

PIERCE COUNTY WISCONSIN
OFFICE OF THE CORPORATION COUNSEL
PIERCE COUNTY COURTHOUSE
414 W. MAIN STREET P.O. BOX 367
ELLSWORTH, WISCONSIN 54011
715-273-3531 Ext. 6435 or 715-273-6745
Fax: 715-273-6860



Pierce County Wood Cutting Application and Permit

Description:

Pierce County is allowing individuals, upon the granting of a permit, limited permission to go on to County land to cut dead trees for firewood on County property located off of Highway 65 near the Solid Waste Department in Ellsworth, subject to the conditions set forth below.

Conditions:

1. Permits are not transferable and payment is not refundable.
2. The permittee must be present when cutting occurs.
3. The dead trees/firewood cut and removed must be used by the permittee and may not be sold.
4. Each permit shall grant the permittee approval to cut and remove a designated number of full cords of wood. Each permittee may be granted approval to cut and remove a maximum of five full cords of wood. For purposes of estimation, a standard size pick-up truck bed filled with firewood is approximately one-half (1/2) of a full cord of wood, so a full cord equals about two pick-up loads of wood. Pierce County makes no guarantee that the requested and applied for number of cords of dead trees/firewood exists on its applicable property.
5. The permit fee of five dollars (\$5.00) per full cord shall be submitted in advance along with the completed application form.
6. Only dead trees shall be cut and/or removed for firewood. No living trees may be cut. Any person in violation of these conditions will be responsible for the cost and expense of all damage to the property for cutting or otherwise damaging any trees other than dead trees. The permittee agrees to indemnify Pierce County for such damages including but not limited to, the amount necessary to make the County whole for the loss of, and damage to the property, as well as collection costs and attorney fees necessary to enforce this provision.
7. No equipment may be used to drag or remove dead trees/firewood. Driving should be only on or near the main roads or trails.

8. Dead trees may be cut only when soil conditions are frozen or dry and will not cause ruts or damage to trails and/or County property. If conditions become muddy, cutting may be temporarily stopped until they improve.
9. Cutting dead trees/firewood shall not be done in a manner that interferes with the tapping of maple trees (which generally extends from February to April) – if applicable, or any other County business or operation.
10. If, because of weather conditions, the permittee is not able to complete the dead tree/firewood cutting during the year in which the permit is granted, he/she may continue cutting dead trees/firewood during the subsequent year, however cutting shall be completed by April 1st of that year. Upon completion of the cutting of dead trees/firewood the permittee shall immediately notify the Administrative Coordinator at 715-273-6851 and the Corporation Counsel at 715-273-6745.
11. Pierce County may immediately cancel or revoke this permit by oral or written notice to the address or telephone number listed on this application upon breach of any condition of this permit.
12. **The permittee recognizes and understands the applicability of section 895.52 Wisconsin Statutes (copy attached), and agrees to protect, indemnify and save harmless Pierce County and its employees and agents from and against all causes of action, claims, demands, suits, liability or expense by reason of loss or damage to any property or bodily injury to any person, including death, as a direct or indirect result of operations under this permit or in connection with any action or omission of the permittee, who shall defend the County and its employees or agents in any cause of action or claim.**

Applicant:

Name of Permittee: _____
 Address: _____
 City, State, Zip Code: _____
 Telephone Number: _____
 Number of full cords requested: _____

I have read, understand, and agree to the above conditions:

Signature of Permittee: _____
 Date: _____

Return Form:

This completed form should be returned to the address on the above letterhead.

Payment:

Make checks payable to:
 Pierce County

Permit Approval:

The permittee is granted permission to cut dead trees for firewood in accordance with the conditions above.

Signature: _____ Date: _____
 Number of Full Cords Permitted to Cut: _____
 Permit Fee Received: \$ _____

from civil liability for the death of or injury to an individual caused by the commercial equipment or technology.

(3) This section does not apply if the death or injury was caused by a willful or wanton act or omission of the person who donated or accepted reimbursement for the commercial equipment or technology.

(4m) This section does not apply to the manufacturer of the donated commercial equipment or technology.

History: 1995 a. 112; 1997 a. 237; 2005 a. 155.

895.517 Civil liability exemption: solid waste donation or sale. (1) In this section:

(a) "Charitable organization" has the meaning given in s. 895.51 (1) (b).

(b) "Municipality" has the meaning given in s. 289.01 (23).

(c) "Qualified food" has the meaning given in s. 895.51 (1) (e).

(d) "Responsible unit" has the meaning given in s. 287.01 (9).

(e) "Solid waste" has the meaning given in s. 289.01 (33).

(2) Any person who donates or sells, at a price not exceeding overhead and transportation costs, solid waste, or a material that is separated from mixed soil waste, to a materials reuse program that is operated by a charitable organization, municipality or responsible unit is immune from civil liability for the death of or injury to an individual or the damage to property caused by the solid waste or material donated or sold by the person.

(3) This section does not apply if the death or injury was caused by willful or wanton acts or omissions.

(4) This section does not apply to the sale or donation of qualified food.

History: 1997 a. 60; 2005 a. 155.

895.52 Recreational activities; limitation of property owners' liability. (1) DEFINITIONS. In this section:

(a) "Governmental body" means any of the following:

1. The federal government.
2. This state.
3. A county or municipal governing body, agency, board, commission, committee, council, department, district or any other public body corporate and politic created by constitution, statute, ordinance, rule or order.
4. A governmental or quasi-governmental corporation.
5. A formally constituted subunit or an agency of subd. 1., 2., 3. or 4.

(b) "Injury" means an injury to a person or to property.

(c) "Nonprofit organization" means an organization or association not organized or conducted for pecuniary profit.

(d) "Owner" means either of the following:

1. A person, including a governmental body or nonprofit organization, that owns, leases or occupies property.
2. A governmental body or nonprofit organization that has a recreational agreement with another owner.

(e) "Private property owner" means any owner other than a governmental body or nonprofit organization.

(f) "Property" means real property and buildings, structures and improvements thereon, and the waters of the state, as defined under s. 281.01 (18).

(g) "Recreational activity" means any outdoor activity undertaken for the purpose of exercise, relaxation or pleasure, including practice or instruction in any such activity. "Recreational activity" includes hunting, fishing, trapping, camping, picnicking, exploring caves, nature study, bicycling, horseback riding, bird-watching, motorcycling, operating an all-terrain vehicle, ballooning, hang gliding, hiking, tobogganing, sledding, sleigh riding, snowmobiling, skiing, skating, water sports, sight-seeing, rock-climbing, cutting or removing wood, climbing observation towers, animal training, harvesting the products of nature, sport shooting and any other outdoor sport, game or educational activity. "Recreational activity" does not include any organized team

sport activity sponsored by the owner of the property on which the activity takes place.

(h) "Recreational agreement" means a written authorization granted by an owner to a governmental body or nonprofit organization permitting public access to all or a specified part of the owner's property for any recreational activity.

(i) "Residential property" means a building or structure designed for and used as a private dwelling accommodation or private living quarters, and the land surrounding the building or structure within a 300-foot radius.

(2) NO DUTY; IMMUNITY FROM LIABILITY. (a) Except as provided in subs. (3) to (6), no owner and no officer, employee or agent of an owner owes to any person who enters the owner's property to engage in a recreational activity:

1. A duty to keep the property safe for recreational activities.
2. A duty to inspect the property, except as provided under s. 23.115 (2).
3. A duty to give warning of an unsafe condition, use or activity on the property.

(b) Except as provided in subs. (3) to (6), no owner and no officer, employee or agent of an owner is liable for the death of, any injury to, or any death or injury caused by, a person engaging in a recreational activity on the owner's property or for any death or injury resulting from an attack by a wild animal.

(3) LIABILITY: STATE PROPERTY. Subsection (2) does not limit the liability of an officer, employee or agent of this state or of any of its agencies for either of the following:

(a) A death or injury that occurs on property of which this state or any of its agencies is the owner at any event for which the owner charges an admission fee for spectators.

(b) A death or injury caused by a malicious act or by a malicious failure to warn against an unsafe condition of which an officer, employee or agent knew, which occurs on property designated by the department of natural resources under s. 23.115 or designated by another state agency for a recreational activity.

(4) LIABILITY: PROPERTY OF GOVERNMENTAL BODIES OTHER THAN THIS STATE. Subsection (2) does not limit the liability of a governmental body other than this state or any of its agencies or of an officer, employee or agent of such a governmental body for either of the following:

(a) A death or injury that occurs on property of which a governmental body is the owner at any event for which the owner charges an admission fee for spectators.

(b) A death or injury caused by a malicious act or by a malicious failure to warn against an unsafe condition of which an officer, employee or agent of a governmental body knew, which occurs on property designated by the governmental body for recreational activities.

(5) LIABILITY: PROPERTY OF NONPROFIT ORGANIZATIONS. Subsection (2) does not limit the liability of a nonprofit organization or any of its officers, employees or agents for a death or injury caused by a malicious act or a malicious failure to warn against an unsafe condition of which an officer, employee or agent of the nonprofit organization knew, which occurs on property of which the nonprofit organization is the owner.

(6) LIABILITY: PRIVATE PROPERTY. Subsection (2) does not limit the liability of a private property owner or of an employee or agent of a private property owner whose property is used for a recreational activity if any of the following conditions exist:

(a) The private property owner collects money, goods or services in payment for the use of the owner's property for the recreational activity during which the death or injury occurs, and the aggregate value of all payments received by the owner for the use of the owner's property for recreational activities during the year in which the death or injury occurs exceeds \$2,000. The following do not constitute payment to a private property owner for the use of his or her property for a recreational activity:

1. A gift of wild animals or any other product resulting from the recreational activity.

2. An indirect nonpecuniary benefit to the private property owner or to the property that results from the recreational activity.

3. A donation of money, goods or services made for the management and conservation of the resources on the property.

4. A payment of not more than \$5 per person per day for permission to gather any product of nature on an owner's property.

5. A payment received from a governmental body.

6. A payment received from a nonprofit organization for a recreational agreement.

(b) The death or injury is caused by the malicious failure of the private property owner or an employee or agent of the private property owner to warn against an unsafe condition on the property, of which the private property owner knew.

(c) The death or injury is caused by a malicious act of the private property owner or of an employee or agent of a private property owner.

(d) The death or injury occurs on property owned by a private property owner to a social guest who has been expressly and individually invited by the private property owner for the specific occasion during which the death or injury occurs, if the death or injury occurs on any of the following:

1. Platted land.

2. Residential property.

3. Property within 300 feet of a building or structure on land that is classified as commercial or manufacturing under s. 70.32 (2) (a) 2. or 3.

(e) The death or injury is sustained by an employee of a private property owner acting within the scope of his or her duties.

(7) **NO DUTY OR LIABILITY CREATED.** Except as expressly provided in this section, nothing in this section or s. 101.11 nor the common law attractive nuisance doctrine creates any duty of care or ground of liability toward any person who uses another's property for a recreational activity.

History: 1983 a. 418; 1985 a. 29; 1989 a. 31; 1995 a. 27, 223, 227; 1997 a. 242. **NOTE:** 1983 Wis. Act 418, which created this section, contains a statement of "legislative intent" in section 1.

A municipality is immune from liability for a defective highway or public sidewalk only when the municipality has turned the highway or sidewalk over, at least in part, to recreational activities and when damages result from recreational activity. *Bystery v. Village of Sauk City*, 146 Wis. 2d 247, 430 N.W.2d 611 (Cl. App. 1988).

"Recreational activity" does not apply to random wanderings of a young child that are not similar to activities listed in sub. (1) (g). *Shannon v. Shannon*, 150 Wis. 2d 434, 442 N.W.2d 25 (1989).

The state's role as trustee of public waters is equivalent to ownership, giving rise to recreational immunity. *Sauer v. Reliance Insurance Company*, 152 Wis. 2d 234, 448 N.W.2d 256 (Cl. App. 1989).

Indirect pecuniary benefits constitute "payment" under sub. (6) (a). *Douglas v. Dewey*, 154 Wis. 2d 451, 453 N.W.2d 500 (Cl. App. 1990).

"Injury" under sub. (1) (b) includes death. *Moua v. Northern States Power Co.* 157 Wis. 2d 177, 458 N.W.2d 836 (Cl. App. 1990).

By providing a lifeguard a landowner does not assume a duty to provide lifeguard services in a non-negligent manner. *Ervin v. City of Kenosha*, 159 Wis. 2d 464, 464 N.W.2d 654 (1991).

For purposes of sub. (4) (b), conduct is "malicious" when it is the result of hatred, ill will, or revenge, or is undertaken when insult or injury is intended. *Ervin v. City of Kenosha*, 159 Wis. 2d 464, 464 N.W.2d 654 (1991).

Immunity is not limited to injuries caused by defects in property itself, but applies to all injuries sustained during use. *Johnson v. City of Darlington*, 160 Wis. 2d 418, 466 N.W.2d 233 (Cl. App. 1991).

A young child's inability to intend to engage in recreational activity does not render landowner immunity inapplicable when the activity is recreational in nature. *Nelson v. Schreiner*, 161 Wis. 2d 798, 469 N.W.2d 214 (Cl. App. 1991).

Illegal gambling conducted by a club occupying city park land placed the club outside the protection of the immunity statute. *Lee v. Elk Rod & Gun Club Inc.* 164 Wis. 2d 103, 473 N.W.2d 581 (Cl. App. 1991).

A party is not immune as an occupant when evidence unequivocally shows intentional and permanent abandonment of the premises had occurred. *Mooney v. Royal Ins. Co.* 164 Wis. 2d 516, 476 N.W.2d 287 (Cl. App. 1991).

Walking to or from a non-immune activity does not change a landowner's status. *Hupf v. City of Appleton*, 165 Wis. 2d 215, 477 N.W.2d 69 (Cl. App. 1991).

Sub. (2) (b) does not require a person injured by a wild animal to be engaged in a recreational activity for immunity to attach to the property owner. A captive deer is a wild animal. *Hudson v. Janesville Conservation Club*, 168 Wis. 2d 436, 484 N.W.2d 132 (1992).

A municipal pier was the type of property intended to be covered by the recreational immunity statute. *Crowbridge v. Village of Egg Harbor*, 179 Wis. 2d 565, 508 N.W.2d 15 (Cl. App. 1993).

A church that paid a fee to reserve park space, including a ball diamond, for a picnic where a "pickup" softball was played was not a sponsor of an organized team sport

activity under sub. (1) (g). *Weina v. Atlantic Mutual Ins. Co.* 179 Wis. 2d 774, 508 N.W.2d 67 (Cl. App. 1993).

Whether a person intended to engage in recreational activity is not dispositive in determining whether recreational activity is engaged in. The nature and purpose of the activity must be given primary consideration. *Linville v. City of Janesville*, 184 Wis. 2d 705, 516 N.W.2d 427 (1994).

Recreational immunity does not extend to activities of the landowner acting independently of its functions as owner. Immunity did not apply to city paramedics providing service to an accident victim at a city park. *Linville v. City of Janesville*, 184 Wis. 2d 705, 516 N.W.2d 427 (1994).

Limited liability for nonprofit organizations is not unconstitutional on equal protection grounds. *Szarzynski v. YMCA, Camp Minikami*, 184 Wis. 2d 875, 517 N.W.2d 135 (1994).

Visiting a neighbor to say hello is not a recreational activity under this section. *Slevert v. American Family Mut. Ins. Co.* 190 Wis. 2d 413, 528 N.W.2d 413 (1995).

That a local firefighter's picnic generated profits that were used for park maintenance and improvements and the purchase of fire equipment did not result in the event being a commercial, rather than recreational, activity under this section. *Fischer v. Doylestown Fire Department*, 199 Wis. 2d 83, 549 N.W.2d 575 (Cl. App. 1995), 95-0796.

Land need not be open for recreational use for immunity to apply under this section. The focus is on the activity of the person who enters on and uses the land. Immunity applies without regard to the owner's permission. *Verdoljak v. Mosinee Paper Corp.* 200 Wis. 2d 624, 547 N.W.2d 602 (1996), 94-2549.

An activity essentially recreational in nature will not be divided into component parts, at one moment recreational and at another not, in applying this section. *Verdoljak v. Mosinee Paper Corp.* 200 Wis. 2d 624, 547 N.W.2d 602 (1996), 94-2549.

Recreational immunity does not attach to a landowner when an act of the landowner's officer, employee, or agent that is unrelated to the maintenance or condition of the land causes injury to a recreational land user. *Kosky v. International Association of Lions Clubs*, 210 Wis. 2d 463, 565 N.W.2d 260 (Cl. App. 1997), 96-2532.

A portable ice shanty located on a frozen lake does not qualify as recreational "property," and its presence on the lake is insufficient to establish its owner as an "occupant" of the lake entitled to recreational immunity. *Doane v. Helenville Mutual Insurance Co.* 216 Wis. 2d 345, 575 N.W.2d 734 (Cl. App. 1998), 97-1420.

Walking for exercise through a park on the way to do errands was a recreational activity. *Lasky v. City of Stevens Point*, 220 Wis. 2d 1, 582 N.W.2d 64 (Cl. App. 1998), 97-2728.

To find immunity under this section, the court must examine not only the plaintiff's reason for being on the property, but also the activity taking place on the property. While a spectator's presence at a school football game is recreational, the exception from landowner immunity for injuries incurred in recreational activities for sponsors of organized sports extends to spectators, not just participants. *Meyer v. School District of Colby*, 226 Wis. 2d 704, 595 N.W.2d 339 (1999), 98-0482.

An attendee at a fair who was injured while attempting to capture a runaway steer was engaged in recreational activity. There is no "Good Samaritan" exception to the recreational immunity provided by this section. *Schultz v. Grinnell Mutual Reinsurance Co.* 229 Wis. 2d 513, 600 N.W.2d 243 (Cl. App. 1999), 98-3466.

Immunity for nonprofit organizations is not limited to those that act in the public interest and gratuitously open their land to the general public. It is not a violation of equal protection to treat "non-charitable" nonprofit organizations differently than private property owners. *Bethke v. Lauderdale of LaCrosse, Inc.* 2000 WI App 107, 235 Wis. 2d 103, 612 N.W.2d 332, 99-1897.

Although individual condominium unit owners held title to an undivided interest in common areas, a condominium association was an occupant and therefore an owner under sub. (1) (d). *Bethke v. Lauderdale of LaCrosse, Inc.* 2000 WI App 107, 235 Wis. 2d 103, 612 N.W.2d 332, 99-1897.

The owner of property subject to an easement is an "owner" under sub. (1) (d). The plaintiff's walking across the easement to gain access to a boat was recreational as the walk was inextricably connected to recreational activity. The plaintiff user of the easement, who was granted the right to use it by a 3rd-person holder of the easement, was not a social guest of the land owner under sub. (6) (d) expressly and individually invited to use the property. The fact that the easement owner granted the right of use as part of the sale of the boat did not render the landowner exempt from immunity under sub. (6) (a). *Urban v. Grasser*, 2001 WI 63, 243 Wis. 2d 673, 627 N.W.2d 511, 99-0933.

An "owner" under sub. (1) (d) 1. includes an "occupant." A child who is an occupant is capable of extending an invitation that triggers the social guest exception. under sub. (6) (d). A guest's continuous act that begins on an owner's property but propels the guest a few feet from the property where an injury occurs compelled the conclusion that sub. (6) (d) must be construed to allow for the extension of the social guest status to the injuries suffered. *Waters v. Pertzborn*, 2001 WI 62, 243 Wis. 2d 703, 627 N.W.2d 497, 99-1702.

This section is liberally construed in favor of property owners when the activity in question is not specifically listed but is substantially similar to listed activities or when the activity is undertaken in circumstances substantially similar to the circumstances of a recreational activity. *Minnesota Fire & Casualty Insurance Co. v. Paper Recycling of LaCrosse*, 2001 WI 64, 244 Wis. 2d 290, 627 N.W.2d 527, 99-0327.

Because a child's subjective assessment of recreational activity could include every form of child's play, an objective, reasonable adult standard must be applied to determine whether a child's play is recreational. Crawling through stacks of baled paper at an industrial site while lighting matches and starting fires was not recreational activity. *Minnesota Fire & Casualty Insurance Co. v. Paper Recycling of LaCrosse*, 2001 WI 64, 244 Wis. 2d 290, 627 N.W.2d 527, 99-0327.

The nature of property can be a significant factor in determining whether an activity is recreational, although it is not dispositive. That a commercial site is used only for a business purpose that is not open to the public, as indicated by a fence to keep people away, argues against children's mischievous conduct on the premises being substantially similar to a recreational activity. *Minnesota Fire & Casualty Insurance Co. v. Paper Recycling of LaCrosse*, 2001 WI 64, 244 Wis. 2d 290, 627 N.W.2d 527, 99-0327.

A deer stand is a "structure" under sub. (1)(f). A structure or improvement need not be owned by the owner of the underlying land to constitute "property" under sub. (1)(f). *Peterson v. Midwest Security Insurance Co.* 2001 WI 131, 248 Wis. 2d 567, 636 N.W.2d 727, 99-2987.

A suit by an elementary school student injured while playing during a mandatory school recess was not barred by this section because the student did not enter the school property to engage in a recreational activity, but for education purposes in order to comply with the state's compulsory attendance and truancy laws. *Auman v. School District of Stanley-Boyd*, 2001 WI 125, 248 Wis. 2d 548, 635 N.W.2d 762, 00-2356.

Sponsorship under sub. (1)(g) contemplates a relationship between the person or organization paying for or planning the project or activity and the intended beneficiary and envisions a relationship between the sponsor and the activity resulting in financial benefits to the sponsor. That a city sponsored one soccer association did not mean it was a sponsor of all organized soccer team activities on city fields. *Miller v. Wausau Underwriters Insurance Co.* 2003 WI App 58, 260 Wis. 2d 581, 659 N.W.2d 494, 02-1632.

As long as one of the purposes for engaging in the activity is recreation the statute attaches and bars a claim. *Kautz v. Ozaukee County Agricultural Society*, 2004 WI App 202, 276 Wis. 2d 833, 689 N.W.2d 771, 03-3281.

That plaintiff's claim was she was injured when she became infected with E Coli as a result of climbing on farm equipment and not as a result of an activity on land or improvements to land was irrelevant. Whether or not the equipment was property within the meaning of this section, the injuring mechanism was not the farm equipment, but rather the bacteria from animal waste tracked onto the equipment from the defendant's real property and was directly related to the condition or maintenance of the defendant's real property. *Kautz v. Ozaukee County Agricultural Society*, 2004 WI App 202, 276 Wis. 2d 833, 689 N.W.2d 771, 03-3281.

An owner under sub. (1)(d) 1. includes a person who has the actual use of the property without legal title, dominion, or tenancy and encompasses a resident of land who is more transient than either a lessee or an owner. An owner under sub. (1)(d) 2. is a governmental body or nonprofit organization that has a written authorization granted by an owner permitting public access to the owner's property for any recreational activity. It would be unreasonable to allow a snowmobile association immunity if it were granted an easement directly, but disallowing it if the easement went first to a government entity, which then arranged with the association to manage, maintain, and construct the trails necessary for recreational access. *Leu v. Price County Snowmobile Trails Association, Inc.* 2005 WI App 81, 280 Wis. 2d 765, 695 N.W.2d 889, 04-1859.

Walking may or may not be a recreational activity under the statute, depending on the circumstances. Mere presence on property suitable for recreational activity when a plaintiff is injured does not, ipso facto, make this section applicable. Although the injured person's subjective assessment of the activity is pertinent, it is not controlling. A court must consider the nature of the property, the nature of the owner's activity, and the reason the injured person is on the property. A court should consider the totality of circumstances surrounding the activity, including the intrinsic nature, purpose, and consequences of the activity. *Rintelman v. Boys & Girls Clubs of Greater Milwaukee, Inc.* 2005 WI App 246, 288 Wis. 2d 394, 707 N.W.2d 897, 04-2669.

Wisconsin's Recreational Use Statute: Towards Sharpening the Picture at the Edges. 1991 WLR 491.

Minnesota Fire & Casualty Insurance Co. v. Paper Recycling of LaCrosse: Why Property Owners Should Fear the Mischief of Boys at Play and Wisconsin Supreme Court Justices at Work. *Salva*. 2002 WLR 999.

Wisconsin's Recreational Use Statute. *Pendleton*. Wis. Law. May 1993.

895.525 Participation in recreational activities; restrictions on civil liability, assumption of risk. (1) LEGISLATIVE PURPOSE. The legislature intends by this section to establish the responsibilities of participants in recreational activities in order to decrease uncertainty regarding the legal responsibility for deaths or injuries that result from participation in recreational activities and thereby to help assure the continued availability in this state of enterprises that offer recreational activities to the public.

(2) DEFINITION. In this section, "recreational activity" means any activity undertaken for the purpose of exercise, relaxation or pleasure, including practice or instruction in any such activity. "Recreational activity" includes hunting, fishing, trapping, camping, bowling, billiards, picnicking, exploring caves, nature study, dancing, bicycling, horseback riding, horseshoe-pitching, bird-watching, motorcycling, operating an all-terrain vehicle, ballooning, curling, throwing darts, hang gliding, hiking, tobogganing, sledding, sleigh riding, snowmobiling, skiing, skating, participation in water sports, weight and fitness training, sight-seeing, rock-climbing, cutting or removing wood, climbing observation towers, animal training, harvesting the products of nature, sport shooting and any other sport, game or educational activity.

(3) APPRECIATION OF RISK. A participant in a recreational activity engaged in on premises owned or leased by a person who offers facilities to the general public for participation in recreational activities 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 a participant who

accepts the risks under this subsection is contributory negligence, to which the comparative negligence provisions of s. 895.045 shall apply.

(4) RESPONSIBILITIES OF PARTICIPANTS. (a) A participant in a recreational activity engaged in on premises owned or leased by a person who offers facilities to the general public for participation in recreational activities is responsible to do all of the following:

1. Act within the limits of his or her ability.
2. Heed all warnings regarding participation in the recreational activity.
3. Maintain control of his or her person and the equipment, devices or animals the person is using while participating in the recreational activity.
4. 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.

(b) A violation of this subsection constitutes negligence. The comparative negligence provisions of s. 895.045 apply to negligence under this subsection.

(4m) LIABILITY OF CONTACT SPORTS PARTICIPANTS. (a) A participant in a recreational activity that includes physical contact between persons in a sport involving amateur teams, including teams in recreational, municipal, high school and college leagues, may be liable for an injury inflicted on another participant during and as part of that sport in a tort action only if the participant who caused the injury acted recklessly or with intent to cause injury.

(b) Unless the professional league establishes a clear policy with a different standard, a participant in an athletic activity that includes physical contact between persons in a sport involving professional teams in a professional league may be liable for an injury inflicted on another participant during and as part of that sport in a tort action only if the participant who caused the injury acted recklessly or with intent to cause injury.

(5) EFFECT ON RELATED PROVISION. Nothing in this section affects the limitation of property owners' liability under s. 895.52. History: 1987 a. 377; 1995 a. 223, 447; 1997 a. 242; 2005 a. 155.

NOTE: 1987 Wis. Act 377, which created this section, has a prefatory note explaining the act.

This section codifies common law. It does not impose a greater duty of care on individuals than exists at common law. *Rockweit v. Senecal*, 197 Wis. 2d 409, 541 N.W.2d 742 (1995), 93-1130.

Sub. (3) does not mean that all who ski are negligent under all circumstances. Sub. (3) and (4) when read together impose an obligation of ordinary care on a skier to avoid foreseeable harms, including adherence to the conditions enumerated in sub. (4). *Ansan v. Cascade Mountain, Inc.* 223 Wis. 2d 39, 588 N.W.2d 321 (Cl. App. 1998), 97-3514.

895.527 Sport shooting range activities; limitations on liability and restrictions on operation. (1) In this section, "sport shooting range" means an area designed and operated for the use and discharge of firearms.

(2) A person who owns or operates a sport shooting range is immune from civil liability related to noise resulting from the operation of the sport shooting range.

(3) A person who owns or operates a sport shooting range is not subject to an action for nuisance or to zoning conditions related to noise and no court may enjoin or restrain the operation or use of a sport shooting range on the basis of noise.

(4) Any sport shooting range that exists on June 18, 1998, may continue to operate as a sport shooting range at that location notwithstanding any zoning ordinance enacted under s. 59.69, 60.61, 60.62, 61.35 or 62.23 (7), if the sport shooting range is a lawful use or a legal nonconforming use under any zoning ordinance enacted under s. 59.69, 60.61, 60.62, 61.35 or 62.23 (7) that is in effect on June 18, 1998.

(5) Any sport shooting range that exists on June 18, 1998, may continue to operate as a sport shooting range at that location notwithstanding all of the following:

(a) Section 167.30, 941.20 (1) (d) or 948.605 or any rule promulgated under those sections regulating or prohibiting the discharge of firearms.