(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.

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 Company, 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.