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Testimony of Ann S. Jacobs
Wisconsin Association for Justice
Before the Assembly Judiciary Committee
December 17, 2015
Regarding
2015 Assembly Bill 174

Good morning, my name is Ann Jacobs. I live and work in Milwaukee where I am the owner of Jacobs Injury Law, S.C. I am the immediate past president of the Wisconsin Association for Justice and a member of its board of directors. On behalf of the association, I am here to speak on AB-174. As always, it is a privilege and honor to testify before this committee.

To begin, we appreciate the opportunity to review and comment on the most recent substitute amendment to this bill. I testified previously before the Senate on the original version of this bill and I am pleased to say the substitute makes several improvements to the bill. However, we continue to have concerns about unintended consequences that will result from way this bill has been drafted. Our concerns center on how the bill treats comparative negligence.

Under current law, a campground owner already has very strong protections against being held responsible for harm they did not cause. As you know, Wisconsin is a comparative negligence state. *See* Wis. Stat. § 895.045(1) (2013-14) (Comparative Negligence). Under this system, a campground owner is only responsible for the percentage of harm they cause, but only when they have caused harm.

Here's how it works. When a case is tried, juries are asked who is at-fault, and then are asked to assign a percentage to each actor. For cases that are resolved through settlements, the vast majority of cases, attorneys on both sides also apply this type of analysis. The goal in either setting is to allocate responsibility. The comparative negligence statute is designed precisely to strike a fair balance between protecting the injured and holding wrongdoers responsible.

Language in this bill eliminates the balanced approach of our comparative negligence regime in a way that will have serious consequences for those visiting Wisconsin campgrounds. The troubling language appears on page 2, line 3 of the substitute, proposed Wis. Stat. § 895.519(1)(b)4. As part of a definition of the “inherent risk of camping,” the bill now reads that an “inherent risk of camping” includes:

“4. A camper or visitor at the private campground acting in a negligent manner.”

This provision is problematic for two reasons. First, the dangerous or negligent conduct of another is not an inherent risk of camping. But more importantly, this section of the law would immunize a campground owner whose *actions have caused injury*. This section would provide campground owners with nearly complete protection for their own negligent actions, even where they are nearly 100% at fault.

For example, as drafted, the bill would provide total immunity:

- For a campground owner who drives drunk on the campground and hits a camper or visitor. If the person he hit on the road was merely 5% at fault (say for walking in the dark), the campground owner would be immune.
- For a campground owner who is notified, but does nothing to stop a rowdy bachelor party whose participants later sexually assault a camper or visitor. Even if a jury found the owner 75% at fault for not better policing his campground, the owner would be immune.
- For the campground owner who leaves a septic cover off near a playground and a child falls in. If the campground owner can claim the parents partly responsible for causing the child’s injury, they avoid all liability. Even if the parents were only 5% negligent after allowing an energetic child briefly out of their grasp, the campground owner who is 95% responsible would be immune.

Surely, I think we can agree that the intention of this bill cannot be to protect behavior like this. And yet section (1)(b)4 (page 2, line 3) gives campground owners immunity for their own wrongdoing. Nobody should get to escape responsibility for their actions when they are the one who is most at fault.

A Simple Fix

In the spirit of compromise, we ask that the committee remove this section of the bill. We look forward to continued dialogue with you and your staff and welcome future opportunities to provide input on pending legislation.