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# JOEL KITCHENS

STATE REPRESENTATIVE • 1<sup>ST</sup> ASSEMBLY DISTRICT

AB 174: Immunity of Private Campgrounds  
Testimony of State Representative Joel Kitchens  
Assembly Committee on Judiciary  
December 17, 2015

Thank you, Chairman Ott, and members of the Committee on Judiciary for holding this public hearing. Today, I am happy to speak in favor of Assembly Bill 174, as amended by proposed substitute amendment 1. The proposed legislation will give private campground owners a more predictable legal environment.

Camping is an essential element of the tourism industry in Wisconsin, and private campgrounds serve both residents and visitors alike. They wish to be able to continue and expand their business and need legal certainty to do so.

Many lawsuits against campgrounds are instances where a patron is injured by causes beyond the owner's control. Assembly Bill 174 will remedy this situation by protecting private campgrounds from legal action, unless the harm experienced by a patron is the result of an owner's or employee's *willfull and wanton act* or omission.

If the campground owner or operator acts intentionally, with reckless disregard, fails to act after knowledge of impending danger, or fails to discover what could have been discovered by ordinary care, then the owner or operator would still be held liable. Senator LeMahieu and I do not wish to place private campground owners beyond legal action, but it is necessary to ensure that they are not hindered by senseless lawsuits.

Public campgrounds are already protected from lawsuits when an inherent risk of camping or outdoors activity is involved. Such activities would include: fishing, picnicking, hiking, water sports, bird watching, horseback riding, and climbing observation towers, all of which are protected under our recreational use statutes (895.52). With Assembly Bill 174, we would like extend these protections to private campgrounds.

As I have mentioned, private campgrounds will still be held accountable when an injury is the direct result of their intentional action or lack of action to promote public safety. We simply ask that these facilities receive some protection from legal action when in cases involving inherent risks of camping or outdoor activities.

For further information on Assembly Bill 174, I would like to turn it over to Senator LeMahieu. We also have a few supporters and campground owners to hear from as well. Thank you for your time, and I appreciate your consideration of Assembly Bill 174.



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**Testimony of Ann S. Jacobs**  
**Wisconsin Association for Justice**  
**Before the Assembly Judiciary Committee**  
**December 17, 2015**  
**Regarding**  
**2015 Assembly Bill 174**

Good morning, my name is Ann Jacobs. I live and work in Milwaukee where I am the owner of Jacobs Injury Law, S.C. I am the immediate past president of the Wisconsin Association for Justice and a member of its board of directors. On behalf of the association, I am here to speak on AB-174. As always, it is a privilege and honor to testify before this committee.

To begin, we appreciate the opportunity to review and comment on the most recent substitute amendment to this bill. I testified previously before the Senate on the original version of this bill and I am pleased to say the substitute makes several improvements to the bill. However, we continue to have concerns about unintended consequences that will result from way this bill has been drafted. Our concerns center on how the bill treats comparative negligence.

Under current law, a campground owner already has very strong protections against being held responsible for harm they did not cause. As you know, Wisconsin is a comparative negligence state. *See* Wis. Stat. § 895.045(1) (2013-14) (Comparative Negligence). Under this system, a campground owner is only responsible for the percentage of harm they cause, but only when they have caused harm.

Here's how it works. When a case is tried, juries are asked who is at-fault, and then are asked to assign a percentage to each actor. For cases that are resolved through settlements, the vast majority of cases, attorneys on both sides also apply this type of analysis. The goal in either setting is to allocate responsibility. The comparative negligence statute is designed precisely to strike a fair balance between protecting the injured and holding wrongdoers responsible.

Language in this bill eliminates the balanced approach of our comparative negligence regime in a way that will have serious consequences for those visiting Wisconsin campgrounds. The troubling language appears on page 2, line 3 of the substitute, proposed Wis. Stat. § 895.519(1)(b)4. As part of a definition of the “inherent risk of camping,” the bill now reads that an “inherent risk of camping” includes:

**“4. A camper or visitor at the private campground acting in a negligent manner.”**

This provision is problematic for two reasons. First, the dangerous or negligent conduct of another is not an inherent risk of camping. But more importantly, this section of the law would immunize a campground owner whose *actions have caused injury*. This section would provide campground owners with nearly complete protection for their own negligent actions, even where they are nearly 100% at fault.

For example, as drafted, the bill would provide total immunity:

- For a campground owner who drives drunk on the campground and hits a camper or visitor. If the person he hit on the road was merely 5% at fault (say for walking in the dark), the campground owner would be immune.
- For a campground owner who is notified, but does nothing to stop a rowdy bachelor party whose participants later sexually assault a camper or visitor. Even if a jury found the owner 75% at fault for not better policing his campground, the owner would be immune.
- For the campground owner who leaves a septic cover off near a playground and a child falls in. If the campground owner can claim the parents partly responsible for causing the child’s injury, they avoid all liability. Even if the parents were only 5% negligent after allowing an energetic child briefly out of their grasp, the campground owner who is 95% responsible would be immune.

Surely, I think we can agree that the intention of this bill cannot be to protect behavior like this. And yet section (1)(b)4 (page 2, line 3) gives campground owners immunity for their own wrongdoing. Nobody should get to escape responsibility for their actions when they are the one who is most at fault.

**A Simple Fix**

In the spirit of compromise, we ask that the committee remove this section of the bill. We look forward to continued dialogue with you and your staff and welcome future opportunities to provide input on pending legislation.