

# State of Wisconsin



2015 Senate Bill 463

Date of enactment: **February 29, 2016**

Date of publication\*: **March 1, 2016**

## 2015 WISCONSIN ACT 168

AN ACT *to repeal* 167.33 (1) (d), 167.33 (3) (g) 1. and 167.33 (3) (g) 2.; *to renumber* 167.33 (1) (a); *to renumber and amend* 167.33 (1) (c), 167.33 (1) (o), 167.33 (3) (b) and 167.33 (3) (g) (intro.); *to amend* 15.347 (20) (b) 6., 167.33 (title), 167.33 (1) (b), 167.33 (1) (f), 167.33 (1) (g), 167.33 (1) (h), 167.33 (1) (L), 167.33 (1) (m), 167.33 (2) (title), 167.33 (2) (b) 1., 167.33 (2) (f), 167.33 (2) (h), 167.33 (3) (a), 167.33 (3) (f) (intro.), 167.33 (3) (f) 5., 167.33 (3) (f) 6., 167.33 (3) (h), 167.33 (3) (j) 1., 167.33 (3) (j) 2., 167.33 (4) (a), 167.33 (4) (ag), 167.33 (4) (b) 2., 167.33 (5) (title), 167.33 (5) (a) 13., 167.33 (5) (b) 11., 895.526 (2) (b), 895.526 (title), 895.526 (2) (title), 895.526 (2) (a), 895.526 (2) (b), 895.526 (2) (c), 895.526 (2) (d), 895.526 (3) (intro.), 895.526 (3) (b) and 895.526 (4) (a); and *to create* 167.33 (1) (ar), 167.33 (1) (dm), 167.33 (3) (am), 167.33 (3) (b) 2., 167.33 (3) (em) and 167.33 (5) (c) of the statutes; **relating to:** duties of ski area operators and persons who bike in a ski area, and liability of ski area operators.

*The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:*

**SECTION 1.** 15.347 (20) (b) 6. of the statutes is amended to read:

15.347 (20) (b) 6. Persons who engage in snow alpine sports.

**SECTION 2.** 167.33 (title) of the statutes is amended to read:

**167.33 (title) Snow Alpine sports.**

**SECTION 3.** 167.33 (1) (a) of the statutes is renumbered 167.33 (1) (am).

**SECTION 4.** 167.33 (1) (ar) of the statutes is created to read:

167.33 (1) (ar) "Biking" means riding a bicycle within a ski area after purchasing or receiving a ticket, pass, or license from the ski area operator.

**SECTION 5.** 167.33 (1) (b) of the statutes is amended to read:

167.33 (1) (b) "Competition" means any event authorized by a ski area operator, or by an agent of a ski

area operator, that involves a comparison of skills used in one or more ~~snow~~ alpine sports. "Competition" includes training sessions for such an event.

**SECTION 6.** 167.33 (1) (c) of the statutes is renumbered 167.33 (1) (om) and amended to read:

167.33 (1) (om) "Freestyle Terrain features" means man-made features that include boxes, jumps, hits, jibs, tabletops, spikes, take-off ramps, landings, banks, rails, rollers, half pipes, picnic tables, logs, and pipes.

**SECTION 7.** 167.33 (1) (d) of the statutes is repealed.

**SECTION 8.** 167.33 (1) (dm) of the statutes is created to read:

167.33 (1) (dm) "Freestyle terrain" means an area that includes half-pipes, terrain parks, terrain gardens, freestyle courses, or other terrain features. Freestyle terrain does not include an area groomed with natural and man-made surface variations to aid new skiers in learning to ski or natural or man-made mogul fields.

**SECTION 9.** 167.33 (1) (f) of the statutes is amended to read:

\* Section 991.11, WISCONSIN STATUTES: Effective date of acts. "Every act and every portion of an act enacted by the legislature over the governor's partial veto which does not expressly prescribe the time when it takes effect shall take effect on the day after its date of publication."

167.33 (1) (f) “Lift” means any aerial tramway or lift, a surface lift, a tow, or a conveyor used by a ski area operator to transport participants in ~~snow~~ alpine sports at a ski area.

**SECTION 10.** 167.33 (1) (g) of the statutes is amended to read:

167.33 (1) (g) “Participant in ~~a snow~~ an alpine sport” means an individual who has a pass or ticket to engage in an alpine sport and who is engaged in ~~a snow~~ an alpine sport or who is walking or otherwise traveling within a ski area for purposes of engaging in the sport. “Participant in ~~a snow~~ an alpine sport” also means an individual who is present at a ski area to observe others engaged in ~~a snow~~ an alpine sport or who is a passenger on a lift. “Participant in ~~a snow~~ an alpine sport” includes an individual that is an employee of a ski area operator when he or she is acting outside the scope of his or her employment.

**SECTION 11.** 167.33 (1) (h) of the statutes is amended to read:

167.33 (1) (h) “Ski area” means trails, terrains, and other outdoor areas that are used by individuals engaged in ~~snow~~ alpine sports and that is administered as a single enterprise by a ski area operator.

**SECTION 12.** 167.33 (1) (L) of the statutes is amended to read:

167.33 (1) (L) “Skiing” means downhill skiing, alpine skiing, nordic skiing, cross-country skiing, ski biking, telemarking, snowshoeing, or snowboarding.

**SECTION 13.** 167.33 (1) (m) of the statutes is amended to read:

167.33 (1) (m) “Sledding” means sliding down a prepared course on sleds, toboggans, ~~ski bikes~~, or comparable devices. “Sledding” excludes tubing.

**SECTION 14.** 167.33 (1) (o) of the statutes is renumbered 167.33 (1) (ag) and amended to read:

167.33 (1) (ag) “~~Snow~~ Alpine sport” means skiing, sledding, biking, or tubing, ~~or freestyling~~.

**SECTION 15.** 167.33 (2) (title) of the statutes is amended to read:

167.33 (2) (title) CONDITIONS AND RISKS OF ~~SNOW~~ ALPINE SPORTS.

**SECTION 16.** 167.33 (2) (b) 1. of the statutes is amended to read:

167.33 (2) (b) 1. Snow, ice, crust, slush, soft spots, holes, grooves, bare spots, mud, loose dirt, cuts, rocks, boulders, water, puddles, creeks, streams, cliffs, drop-offs, or tracks from foot traffic or ski area vehicles.

**SECTION 17.** 167.33 (2) (f) of the statutes is amended to read:

167.33 (2) (f) The risk of collision with other participants in ~~snow~~ alpine sports, employees of a ski area operator, or ski area infrastructure.

**SECTION 18.** 167.33 (2) (h) of the statutes is amended to read:

167.33 (2) (h) The greater risk of collision, injury, or death in treed areas, in areas where competitions are held, and in areas ~~where freestyling is allowed of freestyle terrain~~.

**SECTION 19.** 167.33 (3) (a) of the statutes is amended to read:

167.33 (3) (a) *Notice on tickets required.* ~~Each~~ Except as provided in par. (am), each ski area operator shall print on each ticket or season pass that it issues to participants in ~~snow~~ alpine sports the following warning:

“WARNING: Under Wisconsin law, each participant in ~~a snow~~ an alpine sport assumes the risk of injury or death to person or injury to property resulting from the conditions and risks that are considered to be inherent in ~~a snow~~ an alpine sport, has a number of duties that must be met while engaging in ~~a snow~~ an alpine sport, and is subject to limitations on the ability to recover damages from a ski area operator for injuries or death to a person or to property. A complete copy of this law is available for review at the main site where tickets to this ski area are sold.”

**SECTION 20.** 167.33 (3) (am) of the statutes is created to read:

167.33 (3) (am) A ski area operator may sell, distribute, and use tickets or season passes printed before the effective date of this paragraph ... [LRB inserts date], until its stock of those tickets or passes are exhausted. A ski area operator that sells, distributes, or uses such tickets or passes shall post a notice at each location where the tickets or passes are sold, distributed, or used that informs each recipient of the ticket or pass that he or she is engaging in an alpine sport, as defined in s. 167.33 (1) (ag), and that the definition for snow sport, as used on the ticket or pass, has been amended. The notice shall indicate that a complete copy of s. 167.33 is available for review at the main site where the ski area operator sells tickets.

**SECTION 21.** 167.33 (3) (b) of the statutes is renumbered 167.33 (3) (b) (intro.) and amended to read:

167.33 (3) (b) *Signs required; generally.* (intro.) Each ski area operator shall post and maintain ~~a sign~~ the following signs:

1. A sign that is at least 10 square feet in size at or near each of the sites where tickets to the ski area are sold, at or near each of the entrances or lift loading areas for areas that are open to ~~snow~~ alpine sports, and at or near each area open to sledding, biking, or tubing which is not served by a lift. The sign shall contain the following warning:

“WARNING — ASSUMPTION OF RISKS: Under Wisconsin law, each participant in ~~a snow~~ an alpine sport is considered to have accepted and to have knowledge of the risk of injury or death to person or injury to property that may result. Under Wisconsin law, each participant in ~~a snow~~ an alpine sport has the duty to take the precautions that are necessary to avoid injury or death to person

or injury to property. Wisconsin law sets forth certain other limitations on the liability of ski area operators for injuries or death to person or injury to property. A complete copy of this law is available for review at the main site where tickets to this ski area are sold.”

**SECTION 22.** 167.33 (3) (b) 2. of the statutes is created to read:

167.33 (3) (b) 2. A sign that is at least 3 square feet in size at or near each of the sites where tickets to the ski area are sold that contains the words: “Helmets are recommended” or “Consider wearing a helmet.”

**SECTION 23.** 167.33 (3) (em) of the statutes is created to read:

167.33 (3) (em) *Signs required; biking areas.* In addition to the sign required under par. (b), each ski area operator offering biking shall post and maintain a sign that is at least 10 square feet in size at or near each entrance to a loading area of a lift that serves areas open to biking or at or near an entrance of an area open to biking that is not served by a lift. The sign shall contain the following warning:

“WARNING — DUTIES OF INDIVIDUALS ENGAGED IN BIKING: Under Wisconsin law, each individual engaged in biking has a duty to do all of the following:

1. Obey all posted warnings and signs.
2. Keep out of closed areas.
3. Know the range of his or her ability and engage in biking within that ability.
4. Assess the difficulty of the trails and terrains, including natural and man-made features, that are open to biking. Where possible, walk the trail or features prior to biking.
5. Maintain control of his or her speed and direction.
6. Comply with any posted limits that are imposed on the type of bike or other equipment that may be ridden on a trail or portion of the ski area.
7. Be able to stop or avoid other individuals or objects.
8. Yield to other individuals engaged in biking who are ahead or who are down the slope.
9. Be able to safely board, ride, and deboard any lift serving an area open to biking.
10. Board and deboard a lift only at designated sites.
11. Look uphill and yield to oncoming bikes before leaving the bottom of the hill at the end of the run or when entering a trail or slope.”

**SECTION 24.** 167.33 (3) (f) (intro.) of the statutes is amended to read:

167.33 (3) (f) *Signs required; trails and terrains.* (intro.) Each ski area operator shall designate the trails that are open for skiing or biking in its ski area and shall determine the difficulty level of each trail. The ski area operator shall post and maintain a sign at or near the beginning of each trail. The sign shall contain the name of the trail and all of the applicable wording and emblems

specified in this paragraph to describe the difficulty level of the trail or terrain. The sign shall be at least 4 square feet in size. Each sign shall contain one or more of the following designations that are applicable:

**SECTION 25.** 167.33 (3) (f) 5. of the statutes is amended to read:

167.33 (3) (f) 5. The words “~~freestyling area ahead~~” “freestyle terrain” with an emblem consisting of an orange oval.

**SECTION 26.** 167.33 (3) (f) 6. of the statutes is amended to read:

167.33 (3) (f) 6. The words “tree skiing — caution.” The sign shall ~~have an orange background or orange lettering with a black or white background and shall~~ contain the additional statement: “This back country trail is not groomed or patrolled — Never ski here alone.”

**SECTION 27.** 167.33 (3) (g) (intro.) of the statutes is renumbered 167.33 (3) (g) and amended to read:

167.33 (3) (g) *Areas open to freestyling of freestyle terrain; signs and barricades required.* A ski area operator shall ~~may~~ designate an area as an area for freestyling if it contains one or more freestyle features of freestyle terrain. A ski area operator ~~that designates an area of freestyle terrain~~ shall construct and maintain a barricade with fencing, roping, or similar means at the entrance to such an area. The opening in the barricade may not be wider than 30 feet. The ski area operator shall post and maintain a sign at or near the entrance of the area of freestyle terrain that is at least 3 square feet in size ~~and that shows the boundaries of the area open to freestyling.~~ The sign shall contain emblems ~~consisting of a stop sign and orange oval consistent with signage recommended by a national ski areas association for use in areas of freestyle terrain.~~ The sign shall contain all of the following: the words “freestyle terrain.”

**SECTION 28.** 167.33 (3) (g) 1. of the statutes is repealed.

**SECTION 29.** 167.33 (3) (g) 2. of the statutes is repealed.

**SECTION 30.** 167.33 (3) (h) of the statutes is amended to read:

167.33 (3) (h) *Lifts; signs required.* For each lift that is used by individuals engaged in skiing and that does not serve any trail that is described under par. (f) as “easier,” the ski operator shall post and maintain, at or near the loading area for the lift a sign that is at least 10 square feet in size near or at the entrance of the loading area. The sign shall contain the following warning:

“WARNING: This lift does not serve any trails that are “easier” (marked with a green circle emblem). All of the trails served by this lift are “difficult” or “more difficult” (marked with a blue square emblem), “most difficult” (marked with a black diamond emblem), “expert” or “extreme terrain” (marked with an emblem consisting of 2 black diamonds), or ~~“freestyling terrain ahead~~ “freestyle terrain” (marked with an orange oval).”

**SECTION 31.** 167.33 (3) (j) 1. of the statutes is amended to read:

167.33 (3) (j) 1. In lieu of posting and maintaining each of the separate signs required under par. (b) and par. (d) or (e), or (em), a ski area operator may post and maintain a single sign that is at least 12 square feet in size and that contains all of the required warnings.

**SECTION 32.** 167.33 (3) (j) 2. of the statutes is amended to read:

167.33 (3) (j) 2. A ski area operator may, in a ski area with fewer than 100 acres in use for ~~a snow~~ an alpine sport vary from the specific wording, size, and location requirements for signs specified under this subsection, but any variation may not preclude a reasonably prudent participant in ~~a snow~~ an alpine sport from finding or understanding the contents of the sign.

**SECTION 33.** 167.33 (4) (a) of the statutes is amended to read:

167.33 (4) (a) *Maps.* Each ski area operator shall post and maintain a map of the trails and terrains in the ski area that are designated for any ~~snow~~ alpine sport at all of the sites where tickets to the ski area are sold if the ski area has more than 3 trails. The map shall contain the names of each trail or terrain and a description of the level of difficulty for each trail as determined by the ski area operator under sub. (3) (f). The sign shall be at least 32 square feet in size.

**SECTION 34.** 167.33 (4) (ag) of the statutes is amended to read:

167.33 (4) (ag) *Markings.* Each ski area operator shall mark hydrants, water pipes, and any other man-made structures on a ski area that are not readily visible to participants in ~~a snow~~ an alpine sport under conditions of ordinary visibility from a distance of at least 100 feet. A ski area operator may use any type of marker, including a wooden or bamboo pole, flag, or sign if the marker is visible from a distance of 100 feet and if the marker itself does not constitute a serious hazard to participants in ~~a snow~~ an alpine sport. Variations in steepness or terrain, whether natural or as a result of slope design, snowmaking, or grooming operations, including roads, catwalks, or other terrain modifications, are not man-made structures for the purpose of this paragraph.

**SECTION 35.** 167.33 (4) (b) 2. of the statutes is amended to read:

167.33 (4) (b) 2. If any vehicular grooming operations take place on a ski trail during hours in which a lift is being operated, the ski area operator shall close that trail to the public at the top entrance to the trail until the vehicular grooming operations are complete on that trail. If a groomer is traversing part of a ski area that is not part of a ski trail during hours in which a lift is being operated, the ski area operator shall provide an escort for the groomer or equip the groomer with emergency lights and an audible warning system to warn guests of the approaching groomer.

**SECTION 36.** 167.33 (5) (title) of the statutes is amended to read:

167.33 (5) (title) DUTIES OF INDIVIDUALS ENGAGED IN ~~SNOW~~ ALPINE SPORTS.

**SECTION 37.** 167.33 (5) (a) 13. of the statutes is amended to read:

167.33 (5) (a) 13. If involved in a collision with another participant in ~~a snow~~ an alpine sport that results in injury or death, not leave the vicinity of the collision before giving his or her name and current address to an employee of the ski area operator or a member of the ski patrol, except for the purpose of securing aid for a person injured in the collision. A person who leaves the scene of the collision for the purpose of securing aid shall give his or her name and current address after securing the aid.

**SECTION 38.** 167.33 (5) (b) 11. of the statutes is amended to read:

167.33 (5) (b) 11. If involved in a collision with another participant in ~~a snow~~ an alpine sport that results in injury or death, not leave the vicinity of the collision before giving his or her name and current address to an employee of the ski area operator or a member of the ski patrol, except for the purpose of securing aid for a person injured in the collision. A person who leaves the scene of the collision for the purpose of securing aid shall give his or her name and current address after securing the aid.

**SECTION 39.** 167.33 (5) (c) of the statutes is created to read:

167.33 (5) (c) *Safety rules; biking.* Each individual engaged in biking at a ski area has a duty to do all the following:

1. Obey all posted warnings and signs.
2. Keep out of closed areas.
3. Know the range of his or her ability and engage in biking within that ability.
4. Assess the difficulty of the trails and terrains, including natural and man-made features, that are open to biking. Where possible, walk the trail or features prior to biking.
5. Maintain control of his or her speed and direction.
6. Comply with any posted limits that are imposed on the type of bike or other equipment that may be ridden on a trail or portion of the ski area.
7. Be able to stop or avoid other individuals or objects.
8. Yield to other individuals engaged in biking who are ahead or who are down the slope.
9. Be able to safely board, ride, and dismount any lift serving an area open to biking.
10. Board and dismount a lift only at designated sites.
11. Look uphill and yield to oncoming bikes before leaving the bottom of the hill at the end of the run and upon entering a trail or slope.
12. If involved in a collision with another participant in an alpine sport that results in injury or death, remain in the vicinity of the collision until he or she gives his or her

name and current address to an employee of the ski area operator or a member of the bike patrol, except to secure aid for a person injured in the collision. A person who leaves the vicinity in order to secure aid shall provide his or her name and current address after securing the aid.

**SECTION 40.** 895.525 (2) (b) of the statutes is amended to read:

895.525 (2) (b) "Recreational activity" means any activity undertaken for the purpose of exercise, relaxation or pleasure, including practice or instruction in any such activity. "Recreational activity" does not include participating in ~~a snow an alpine~~ sport at a ski area, as those terms are defined in s. 167.33, but includes hunting, fishing, trapping, camping, bowling, billiards, picnicking, exploring caves, nature study, dancing, bicycling that is not biking, as defined in s. 167.33 (1) (ar), horseback riding, horseshoe-pitching, bird-watching, motorcycling, operating an all-terrain vehicle or utility terrain vehicle, recreational aviation, as defined in s. 895.52 (1) (hm), ballooning, curling, throwing darts, hang gliding, hiking, sleigh riding, snowmobiling, 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, participating in an agricultural tourism activity, sport shooting, and participating in ~~a snow an alpine~~ sport outside a ski area, as those terms are defined in s. 167.33, and any other sport, game or educational activity.

**SECTION 41.** 895.526 (title) of the statutes is amended to read:

**895.526 (title) Participation in ~~a snow an alpine~~ sport; restrictions on civil liability, assumption of risk.**

**SECTION 42.** 895.526 (2) (title) of the statutes is amended to read:

895.526 (2) (title) APPRECIATION OF CONDITIONS AND RISK OF PARTICIPATION IN ~~A SNOW AN ALPINE~~ SPORT.

**SECTION 43.** 895.526 (2) (a) of the statutes is amended to read:

895.526 (2) (a) Every participant in ~~a snow an alpine~~ sport at a ski area accepts the conditions and risks of the ~~snøw alpine~~ sport as set forth in s. 167.33 (2).

**SECTION 44.** 895.526 (2) (b) of the statutes is amended to read:

895.526 (2) (b) Every participant in ~~a snow an alpine~~ sport at a ski area is presumed to have seen and understood signage provided by the ski area operator pursuant to s. 167.33 (3).

**SECTION 45.** 895.526 (2) (c) of the statutes is amended to read:

895.526 (2) (c) Every participant in ~~a snow an alpine~~ sport at a ski area accepts that failure to wear a helmet or wearing a helmet that is improperly sized, fitted, or secured increases the risk of injury or death or the risk of a more severe injury. Every participant in ~~a snow an alpine~~ sport at a ski area accepts that a helmet may not be available for purchase or for rent at a ski area.

**SECTION 46.** 895.526 (2) (d) of the statutes is amended to read:

895.526 (2) (d) Every participant in ~~a snow an alpine~~ sport at a ski area accepts that natural or man-made items or obstacles within a ski area, including ski area infrastructure and ski area vehicles, may be unpadded or not heavily padded and accepts that there may be a higher risk of injury or death or of a more severe injury associated with a collision with an item or obstacle that is unpadded or not heavily padded.

**SECTION 47.** 895.526 (3) (intro.) of the statutes is amended to read:

895.526 (3) RESPONSIBILITIES OF A PARTICIPANT IN ~~A SNOW AN ALPINE~~ SPORT. (intro.) Every participant in ~~a snow an alpine~~ sport is responsible to do all of the following:

**SECTION 48.** 895.526 (3) (b) of the statutes is amended to read:

895.526 (3) (b) Choose whether to wear a helmet while participating in the ~~snøw alpine~~ sport. If the participant chooses to wear a helmet, he or she has the responsibility to ensure the helmet is of the correct size and fit and to ensure that it is properly secured while he or she participates in the ~~snøw alpine~~ sport.

**SECTION 49.** 895.526 (4) (a) of the statutes is amended to read:

895.526 (4) (a) A ski operator who fulfills all of his or her duties under s. 167.33 (3) and (4) owes no further duty of care to a participant in ~~a snow an alpine~~ sport and is not liable for an injury or death that occurs as a result of any condition or risk accepted by the participant under sub. (2).