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# PAUL TITTL

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STATE REPRESENTATIVE • 25<sup>TH</sup> ASSEMBLY DISTRICT

Committee on Natural Resources and Sporting Heritage  
Assembly Bill 411 and Senate Bill 321 Testimony  
December 18, 2013

First of all, I would like to thank you, Chairman Ott, and all of the other committee members for allowing me to testify on Assembly Bill 411 and the companion bill SB 321 relating to the limitation of a property owner's liability when lands are used for recreational aviation.

In 1984, Wisconsin created 895.52 of the state statutes (1983 Wisconsin Act 418). Here is the preamble to that act:

The legislature intends by this act to limit the liability of property owners toward others who use their property for recreational activities under circumstances in which the owner does not derive more than a minimal pecuniary benefit. While it is not possible to specify in a statute every activity which might constitute a recreational activity, this act provides examples of the kinds of activities that are meant to be included, and the legislature intends that, where substantially similar circumstances or activities exist, this legislation should be liberally construed in favor of property owners to protect them from liability. The act is intended to overrule any previous Wisconsin supreme court decisions interpreting section 29.68 of the statutes if the decision is more restrictive than or inconsistent with the provisions of this act.

Today, section 895.52 includes a broad range of activities such as hunting, fishing, trapping, camping, picnicking, exploring caves, nature study, bicycling, horseback riding, bird-watching, motorcycling, operating an all-terrain vehicle or utility 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.

The bill you have before you today adds recreational aviation to the list of activities specified in that section of the statute. This change is an important one.

The proposed change provides peace of mind for landowners who own private airstrips where recreational aircraft could land. Under the present law, many of these landowners are very reluctant to allow aircraft to use their landing strips, because they do not want to bring about potential liability. Even those landowners who open their landing strips for public use have lingering anxiety about the liability they might be assuming by allowing others to use those landing strips.

These landowners are not deriving profit from this kind of use. They are only generating potential liability. By adding recreational aviation to the activities in section 895.52, we would give them the protections now enjoyed by landowners who allow fishing, hunting, snowmobiling, all-terrain vehicle use, and similar activities.

General aviation plays an important role in our state, contributing substantial economic benefit to the tourism and aviation industries. In addition, general aviation helps to introduce youth to aviation. Many of today's pilots and aviation leaders developed an interest in aviation because of an early general aviation experience. This bill will help to increase those important opportunities among today's youth.

Because of the benefits general aviation provides, we should be doing what we can to promote it rather than hinder it.

Finally, the substitute amendment to SB 321 changes the phrase "non-commercial aviation" to "recreational aviation" and defines that term. That change was made to eliminate any confusion that might arise out of other usage within the industry of the phrase "non-commercial aviation." I am comfortable with the language of the substitute amendment to SB 321.

Thank you for the opportunity to testify today. I would be happy to take any questions.



December 18, 2013

Representative Ott (Chair), Representative Kleefisch (Vice-Chair), and Members of the Assembly Committee on Natural Resources and Sporting Heritage

*RE: EAA Support for Assembly Bill 411*

EAA strongly supports AB 411, which seeks to extend recreational land use statute protections to landowners who offer use of their land to the public for noncommercial aviation activities. We believe that this bill is in the best interest of the recreational aviation community, land owners willing to share use of their land with the public, and all citizens of Wisconsin. EAA encourages Wisconsin Assembly members to support this bill, which would bring Wisconsin's recreational use statute in line with the 26 other states that include aviation activities in their corresponding laws.

The Wisconsin recreational use statute is designed to expand the acreage available for recreational use by the general public, and it accomplishes this by encouraging land owners to allow the public on to their land by shielding them from liability concerns. The statute currently covers activities such as hunting, fishing, hiking, and skiing. Significantly, it also already enumerates recreational power sports like snowmobiling, motorcycling, and all-terrain vehicle riding—all of which are substantially similar to recreational aviation.

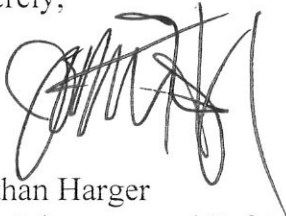
EAA has heard from several land owners who are motivated and willing to allow the public to use their land for recreational aviation purposes, but are reluctant to do so because of liability concerns. These individuals would enjoy opening their private landing strips for the enjoyment of the Wisconsin aviation community, providing pilots with new places to explore and convenient access points for towns not served by public airports, and would gladly do so with the protections enumerated in AB 411. Many of the individuals with whom we spoke were not worried about losing a potential lawsuit arising from another's mishaps while using their land; they are primarily concerned with having to pay significant sums to defend themselves from such suits—and are unwilling to welcome the public until the threat of those lawsuits is dissipated.

The addition of noncommercial aviation is consistent with the activities currently named in the recreational use statute, all of which involve risks managed by the participants and undertaken purely for personal enjoyment. EAA believes that people should be allowed to accept responsibility for themselves while engaging in outdoor activities for which they are passionate, and we believe that the land owners generous enough to permit those people to exercise their passions on their land should not be held potentially liable for their generosity.

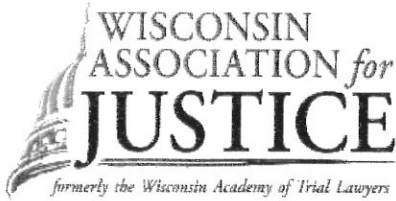
Ultimately, EAA believes that small, private airstrips and the communities that have always formed around them are a great wellspring of grassroots aviation, and we believe that these airstrips should have the protection of law that will allow them to thrive. Wisconsin has a very rich aviation tradition, and we believe that AB 411 will allow the tradition to continue to flourish—allowing the dream of aviation to be available to future generations.

If you have any questions regarding private airstrip operations, Wisconsin's aviation tradition, or other states' recreational use statutes that include aviation activities, I would be very happy to speak with you; please do not hesitate to contact me. Thank you for your time today; I appreciate the opportunity to provide EAA's supporting testimony to you.

Sincerely,

A handwritten signature in black ink, appearing to read 'Jonathan Harger', written over a horizontal line.

Jonathan Harger  
EAA Advocacy and Safety



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**Testimony of  
Jeffrey A. Pitman  
on behalf of the  
Wisconsin Association for Justice  
before the  
Assembly Natural Resources & Sporting Heritage Committee  
Rep. Al Ott, Chair  
on  
2013 Senate Bill 321 and Assembly Bill 411  
December 18, 2013**

CHAIRMAN OTT AND MEMBERS OF THE COMMITTEE, my name is Jeffrey A. Pitman, a partner with the Pitman, Kyle, Sicula & Dentice law firm in Milwaukee and the immediate Past President of the Wisconsin Association for Justice (WAJ). I am appearing to oppose the immunity provisions in both Senate Bill 321 (SB-321) and Assembly Bill 411 (AB-411). Thank you for this opportunity to testify.

Both AB-411 and SB-321 concern adding recreational aviation to the list of recreational activities in the recreational immunity statute, Wis. Stat. §§ 895.52 and 895.525.

Under the recreational immunity statute, the definition of owner covers both private and municipal property. SB-321 has been amended significantly to make clear that “recreational aviation” covers only “privately owned land,” excluding use at a public airport and when the plane is used for compensation or hire. WAJ supports the amendment.

WAJ continues to object to the legislation because of the sweeping nature of the immunity granted to landowners. Under the law, the landowner *owes no duty* to keep the property safe for recreational activities or to give recreational users a warning of an unsafe condition on the property. By adding recreational aviation to the bill, *the entire risk of injury or death for any recreational aviation activity would be assumed by the person flying*. So if a tractor is left on the runway or the runway was plowed up, conditions that may not be apparent until the plane comes close to the ground, the landowner is immune. This bill would make it less safe for pilots and passengers.

However, while the pilots may be willing to accept that risk, their families and every passenger who flies with them will also be unable to hold a careless landowner accountable. This could throw a family into poverty who lost a 40-year-old husband/father and unable to recover damages to help pay for funeral expenses or loss of the husband/father's earnings. It would also mean that if someone were severely injured in an accident caused by a careless landowner, the medical expenses would also not be covered.

Thank you for the opportunity to testify.