

# LawClips

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Topic for the Month

## Bunny Hill Anyone?

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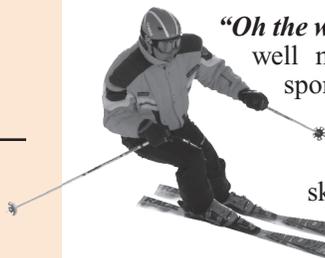
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## Liability of Ski Area Operators



*"Oh the weather outside is frightful,"*  
well maybe if you are a snow  
sports enthusiast.

With unseasonably toasty temperatures this year, skiers and snowboarders who would have normally been heading for the slopes, in March, for one last hoorah were instead visiting the beach.

It didn't seem like winter for many. The lack of snow, coupled with warm temperatures that melted much of the snow that did fall is primarily to blame. Skiers and snowboarders spent much of the season riding through man-made blizzards at the ski resorts while lawmakers were busy contemplating a new Senate and Assembly bill which would affect the liability of ski hills and resorts in Wisconsin.

In the new bill, SB388/AB495, skiers would take on nearly all the risk associated with a day on the ski hill or cross-country trail. Public hearings were held in both the Senate and Assembly Committees on Wednesday, February 8. Many say the proposed bill goes too far and puts too much liability on snow sport participants and not enough on ski hill operators.

Under current law, a participant who is skiing, sledding, or tobogganing, on a premise that is open to the public for such purposes is deemed to accept the risks inherent in the activity.

### The participant is responsible to act within the limits of his or her ability to:

- Heed all warnings regarding participation in the activity
- Maintain control of his or her-self and the equipment he or she is using
- Refrain from acting in any manner that may cause or contribute to the death or injury to himself/herself or to other persons while participating in the recreational activity.

Under current law, if a participant is injured or killed, his or her own actions may be considered contributory negligence in a civil suit brought against the owners of the premises, if the participant failed to comply with any of the responsibilities set forth for participants in the activity.

Under bills SB388/AB495, the same rules of liability and negligence would apply to the participant, but the bill would establish a different scheme for determining whether the operator of a ski area is liable for injuries sustained by a person who participates in a snow sport at a ski area.

### The questionable points of the new bill would include:

- SB388/AB495 would shift the burden from the ski area operator to the skier to assess and assume potentially unknown risks of a ski trail or other conditions which the ski area operator would know could hurt a skier.
- SB388/AB495 would broaden the definition of risks inherent in skiing to include a number of risks created by the ski area itself – the way runs are cut and/or maintained.
- SB388/AB495 would require each individual engaged in skiing or sledding to be in control of him or her-self at all times and be able to assess every risk on the slope. This includes risks of the conditions – rocks, boulders and forest growth, including debris, stumps, logs or brush – as well as man-made conditions.
- SB388/AB495 appears to say that if a skier assumes the risk of skiing, it is a complete bar to recovery if an injury occurs. The bill would resurrect the doctrine of "assumption of risk," which Wisconsin did away with decades ago, as has virtually every state in the country.
- SB388/AB495 would allow the use of an "exculpatory release of liability." Exculpatory releases generally require any person who signs them to acknowledge they understand their rights, waive them, and agree not to hold another responsible for an injury. A person is asked to sign away his or her rights without any meaningful opportunity to know and appreciate the risks involved. This bill would even apply to children when parents sign the release.

In essence, under the new bill, the operator of a ski area would be immune from liability for any injury sustained by a participant in a snow sport or by an observer if the injury was a result of any of the risks accepted by the participant and the operator of the ski area has complied with the requirements.

As we were writing this article AB495 failed to pass. Stellpflug Law, S.C. would like to see any future bills encourage balance and safety for snow sport partic-

ipants as well as ski hill operators. If you have any questions regarding an accident you may have incurred, please contact any of the following Stellpflug Law, S.C.

personal injury attorneys at 920-336-5766.



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