2013 Wisconsin Act 116, section 32 (1) (b), shall be payable only from funds of the authority.

History: 2013 a. 20, 116; 2015 a. 55, 85.

895.515 Civil liability exemption; equipment or technology donation. (1) In this section:

(a) "Commercial equipment or technology" means goods or related procedures used or bought for use primarily in a business, including farming and a profession.

(b) "Institution of higher education" means an institution within the University of Wisconsin System, a technical college or a private, nonprofit institution of higher education located in this state.

(2) Any person engaged in the sale or use of commercial equipment or technology, for profit or not for profit, who donates any commercial equipment or technology to a public or private elementary or secondary school, a tribal school, as defined in s. 115.001 (15m), or an institution of higher education or who accepts reimbursement in an amount not to exceed overhead and transportation costs for any commercial equipment or technology provided to a public or private elementary or secondary school, to a tribal school, or to an institution of higher education is immune 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; 2009 a. 302.

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.

895.519 Civil liability exemption; private campgrounds. (1) In this section:

(am) "Inherent risk of camping" means a danger or condition that is an integral part of camping, including dangers posed by any of the following:

1. Features of the natural world, such as trees, tree stumps, roots, brush, rocks, mud, sand, and soil.

2. Uneven or unpredictable terrain.

3. Natural bodies of water.

4. Another camper or visitor at the private campground acting in a negligent manner, where the campground owner or employees are not involved.

5. A lack of lighting, including lighting at campsites.

6. Campfires in a fire pit or enclosure provided by the campground.

7. Weather.

8. Insects, birds, and other wildlife.

(bm) "Private campground" means a facility that is issued a campground license under s. 97.67 and that is owned and operated by a private property owner, as defined in s. 895.52 (1) (e).

(2) Except as provided in sub. (3), a private campground, an owner or operator of a private campground, and any employees and officers of a private campground or private campground owner or operator are immune from civil liability for acts or omissions related to camping at a private campground if a person is injured or killed, or property is damaged, as a result of an inherent risk of camping.

(3) The immunity of sub. (2) does not apply if the person seeking immunity does any of the following:

(a) Intentionally causes the injury, death, or property damage.

(b) Acts with a willful or wanton disregard for the safety of the party or the property damaged. In this paragraph, "willful or wanton disregard" means conduct committed with an intentional or reckless disregard for the safety of others.

(c) Fails to conspicuously post warning signs of a dangerous inconspicuous condition known to him or her on the property that he or she owns, leases, rents, or is otherwise in lawful control or possession of.

(4) This section does not limit the immunity created under s. 895.52.

(5) Nothing in this section affects the assumption of risk under s. 895.525 by a person participating in a recreational activity including camping.

History: 2015 a. 293; 2017 a. 365 ss. 87, 110.

The Exculpatory Contract and Public Policy. Anzivino. 102 MLR 747 (2019).

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

(ag) "Agricultural tourism activity" means an educational or recreational activity that takes place on a farm, ranch, grove, or other place where agricultural, horticultural, or silvicultural crops are grown or farm animals or farmed fish are raised, and that allows visitors to tour, explore, observe, learn about, participate in, or be entertained by an aspect of agricultural production, harvesting, or husbandry that occurs on the farm, ranch, grove, or other place.

(ar) "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 or utility terrain vehicle, operating a vehicle, as defined in s. 340.01 (74), on a road designated under s. 23.115, recreational aviation, 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, participating in an agricultural tourism activity, 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.

(hm) "Recreational aviation" means the use of an aircraft, other than to provide transportation to persons or property for compensation or hire, upon privately owned land. For purposes of this definition, "privately owned land" does not include a public–use airport, as defined in s. 114.002 (18m).

(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.

7. A payment made to purchase products or goods offered for sale on the property.

(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, s. 101.11, or s. 895.529 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; 2011 a. 93, 208; 2013 a. 20, 269, 318; 2015 a. 195.

NOTE: 1983 Wis. Act 418 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 (Ct. App. 1988). See also Langenhahn v. West Bend Mutual Insurance Co., 2019 WI App 11, 386 Wis. 2d 243, 926 N.W.2d 210, 17–2178.

"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 Co., 152 Wis. 2d 234, 448 N.W.2d 256 (Ct. App. 1989).

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

"Injury" under sub. (1) (b) includes death. Moua v. Northern States Power Co., 157 Wis. 2d 177, 458 N.W.2d 836 (Ct. 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 (Ct. 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 (Ct. 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 (Ct. 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 (Ct. 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 (Ct. 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 (Ct. 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 (Ct. 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 Minikani, 184 Wis. 2d 875, 517 N.W.2d 135 (1994).

Visiting a neighbor to say hello is not a recreational activity under this section. Sievert 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 (Ct. 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 (Ct. 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 (Ct. 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 (Ct. 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 (Ct. 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.

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.

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.

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 childrens' 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 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.

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.

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 203, 276 Wis. 2d 833, 688 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 203, 276 Wis. 2d 833, 688 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.

The legislature did not enact this section to stop landowners from engaging in negligent behavior, but to induce property owners to open their land for recreational use. Recreational users are to bear the risk of the recreational activity. Held v. Ackerville Snow Club, 2007 WI App 43, 300 Wis. 2d 498, 730 N.W.2d 428, 06–0914.

This section does not distinguish between active and passive negligence. Claims for passive negligence, such as a snowmobile club's alleged failure to retrieve grooming equipment from a trail, were no more viable than claims for active negligence, such as an alleged decision to leave the disabled equipment partially on the trail in a blind curve. All of the acts alleged were related to the condition or maintenance of the snowmobile trail. Held v. Ackerville Snow Club, 2007 WI App 43, 300 Wis. 2d 498, 730 N.W.2d 428, 06–0914.

Sub. (1) (c) does not define nonprofit by referencing the chapter under which corporations were incorporated, either ch. 180 or 181, so that factor is not dispositive of the question. It would be an absurd result to read this section as making a for–profit organization out of an organization that throughout its existence has been governed by articles of incorporation that define it as a nonprofit, has been documented by state agencies as a nonprofit, and has been in compliance with IRS regulations as a nonprofit. De La Trinidad v. Capitol Indemnity Corp., 2009 WI 8, 315 Wis. 2d 324, 759 N.W.2d 586, 07–0045.

An occupant under sub. (1) (d) 1. includes persons who, while not owners or tenants, have the actual use of land. Occupant includes one who has the actual use of

property without legal title, dominion, or tenancy. In order to give meaning to "occupies," the term should be interpreted to encompass a resident of land who is more transient than either a lessee or an owner. Milton v. Washburn County, 2011 WI App 48, 332 Wis. 2d 319, 797 N.W.2d 924, 10–0316.

By including "cutting or removing wood" within the definition of "recreational activity," the legislature made a policy choice that engaging in the activity of "cutting or removing wood" is a recreational activity. In cases in which an individual was injured while engaging in an activity specifically enumerated under the statute, the courts have determined that the activity is "recreational," without examining the various aspects or the purposes of the activity. WEA Property & Casualty Insurance Company v. Krisik, 2013 WI App 139, 352 Wis. 2d 73, 841 N.W.2d 290, 11–1335.

For purposes of this section, sub. (1) (d) 1. defines an "owner," as a person "that owns, leases or occupies property." It is not the rule that one occupies property for purposes of the recreational immunity statute only when there is express permission to enter the property. WEA Property & Casualty Insurance Co. v. Krisik, 2013 WI App 139, 352 Wis. 2d 73, 841 N.W.2d 290, 11–1335.

Case law makes clear that the act of walking to or from an immune activity constitutes recreational activity. Carini v. ProHealth Care, Inc., 2015 WI App 61, 364 Wis. 2d 658, 869 N.W.2d 515, 14–1131.

Recreational immunity applies when a temporary condition is placed upon the land. The length of time the allegedly negligent unsafe condition is present does not matter. A temporary, artificial condition may constitute a "condition" of the land under sub. (2) (a) 3. Carini v. ProHealth Care, Inc., 2015 WI App 61, 364 Wis. 2d 658, 869 N.W.2d 515, 14–1131.

The defendant hot air balloon company was not entitled to recreational immunity because the defendant was not an "occupier" of land under sub. (1) (d) 1. None of the prior cases interpreting this section has granted immunity to a third party not responsible for opening up the land to the public. Defining the defendant as an "occupier" would not further the policy of opening as much property as possible for recreational use because the land was already open for public recreational purposes. Roberts v. T.H.E. Insurance Co., 2016 WI 20, 367 Wis. 2d 386, 879 N.W.2d 492, 14–1508.

The defendant hot air balloon company was not an owner of property under sub. (1) (d) 1. as the balloon was not a structure and not "property" under sub. (1) (f). The hot air balloon ride was not constructed on real property. It was transient, designed to be moved at the end of the day, and not designed to remain in one place. Roberts v. T.H.E. Insurance Co., 2016 WI 20, 367 Wis. 2d 386, 879 N.W.2d 492, 14–1508.

"Supervising" other persons, who are themselves engaged in recreational activities, is a "recreational activity" within the meaning of sub. (1) (g). Such supervision involves actively overseeing or directing the performance of the recreational activity of another. Thus, "supervision" is akin to, and subsumed within, "practice" and "instruction" in a recreational activity, which the legislature specifically identified as giving rise to immunity. Wilmet v. Liberty Mutual Insurance Co., 2017 WI App 16, 374 Wis. 2d 413, 893 N.W.2d 251, 15–2259.

Each recreational immunity case poses an intensely fact–driven inquiry. The court applies a multi–factor test to ascertain whether a particular activity is "substantially similar" to those enumerated in the statute, including: 1) the activity's intrinsic nature; 2) the purpose of the activity; 3) the activity's consequences; 4) the property user's intent and reason for being on the property; 5) the nature of the property; and 6) the property owner's intent. Wilmet v. Liberty Mutual Insurance Co., 2017 WI App 16, 374 Wis. 2d 413, 893 N.W.2d 251, 15–2259.

This section does not define the term "agent." An agent is one who acts on behalf of and is subject to reasonably precise control by the principal for the tasks the person performs within the scope of the agency. An agent may be either an employee or an independent contractor. An independent contractor may or may not be an agent. Whether an independent contractor is an agent is a fact–specific inquiry. In this case, there was no evidence that the property owner either controlled the details of the contractor's work or formulated any reasonably precise specifications for that work. The contractor was not the owner's agent for purposes of this section. Westmas v. Creekside Tree Service, Inc., 2018 WI 12, 379 Wis. 2d 471, 907 N.W.2d 68, 15–1039. But see Lang v. Lions Club of Cudahy Wisconsin, Inc., 2020 WI 25, 390 Wis. 2d 627, 939 N.W.2d 582, 17–2510.

The definition of "occupy" in the context of this section is "to take and hold possession." A tree trimming company that moved from temporary location to temporary location for the limited purpose of trimming trees that did not have authority to open up the land to the public and that could not be said to have taken and held possession of the property was not an occupier and thus not a statutory owner of the property for purposes of this section. Westmas v. Creekside Tree Service, Inc., 2018 WI 12, 379 Wis. 2d 471, 907 N.W.2d 68, 15–1039.

Discussing what constitutes an agency relationship for purposes of recreational immunity under sub. (2). Lang v. Lions Club of Cudahy Wisconsin, Inc., 2020 WI 25, 390 Wis. 2d 627, 939 N.W.2d 582, 17–2510.

The Exculpatory Contract and Public Policy. Anzivino. 102 MLR 747 (2019).

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.

Recreational Liability: Plaintiff–friendly Standards Remain. Pendleton. Wis. Law. Oct. 2017.

As I See It: Trouble by Design: Recreational Immunity Statute a Barrier to Justice. Rogers. Wis. Law. Nov. 2017.

895.523 Recreational activities in a school building or on school grounds; limitation of liability. (1) DEFINITIONS. In this section:

(a) "Governing body of a charter school" means the person that operates a charter school established under s. 118.40 (2) or (2m) or the entity that operates a charter school established under s. 118.40 (2r) or (2x).

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

(c) 1. Except as provided in subd. 2., "recreational activity" means all of the following:

a. Any indoor physical activity, sport, team sport, or game, whether organized or unorganized, undertaken for the purpose of exercise, relaxation, diversion, education, or pleasure.

b. Any outdoor activity undertaken for the purpose of exercise, relaxation, or pleasure, including practice or instruction in any such activity. In this subd. 1. b., "outdoor 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.

2. "Recreational activity" does not include any indoor or outdoor organized team sport or activity organized and held by a school district, school board, or governing body of a charter school.

(d) "Recreational agreement" means a written authorization granted by a school board or the governing body of a charter school to a person that permits public access to all or a specified part of the school grounds for the purpose of any recreational activity and that satisfies the requirements under sub. (5).

(e) "School board" means the school board or board of school directors in charge of the public schools of a school district.

(f) "School building" means a building designed for and used as a school by a school district, by a school board, or by the governing body of a charter school.

(g) "School grounds" means real property, and any school buildings, accessory buildings, structures, and improvements thereon, owned, leased, or rented by a school district, by a school board, or by the governing body of a charter school and used primarily for public school purposes.

(gm) "Spectator" means a person who attends or watches a recreational activity but does not engage or participate in or intend to engage or participate in the recreational activity.

(h) "Sport" means an activity requiring physical exertion and skill and which, by its nature and organization, is competitive and includes a set of rules for play.

(2) NO DUTY; IMMUNITY FROM LIABILITY. (a) Except as provided in sub. (3), no school district, no school board, no governing body of a charter school, and no officer, employee, or agent of a school board or of a governing body of a charter school, owes to any person who enters the school grounds of the school board or of the governing body of a charter school to engage or participate in a recreational activity held pursuant to a recreational agreement any of the following:

1. A duty to keep the school grounds safe for the recreational activity.

2. A duty to inspect the school grounds.

3. A duty to give warning of an unsafe condition, use, or activity on the school grounds.

(b) Except as provided in sub. (3), no school district, no school board, no governing body of a charter school, and no officer, employee, or agent of a school board or of a governing body of a charter school, is liable for the death of, any injury to, or any death or injury caused by, a person engaging or participating in a recreational activity held pursuant to a recreational agreement and taking place on the school grounds of the school board or of the governing body of a charter school.

(3) LIABILITY. Subsection (2) does not limit the liability of a school district, a school board, a governing body of a charter school, or an officer, employee, or agent of the school board or of the governing body of a charter school for any of the following:

(a) A death or injury caused by a malicious act or by a malicious failure to warn against an unsafe condition of which an offi-