Bill 52 directs the Department of Natural Resources (DNR) to create a deicer applicators certification program, and the bill provides liability protection in certain circumstances to commercial applicators that are certified under DNR's program and to property owners<sup>1</sup> who contract with certified commercial applicators. The bill requires DNR to maintain and publish a list of certified applicators.

In creating the certification program, DNR must establish criteria for training commercial applicators in methods for snow and ice removal and deicer application that protect water quality, and DNR must maintain a list of approved training programs. DNR must certify a commercial applicator if the applicator completes a DNR-approved training program and passes a DNR-approved examination.

Under the bill, a certified commercial applicator, or an owner who contracts with the certified commercial applicator, is generally not liable for damages arising from a hazard caused solely by the accumulation of snow and ice on property maintained by the applicator, if the applicator used DNR-approved methods and the applicator does not commit certain intentional or grossly negligent acts. However, the bill provides an exception to that general grant of immunity.

Specifically, the liability protections do not apply if the certified commercial applicator or owner does any of the following:

- Commits an act or omission that constitutes gross negligence or willful or wanton disregard for the safety of entrants onto real estate of the owner that is maintained by the certified commercial applicator and the act or omission proximately causes injury, damage, or death.
- Intentionally injures an entrant onto real estate of the owner that is maintained by the certified commercial applicator.
- Fails to use methods for snow and ice removal and deicer application that are taught in a DNR-approved training program.

The bill also requires a certified commercial applicator to maintain records relating to the applicator's property maintenance practices, proof of certification by DNR, exam passage, and compliance with required reporting. A certified commercial applicator must submit an annual report to DNR regarding the types and amounts of deicers used in the previous calendar year.

Finally, DNR has discretion to revoke an individual's certification if the individual violates the section created by the bill or rules adopted under that section.

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<sup>1</sup> Owner is defined under the bill to include a lessee of real estate.

## SENATE SUBSTITUTE AMENDMENT 2

Senate Substitute Amendment 1 makes the following changes to the bill:

- Requires the Department of Agriculture, Trade and Consumer Protection (DATCP), rather than DNR, to implement a certification program for commercial applicators.
- Changes the credential from a certification to a registration and specifies that the registration is valid for five years.
- Modifies the language used to describe one of the exceptions to the general grant of immunity under the bill by replacing “an act or omission that constitutes gross negligence or willful or wanton disregard for the safety of entrants onto real estate of the owner that is maintained by the certified commercial applicator” with “an act or omission that involves reckless or wanton conduct or intentional misconduct.”
- Requires DATCP to maintain a list of third-party training providers, rather than training programs.
- Makes clear that the liability protection provided in the bill only applies to private real estate.
- Removes the zero dollar appropriation.
- Provides that an individual may challenge a decision by DATCP to revoke the individual’s registration in a contested case hearing.
- Reduces the record retention period from six years to three years.
- In the grant of immunity for registered applicators and owners, removes a requirement that a hazard must have been caused “solely” by snow or ice for the immunity to apply.
- Adds a provision specifying that, with respect to a commercial applicator that is not registered under the bill, any evidence related to the program created by the bill, or the fact that the commercial applicator is not registered, is inadmissible for any purpose in any judicial, legislative, or administrative action, proceeding, or hearing.
- Removes weather conditions from the information that must be included in a registered commercial applicator’s written records.
- Requires DATCP to maintain and publish a list of: (1) companies that employ or contract with registered commercial applicators; and (2) sole proprietors who are registered commercial applicators, rather than a list of certified applicators.

## BILL HISTORY

Senator Jacque offered Senate Substitute Amendment 2 on January 4, 2024. On January 16, 2024, the Senate adopted the substitute amendment on a vote of Ayes, 19; Noes, 13. The Senate then initially refused passage of the bill by taking a tie vote, but subsequently reconsidered the vote and passed the bill, as amended, by a vote of Ayes, 17; Noes, 15.

Senator Jacque had earlier offered Senate Substitute Amendment 1 on May 17, 2023. Senate Substitute Amendment 1 includes many of the changes made by Senate Substitute Amendment 2, except that it does not include the last four changes listed in the description of Senate Substitute Amendment 2, above. On May 30, 2023, the Senate Committee on Natural Resources and Energy voted to adopt the Senate Substitute Amendment 1 and the bill, as amended, both on votes of Ayes, 3; Noes, 2.

For a full history of the bill, visit the Legislature’s [bill history page](#).

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