



DEVIN LEMAHIEU

STATE SENATOR

DATE: June 2, 2015
RE: **Testimony on 2015 Senate Bill 131**
TO: The Senate Committee on Judiciary and Public Safety
FROM: Senator Devin LeMahieu

Mr. Chairman and committee members, thank you for taking time today to discuss Senate Bill 131, relating to the immunity of public campgrounds. Representative Kitchens and I have introduced Senate Bill 131 to provide clear guidance on legal responsibilities and expectations for personal injuries and property damage that occur at private campgrounds.

As you know, the tourism industry plays a vital role to our state's economy. In Wisconsin, over 150 privately owned campgrounds provide recreational opportunities for residents and visitors to get outdoors and enjoy all that our wonderful state has to offer. Unfortunately, private campgrounds are being put at risk due to a number of frivolous lawsuits.

Senate Bill 131 ensures that the owner or operator of the campground or their employees will not be held liable for property damage or personal injuries that occur unless the injury is caused by their *willful or wanton act* or omission.

Under this proposal a private campground owner or operator may not escape liability entirely. 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.

Camping, and the activities experience while camping involve a certain inherent risk of the outdoors. In fact, many of these activities are already protected from liability under our recreational use statutes (895.52), including: fishing, picnicking, hiking, water sports, bird watching, horseback riding, and climbing observation towers. This bill extends a similar protection to all private campgrounds.



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Also, similar protections are already in place for public campgrounds across Wisconsin. Public campgrounds face immunity so long as the action is not the result of a malicious act or malicious failure to warn. This is a higher standard than the “willful or wanton” language used in SB 131.

SB 131 strikes the appropriate balance between immunity and public safety. The current bill has been improved from a previous version to incorporate an intermediary level of protection for campground owners. If private campgrounds act wrongfully and cause injury to patrons, they would still be able to be held responsible.

Now we would like to turn it over to some of the campground owners attending today so you can hear about the difficulties they have been facing. I hope you will join us in supporting this improvement to our state’s laws. These protections under SB 131 will help assure the continued availability of enterprises that offer recreational activities to the public.



JOEL KITCHENS

STATE REPRESENTATIVE • 1ST ASSEMBLY DISTRICT

SB 131/AB 174 Testimony

Thank you Chairman Wanggaard and members of the committee for allowing me to testify today in support of Senate Bill 131. As Senator LeMaheiu said, this is a straightforward bill that is meant to provide clear guidance on legal responsibilities and expectations for personal injuries and property damage that occurs at private campgrounds.

Tourism is a large part of our state's economy, and camping is certainly a very important component of that. Like any other outdoor activity, camping has inherent risk. Senate Bill 131 aims to protect owners and operators of private campgrounds from being held liable for property damage and personal injuries that occur through no fault of their own. Frivolous lawsuits create a substantial hardship for the campground owners who are a very important part of our tourism economy.

It is important to note that SB 131 does not give private campground owners carte blanche to act recklessly. If property damage or personal injury occurs due to a willful or wanton act or omission on the part of the owner or operator or their employees, they will still be held liable.

Our state has a rich history of providing outdoor recreation to our citizens, as well as those of other states. In my district, maybe more than any other, camping and the outdoors provide a real economic boon. Senate Bill 131 will help to ensure that our private camping industry will continue to be strong and not bogged down by petty lawsuits.

Again, thank you for allowing me to speak in favor of Senate Bill 131. I look forward to discussing the merits of this bill.



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BRYAN ROESSLER
EXECUTIVE DIRECTOR

From: Wisconsin Association for Justice
President Ann S. Jacobs

To: Senate Committee on Judiciary and Public Safety
Rep. Van Wanggaard, Chair

Re: Testimony regarding 2015 Senate Bill 131

Date: June 2, 2015

Summary:

The Wisconsin Association for Justice (WAJ) opposes Senate Bill 131 for three reasons:

1. There is no immunity to any business or entity in Wisconsin that is this broad and poses this level of danger to the public;
2. The definition of "private campgrounds" is too broad and could even cover swimming pools and hotels;
3. There is no definition of "willful and wanton" conduct.

As written, SB-131 jeopardizes the safety of individuals and families that camp at private campgrounds in Wisconsin.

The Grant of Immunity Is Unprecedented and Dangerous

The scope of immunity provided by SB-131 is remarkable in its scope. It protects campground owners and employees who act unreasonably and hurt their patrons and the community. The creation of a statutory immunity slams shut the courthouse door on meritorious and serious claims. It is the single most serious step the legislature can take to address a liability issue that comes before it. An immunity is a blanket mandate to the court that a citizen's lawsuit be dismissed before any facts concerning that lawsuit are heard.

Consider the following situations where campground owners and employees would be immune under this law:

- A campground employee decided to use a 357 Magnum pistol loaded with birdshot to try to get rid of pesky birds around the pool area. He pointed the gun in the direction of children who were standing near a fence on the mini golf course and fired the gun at a bird. Missed the bird but the birdshot ricocheted and injured the children.¹

¹ This was an actual case brought by a WAJ member.

- A campground employee repairs a cabin’s heating system instead of calling in a professional and carbon monoxide is created, killing a family renting the cabin.
- A campground owner starts a burn pile to get rid of leaves. The fire escapes the campground and burns hundreds of surrounding acres of land, including several homes and buildings outside the campground.²
- The campground employees tasked with making food for the snack shack fail to take ordinary food-safety precautions, causing an e-coli outbreak that hospitalizes dozens of guests.
- The campground runs out of pool chemicals (even though such chemicals are required by law) but chooses not to close the pool, causing significant gastrointestinal illnesses to swimmers.
- A campground manager, aware of impending storm with predicted significant straight-line winds, does nothing to warn campers in tents under the trees of the prediction. The storm hit and trees fell on the tents resulting in significant injuries to campers.³
- A campground owner turns a blind eye to underage drinking, under a “don’t ask don’t tell” policy and drunken teens drive off and kill themselves and others.

Immunity undermines the principle that individuals should be held responsible for their own actions, including negligent actions that hurt other people. If a camper ignores a stop sign on a campground and hurts someone, we expect them to pay for the damages and harm they cause. Under this bill, if a campground owner ignores the same stop sign and kills someone, he is immune. Under no view of rational public policy does such a situation make sense. This also does serious damage to the constitutional rights that are guaranteed to seriously injured victims in the state of Wisconsin — a right to a remedy.

Definition of Campground Too Broad

Under SB-131 the definition of private campground “means a facility that is issued a campground permit under s. 254.47 and that is owned and operated by a private property owner, as defined in s. 895.52 (1) (e).”

Wis. Stat. § 254.47 is a recreational permit statute. It authorizes a department of health to “issue permits to and regulate campgrounds and camping resorts, recreational and educational camps and public swimming pools.” There is no specific definition of a private campground. Is it the intention to have this law apply to camping resorts (which could include a hotel), education camps and public swimming pools?

DHS 178.03(3) contains another definition of campground. “‘Campground’ means any parcel or tract of land owned by a person, the state or a local government, which is designed, maintained, intended or used for the purpose of providing sites for nonpermanent overnight use by 4 or more camping units, or by one to 3 camping units if the parcel or tract of land is represented as a campground.”

The mixing and matching of these terms creates confusion and will surely lead to an expansion of immunity to unintended businesses.

² A very similar fact situation was litigated by a WAJ member.

³ This was another actual case involving a WAJ member.

Willful and Wanton Undefined

There is no definition of “willful and wanton” in the statute. This could lead to confusion and conflicting interpretations of the law. Last session the Legislature passed an Agri-Tourism Bill (2013 Wisconsin Act 269) providing immunity for inherent risks of participants in Agri-Tourism. The statute, provides immunity if certain conditions are met – like posting a warning. However, Wis. Stat. § 895.524 (2) (b) provides that an “agricultural tourism provider is not immune from civil liability for injury to or the death of a participant if any of the following applies:

895.524(2)(b)1.a. a. The agricultural tourism provider acts with a willful or wanton disregard for the safety of the participant. In this subd. 1. a., “willful or wanton disregard” means conduct *committed with an intentional or reckless disregard for the safety of others, such as by failing to exercise ordinary care to prevent a known danger or to discover a danger.* b. The agricultural tourism provider intentionally causes the participant's injury or death.

WAJ believes that if this bill is adopted (which we do not support), this bill should adopt a similar definition of willful and wanton.

Conclusion

WAJ believes there is no basis or justification for giving private campground owners civil immunity for negligent conduct. The opportunities to cause harm to patrons and surrounding communities is too great for such a remarkable elimination of civil liability. While WAJ will often appear at a hearing on legislation we oppose and offer suggestions on how to approve it, this bill is one where we see no solution to the problems with this bill. WAJ urges that this bill not be passed.



*formerly the
Wisconsin Innkeepers Association*

Serving the lodging
industry for more than
100 years

June 2, 2015

To: Senate Committee on Judiciary and Public Safety
Senator Van Wanggaard, Chair

From: Trisha A. Pugal, CAE
President, CEO

RE: Concerns with SB 131 Immunity of Private Campgrounds

The Wisconsin Hotel & Lodging Association represents over 700 lodging properties ranging from small family resorts to large hotels around the state of Wisconsin. Within our membership we have multiple properties that also offer onsite camping. With this broad representation of lodging opportunities available to the public comes a different perspective from those that solely represent campgrounds.

Our Board of Directors has voted to oppose this bill with its more narrow scope, however today we are speaking for informational purposes as we believe there may be many who are not aware of how the campground and lodging industries are becoming more intertwined than in past years.

Many small family resorts offer a rustic natural surrounding with cabins or cottages, however they are licensed as lodging properties instead of campgrounds. In addition, a growing number of campgrounds now offer structures for rent to the public, such as cabins, park models, etc. with similar rustic natural surroundings. In fact, legislation is advancing to create special rules for "camping units", which are small cabins.

Our point here is not to oppose the concept of immunity for such surroundings servicing paid overnight guests in a more natural environment, but to suggest to the Committee that the very same concepts should apply to the servicing of paid overnight guests in similar natural environments such as small family resorts.

While a few of our members are licensed solely as campgrounds, some are "dual-licensed" meaning they have both campground and lodging licenses. If this legislation provides immunity for solely campground licensees, what happens to the dual licensees? Would this be interpreted as the immunity

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100 years

applies to the entire grounds, or would there need to be markings drawn to figure where part of the property is not covered, due to a differently licensed structure located on the same property?

Our interests are to provide equity of application and clarity in interpretations between types of properties servicing overnight guests that are finding more and more similarities.

We respectfully ask this Committee to consider equitable treatment of properties with similar surroundings and to ensure that the reasoning for any differentiation is logical and clearly delineated.

Thank you for your consideration.

CC: WH&LA Executive Committee, Legislative & Tourism Committee Chair, and Kathi Kilgore, Contract Lobbyist.

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NOTICE OF WISCONSIN LAW

Wisconsin Statutes 895.525 (3) & (4) States:

. . . A participant in a recreational activity . . . accepts the risks inherent in the recreational activity of which the ordinary prudent person is or should be aware.

A participant in recreational activity . . . 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 injury to himself or herself or to other persons while participating in the recreational activity

A violation of this law constitutes negligence.

Wisconsin State Statutes 895.525 (3) & (4).

Signature: _____

Date: _____