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# Wisconsin Legislative Council

## AMENDMENT MEMO

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**2023 Assembly Bill 61**

**Assembly Substitute  
Amendment 1**

### 2023 ASSEMBLY BILL 61

2023 Assembly Bill 61 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. 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.

## **ASSEMBLY SUBSTITUTE AMENDMENT 1**

Assembly 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.

## **BILL HISTORY**

Representative Behnke offered Assembly Substitute Amendment 1 on May 17, 2023. On May 24, 2023, the Assembly Committee on Regulatory Licensing Reform recommended adoption of Assembly Substitute Amendment 1 on a vote of Ayes, 4; Noes, 3, and recommended passage of the bill, as amended, on a vote of Ayes, 6; Noes, 1.

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

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