LIABILITY AND IMMUNITY: A NATIONAL ASSESSMENT OF LANDOWNER RISK FOR RECREATIONAL INJURIES

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CAVEATS AND DISCLAIMERS

Data for this publication was obtained from state statutes, court cases and injury reports through December, 1992. The law is ever-changing, thus any changes or data after that date are not included in this report.

This report represents the views of the authors and only the authors. The report is not an attempt to provide legal advice, rather it presents points of law as evidenced in cases or statutes. Since the report contains aggregated material, the reader should consult a local attorney for legal advice as to the applicable law(s) in their state.
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SUMMARY

Vast increases in the use of public lands for recreational use have led to more frequent requests by the recreating public to gain access to private, rural lands for the purposes of hunting, fishing, and other outdoor activities. Opportunities to use private lands have often been restricted by landowners' fears of being held liable for injuries occurring to recreationists while they are on private property. These concerns were mounting in spite of little evidence that landowner liability presents serious barriers to the recreational use of private land.

This study examines: 1) the problems associated with landowner liability for recreational injuries; 2) whether liability risks are real or exaggerated; and 3) what a landowner should know about the liability threat in their own state to make informed decisions about granting access to their property. The study consists of a state-by-state compilation and evaluation of reported lawsuits involving recreation-related accidents on private lands. In addition, the study presents a compilation and analysis of accident statistics on selected recreational activities to determine the significance of accident patterns on litigation. Finally, the study presents an analysis of selected insurance policies to ascertain the degree of insulation from liability provided to landowners through insurance coverage.

The results of this study indicate that the fear of liability is probably exaggerated. Landowners enjoy significant immunity from liability under state recreational use statutes. While a few lawsuits involving recreational injuries occur every year, most of those cases are brought against public entities or against private landowners presumed to have "deep pockets," such as corporations and utility companies. In reality, the risk of liability exposure for rural landowners is quite small, even, in some states, when the landowner charges a recreational use fee.
INTRODUCTION

Background

In 1962 the Outdoor Recreation Resources Review Commission projected that demand for outdoor recreation resources in the United States would triple by the year 2000. That tripling of demand occurred by 1977, nearly 25 years earlier than had been expected. Subsequent studies have indicated that demand has continued to increase annually, resulting in overcrowding in public lands open to recreation.

As burgeoning numbers of recreationists outstrip the available supply of public land, the demand is transferred to private, rural landowners in the form of requests for access to their farms, ranches, and forests. Considerable concern has been expressed in recent years that opportunities for recreation on private lands are decreasing due to both development and closure.¹ The Soil Conservation Service estimated that about one million acres of rural lands are converted for urban, residential, transportation and other infrastructure purposes annually.² Moreover, additional private open space is being closed and/or posted by private landowners to deny recreational access to the public.³

The reasons for restrictions on access to private lands are many. Trespass, property damages, resource impacts, loss of privacy, and land use conflicts have been commonly cited as factors in private landowners' decisions to close their properties to public recreation. While these problems have had a definite impact on private land closures, legal liability for recreational injuries has been the concern which often receives the most attention among landowners, resource managers, and researchers.

Landowner Liability

There is little doubt that much of the concern over landowner liability is based on the increasingly litigious inclinations of American society. The President's Commission on Americans Outdoors, for example, stated that America was experiencing a liability crisis, "...as liability insurance premiums for recreation providers [have] skyrocketed 200-300 percent-sometimes more." ⁴ Multi-million dollar lawsuits awarded for medical malpractice and product liability have fueled the fear of rural landowners regarding their susceptibility to legal claims.


As a result, many landowner studies have documented at least some degree of concern among private landowners regarding the threat of liability. Though this research has clearly identified landowners' liability concerns, it has done little more than document that liability is perceived as a problem among landowners. To date, no substantial effort has been made to document the real rather than perceived rural landowner liability exposure.

Since the mid-1960's, all 50 states have enacted "recreation use statutes" purporting to limit landowner liability for the recreation user. A number of studies have examined the nuances of these statutes but none have examined accident and injury patterns, nor analyzed the appellate court case involving recreational injuries on private lands. "There is little hard data on the number of lawsuits, the reasons for liability, and other factors. Without [this] information, providers and insurers of recreation make poor decisions."6

PURPOSE AND METHODS

The purpose of this study was to evaluate the problems associated with landowner liability for recreational injuries, and to answer the questions: Are the liability risks real or exaggerated? and, What should a landowner know to make informed decisions?

These objectives are addressed in this report through:

1. a state-by-state compilation and evaluation of reported lawsuits involving recreation-related accidents on private lands;
2. compilation and analysis of accident statistics on selected recreational activities to determine the significance of accident patterns on litigation, and;
3. analysis of selected insurance policies to ascertain the degree of insulation from liability provided to landowners through insurance coverage.

Recreational accident and injury data were collected and analyzed for three recreational activities that commonly take place on private lands. The three activities were hunting, fishing, and operation of all-terrain vehicles (ATVs). Historical trends were established for both fatal and non-fatal injuries resulting from participation in these activities for the period from 1982 to 1991.

In addition, appellate case law dealing with rural landowners and recreational injury litigation was searched. Appellate cases were identified, compiled, and analyzed with reference to the following points:

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6 President's Commission on Americans Outdoors, (1987).
1. real liability exposure of the landowner;
2. factors contributing to liability exposure;
3. type of accidents;
4. recreation activity pursued by injured party; and,
5. relationship between "fee versus free" access on liability.

From this data, an overview of landowner liability exposure was developed. Liability exposure can provide the basis for a landowner's decision on whether to grant recreational access to their property.

Finally, insurance carriers who specialize in coverage for rural landowners who allow organized groups of individuals (primarily hunting and/or shooting clubs) to use their lands for recreation were contacted and information about the types and policies offered was requested. This type of coverage is summarized in light of the current legal environment.

**TRENDS IN RECREATIONAL ACCIDENTS**

In order to provide an understanding of the threat of liability faced by rural landowners, data on accidents associated with three common rural land recreation activities were compiled and analyzed. Because no national comprehensive database regarding recreation accidents exists, data had to be collected from various sources. Each of these data sources had limitations, therefore, no attempt should be made to depict statistics as absolute numbers. Furthermore, no attempt was made to segment recreational accidents occurring on private versus public lands. However, these statistics are useful in indicating trends in accidents over the ten-year period 1982-1991.

**Hunting Accidents, 1982-1991**

Statistics on hunting accidents are compiled annually by the North American Hunter Education Association (HEA), in collaboration with state agencies responsible for management of fish and wildlife resources. There are some differences among states on what constitutes a hunting accident. For example, some states include in hunting accident data those injuries resulting from activities which occur prior to or after actual hunting (e.g., falls from trees, knife wounds, exposure, drowning, etc.). Other states restrict the reporting of accidents to those incidents caused by direct involvement with a firearm or bow. Although these definitional problems exist and may lead to slight underreporting, the accidents reported by the HEA represent a source of liability exposure.

Generally, hunting accidents have been decreasing over the past ten years, particularly in terms of numbers of fatalities. Figure 1 shows that fatal hunting accidents have decreased from a high of 227 in 1983 to a low of 137 in 1990, even though there was a slight increase reported in 1991.

Not surprising, the overwhelming majority of hunting accidents involved the use of shotguns and rifles. Approximately 90 percent of all hunting accidents reported from 1982 through 1991 involved one of these two types of firearms. HEA classification of the factors which contributed to these accidents were largely attributed to poor judgment on the part of the hunter. Victims being mistaken for game, being shot while out of sight from the hunter, and being hit while a hunter was swinging on game were the most commonly reported contributing factors.

Basic skills and aptitude factors such as unsafe loading/unloading of firearms, improper crossing of obstacles, and falls also accounted for a significant number of accidents. Relatively few accidents were attributed to horseplay or involved the use of alcohol or drugs.
Approximately one-quarter of all accidents involved persons ranging in age from 10 to 19 years. This age group was also responsible for 31 percent of the self-inflicted accidents. The 20 to 29 year age group was accountable for 22 percent of all accidents. However, these statistics may be somewhat misleading because it seems reasonable to assume that larger proportions of the total hunter population would come from these age groups.

Probably the most revealing statistic is the accident rate per 100,000 licenses sold. With the exception of a slight increase in 1988, this statistic has generally declined over the past 10 years. The total accident/per 100,000 licenses sold rate was highest in 1983 when the nation experienced 9.75 accidents for every 100,000 licenses. Of this total, 1.25 fatalities were reported. By 1990, this statistic had dropped to 8.01 accidents and .80 fatalities. Slight increases were reported in 1991 (8.1 and .84, respectively).

When examined on a regional basis, the accident rate in the Northeastern U.S. appeared to be consistently highest. The states in this region reported over 13 accidents per 100,000 licenses sold in 1982 and has been in single digits only once over the 10 year period (9.27 in 1984). In some years, the accident rate in this region almost doubled that of other regions. Although hunted density statistics are extremely difficult to estimate it would seem that states such as those in the Northeast which have higher population densities, smaller tracts of land ownership, and limited amounts of undeveloped land, would indeed be more susceptible to hunting accidents.

Finally, results of this study suggest that efforts by states to train hunters in safe hunting practices are having positive effects. Less than 1 of every 3 accidents involved a person who had graduated from a state hunter education course. Currently 47 of the 50 states now require first-time hunters to complete a hunter education course prior to purchasing a hunting license. The remaining three states have hunter education programs which are voluntary.

Figure 1

![Figure 1](image)

*Data from 1983-86 does not include self-inflicted injuries.
Source: North American Hunter Education Association

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7 Connecticut, Delaware, Massachusetts, Maryland, Maine, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, Virginia, West Virginia.
All-Terrain Vehicle Accidents, 1982-1991

Data on accidents related to all-terrain vehicles (ATVs) were obtained from the U.S. Consumer Product Safety Commission (CPSC). The CPSC habitually collects data regarding deaths and injuries associated with product usage. For this reason, the accident data on riding ATVs is probably the most exhaustive. The data discussed below involves both 3-wheel and 4-wheel all-terrain vehicles and are shown in aggregate. This analysis does not include statistics on motorcycles, dirt bikes or mini-bikes.

Over the last ten years, 1,952 deaths have been attributed to the operation of ATVs. In 1982 only 29 deaths and 8,600 injuries were reported; however, with marked increases in sales of ATVs over the next several years, the number of ATV-related deaths rose to a high of 299 in 1986. In that year, injuries requiring emergency room treatment totaled 86,400, shown in figure 2.

In 1985, in recognition of skyrocketing accident rates, the CPSC commissioned several studies to identify factors associated with ATV accidents. Early studies indicated that the risk associated with 3-wheel vehicles was significantly higher than that for 4-wheel ATVs. In addition, more than 30 percent of the incidents reported involved unsafe practices which manufacturers specifically warned against (e.g., carrying passengers, exceeding slope limits, etc.). Further, these studies found that children under 16 years of age riding adult-size ATVs were particularly susceptible to injuries and death.8

Based in part on the findings of these studies, several consent decrees between manufacturers and the Commission were agreed upon and significant changes in the manufacture, sales and utilization of these vehicles occurred. Some of the most significant changes were the agreements not to sell the higher-risk 3-wheel ATVs, and to restrict sales of adult-size ATVs to children under 16 years of age. As a result, there has been a general decrease in deaths and injuries associated with riding ATVs since 1986.

Figure 2
Trend Analysis of U.S. Fatalities and Injuries
Involving 3- and 4-Wheel All-Terrain Vehicles, 1982-1991

![Graph showing trend analysis of U.S. Fatalities and Injuries involving 3- and 4-Wheel All-Terrain Vehicles, 1982-1991]

Fishing Accidents, 1982-1991

Fishing accident were also requested from the CPSC for the period 1982 to 1991. The database for this activity is not as comprehensive as that gathered on ATV-related accidents, especially regarding statistics on non-fatal injuries. In most cases injuries related to fishing were relatively minor compared to those resulting from hunting or ATV operation. Knife wounds from cleaning fish and fish hook penetration of the skin were the most commonly reported injuries requiring medical treatment. Although perhaps painful, these are not the types of injuries from which victims would attempt to recover retribution. Therefore, no attempts were made to analyze non-fatal injuries involving fishing.

On the other hand, fishing-related fatalities are more typical of the types of accidents which would result in lawsuits. Even though there were examples of deaths caused by electrocution when a victim's fishing pole made contact with high voltage wires, or victims' use of homemade electric worm probes (devices used to electrically force earthworms to rise to the surface) the majority of fishing fatalities resulted from accidental drownings. Figure 3 shows trends in fishing fatalities. With the exception of the three-year period of 1984-1986 when the number of accidents rose to 170, 148, and 124, respectively, the incidence of deaths related to fishing seems to be fairly stable over time.

Figure 3

Source: Consumer Product Safety Commission (CPSC) Directorate of Epidemiology
TRENDS IN LANDOWNER LIABILITY & IMMUNITY

Land ownership is an ethic that is so deeply ingrained in American life that preferential liability rules favoring the landowner have been established in all states. The classic formulation of liability is rooted in the common law credo that "a man's home is his castle," wherein he should be free from the duty to use reasonable care toward others. The principles governing landowner liability for visitor injuries has long been the subject of judicial and academic scrutiny. Landowner liability has historically been determined by common law principles and more recently by state recreation use statutes. Under state recreation use statutes, this land ownership preference is reinforced by giving landowners immunity from liability when they allow gratuitous recreation use of their property. Depending on the factual and statutory circumstances, landowners may enjoy near absolute immunity for injuries to recreation users. The following sections of this report outline landowner liability exposures for injuries to recreation users.

Common Law Landowner Obligations

Under common law there is a substantial body of law relating to the rights and duties of landowners for injuries resulting from conditions of the land and activities conducted on it. The liability exposure of a landowner to a person injured on the property depends on the nature of the relationship between the parties at the time of the accident. At common law, users are classified as invitees, licensees, or trespassers. Of the three categories, invitees receive the greatest legal protection, licensees moderate protection and trespassers have little protection. The principle that differentiates users is the reason or purpose for which the user enters the land. This purpose determines the landowners liability exposure.

Invitees

An invitee is a person expressly or impliedly invited on the property by the landowner for a public or a business purpose. For example, if a hunter pays a fee to the landowner the hunter may be classified as an invitee. The landowner owes the highest duty of care to invitees and must act reasonably and prudently to protect them from injury. Translated into layman's language, the landowner has a duty to:

1. inspect the property and facilities to discover hidden dangers;
2. remove the hidden dangers or warn the user of their presence;
3. keep the property and facilities in reasonably safe repair; and
4. anticipate foreseeable activities by users and take precautions to protect users from foreseeable dangers.

The landowner does not insure the invitee's safety and only has to exercise reasonable care to

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10 The acknowledged definition of an invitee is outlined in the Restatement Second of Torts, § 332:
1. An invitee is either a public invitee or a business visitor.
2. A public invitee is a person who is invited to enter or remain on land as a member of the public for a purpose for which the land is held open to the public.
3. A business visitor is a person who is invited to enter or remain on land for a purpose directly or indirectly connected with business dealing with the possessor of the land.

The landowner does not insure the invitee's safety and only has to exercise reasonable care to prevent injury. Liability for failure to exercise reasonable care extends only to the dangers reasonably discoverable by the landowner. Generally, the landowner is not liable for injuries caused by known, open or obvious dangers. The law imposes on the invitee the duty to avoid these types of dangers.

Licensees

A licensee is anyone who enters the property by permission only without any economic or other inducement offered by the landowner. As commonly used, a licensee is a social guest whose use of the property is gratuitous and not economically beneficially to the landowner. For example, a person who is permitted to hunt on a rancher's land without paying a fee is a licensee. If the rancher charges a fee, the hunter may be classified as an invitee. The landowner's duty of care to a licensee is the same as that for the invitee except that the landowner does not have a duty to inspect the property to discover hidden dangers. However, once a hidden danger is discovered by the landowner there is a duty to warn the licensee of the hazard. The landowner has no duty to warn the licensee of known, open or obvious dangers.

Trespassers

The law affords the adult trespasser scant legal protection. A trespasser is a person who is on the property of another without any right, lawful authority, expressed or implied invitation or permission. Thus hunters who enter the property of another without permission--regardless of whether the entrance is intentional or based upon a mistaken belief that they are on public lands--are trespassers. Generally, a landowner has no duty to care to the adult trespasser, except that a landowner cannot intentionally, willfully or wantonly injure a trespasser. A wilful or wanton act is an act knowingly and intentionally committed under circumstances of reckless disregard for the safety of the trespasser. For example, the landowner may not set traps or string hidden wires to harm trespassers.

Some jurisdictions have adopted an exception known as "the discovered trespasser rule" requiring that landowners exercise reasonable care to not injure the trespassers once they are discovered. This is an affirmative action requirement rather than an inaction requirement. Stated another way, the landowner is not required to take action to protect the trespasser but is under an obligation not to do something that would harm the trespasser. For example, if a landowner observes a trespasser entering a rifle range the landowner has an obligation to not open fire once the trespasser is discovered.

Aside from these very limited exceptions, the landowner is under no legal obligation to maintain the land for the safety of the adult trespasser. Further, the landowner has no duty to inspect for and warn a trespasser of hidden dangers.

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13 Second Restatement of Torts, § 329.

14 Intent may be important in determining criminal trespass.

15 Katsko v. Briney, 183 N.W.2d 657 (Iowa 1971) (Use of a spring gun to protect a vacant building).

16 For a listing of these states see Prosser & Keeton (1984) p. 396.
Trespassing Children

Under the doctrine of attractive nuisance, landowners have a greater duty of care to trespassing children. This rule is imposed when artificial conditions on the land cause the injury. The rule is not imposed when natural conditions, not inherently dangerous to children, cause the injury. Courts have often refused to apply the doctrine to injuries arising from animals, natural vegetation and to children over 14 years of age.

Recreation Use Statutes & Landowner Obligations

In an effort to encourage landowners to make their land available to the public for non-commercial recreation use, all 50 states have enacted statutes limiting landowner's liability for injuries suffered by the recreation user. See Table 1. Virginia was the first state to enact such legislation in 1950, followed by Michigan and Delaware in 1953. The theory behind these statutes is that if landowners were protected from liability they would open up their land and that this would reduce state expenditures to provide such areas. This policy was the motive behind a Model Act drafted in 1965 by the Council of State Governments, entitled "Public Recreation on Private Lands: Limitations on Liability. This Model Act has been adopted nearly verbatim by about 20 states with the remaining 29 states adding variations but keeping the same theme of the Act.

Although state recreation use statutes vary in particular provisions, they all purport to limit the duties and liability exposure of the landowner to recreation users injured while on the owner's property. Two notable exceptions to shielding the landowner from liability risks are contained in most statutes. Recreation use statutes do not: (1) limit landowner liability exposure for an intentional, willful or malicious act or failure to guard against a dangerous condition; structure or activity; or (2) protect the landowner who charges a fee for the recreational use of land.

These statutes have withstood various constitutional challenges based on due process, equal protection and reasonable exercises of state power arguments. They have been consistently upheld as rationally related to the valid state purpose of opening private lands for use by the public. Additionally, litigation has dealt with establishing the intent and permissible parameters of each

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17 Section 339 of the Second Restatement of Torts establishes five conditions to impose liability:
A possessor of land is subject to liability for physical harm to children trespassing thereon caused by an artificial condition upon the land if:
(a) the place where the condition exists is one upon which the possessor knows or has reason to know that children are likely to trespass, and
(b) the condition is one of which the possessor knows or has reason to know and which he realizes or should realize will involve an unreasonable risk of death or serious bodily harm to such children,
(c) the children because of their youth do not discover the condition or realize the risk involved in intermeddling with it or coming within the area made dangerous by it,
(d) the utility to the possessor of maintaining the condition and the burden of eliminating the danger are slight as compared with the risk to the children involved, and
(e) the possessor fails to exercise reasonable care to eliminate the danger or otherwise to protect the children.

18 See Brady v. Skinner, 646 P.2d 310 (Ariz 1982) (Mule that kicked a four year old boy held not an attractive nuisance); Whitcanock v. Nelson, 400 N.E.2d 988 (Ill 1980) (Colt that trampled a 2 year old child was not a dangerous agency under attractive nuisance doctrine).

19 See the state by state listing of recreation use statutes in this report.
statute.\textsuperscript{20} Issues related to the modification of the landowner's duty of care, the meaning of wilful and wanton misconduct and the effect of charging a user fee are common litigation themes. Each of these categories will be examined in the following sections.

\textit{Landowner Duty of Care}

Recreation use statutes offer a landowner an island of immunity in a rising sea of legal obligations. At common law, a landowner's legal duty of care (liability risk exposure) is determined by the status of the user: invitee, licensee or trespasser. Until the passage of recreation use statutes, the liability of the landowner was set by users who fit into one of these categories. Recreation use statutes generally change the classification of the recreation user and correspondingly the duty of care that the landowner owes to the recreation user.\textsuperscript{21} In effect the statutes provide significantly greater liability protection for the landowner than is available at common law.

Although the recreation use statutes do not specifically create a new category of user, by implication or case interpretation, the recreation user has been added as a new category. Recreation users in effect are downgraded to a constructive trespasser status. Thus, the landowner is under no duty to:

1. inspect the property to discover hidden dangers;
2. warn the recreation entrant of hidden dangers;
3. keep the property reasonably safe for the entrants use; and
4. provide assurances of safety to the recreationist.

While landowners have very little liability risk exposure to gratuitous recreation users they are not totally devoid of obligations to the recreation entrant. Basically, landowner's have an obligation to avoid injuring the recreation entrant through gross negligence or wilful and wanton misconduct.

\textit{Wilful \& Malicious Conduct}

Landowners lose their extensive liability protection when recreation users are injured through a landowners wilful, wanton, or gross misconduct. With the exception of Idaho, North Carolina, Ohio and Vermont, the remaining 46 states recognize this type of conduct as an exception to the protection rule. Of these four states, only Idaho and Ohio seem to provide the landowners with absolute immunity from recreation user injuries.

Although efforts have been made to distinguish between the terms "wilful," "wanton," "malicious," or "gross" conduct, in practice such distinctions have been consistently ignored and

\textsuperscript{20} As of 1992, about 380 appellate court cases dealing with the various ramifications of the statutes were identified. For a listing of these cases see the Table 2.

\textsuperscript{21} Thirty one states have adopted a standard of care patterned after the Model Act, 11 have a modified standard and 4 offer a vague definition. Appellate courts have made decisions interpreting the duty of care in 14 states suggesting that the statutory standard of care has posed for problems for application and interpretation. See Kaiser, R.A. \& Wright, B.A. \textit{Recreational Access to Private Land: Beyond the Liability Hurdle}, 40 Journal of Soil and Water Conservation, 478-480 (1985).
the terms have been treated as having the same meaning. In many of the statutes, all of the terms are used. The statutes generally do not define wilful, wanton, malicious or gross misconduct leaving the determination of such conduct up to the courts.

Generally, conduct characterized as wilful, wanton or gross tends to take on an aspect of highly unreasonable actions involving an extreme departure from ordinary care. It is often said to be conduct undertaken in disregard of a known and obvious risk making it high probably that harm would follow. It is conduct which shows an utter indifference to or conscious disregard for the safety of others.

Since wilful and wanton acts serve to expose the landowner to greater liability risks for recreation user injuries a number of recent cases have sought to apply this exception. Ordinarily, many of the cases would be characterized as negligence cases for which the landowner would not be liable, but because of the exception, many litigants have sought to establish wilful, wanton, or gross conduct. Successful claims against landowners for the wilful, malicious or gross failure to guard the user against a dangerous conditions have generally been found in swimming and diving injury cases, in motorcycle or snowmobile accidents or in instance where unmarked wires or fences caused the injury.

One illustration of a successful claim of wilful and wanton misconduct is Burnett v. Adrian 326 N.W.2d 810 (Mich 1982) where the court held that although the parents had made no claim for gross negligence, they had alleged facts to make out a claim for wilful and wanton misconduct within the meaning of the Michigan recreational use statute. The parents alleged that: (1) their 14 year old son drowned after walking off the edge of a submerged structure that the city had failed to destroy when the lake was created; (2) the city knew the structure existed and that swimmers used the lake in that area; and, (3) the city failed to avert the danger by removing the structure, fencing the lake or posting warning signs.

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23 One Michigan Court set forth these elements for an act to be wilful and wanton:
(1) knowledge of situation requiring exercise of ordinary care and diligence to vert injury to another;
(2) ability to avoid resulting harm by ordinary care and diligence in use of means at hand; and
(3) omission to use such care and diligence to avert threatened danger when to an ordinary mind it must be apparent that result is likely to prove disastrous to another. Graham v. Gratiot County, 337 N.W.2d 73 (Mich 1983).


25 See Manel v. U.S. 719 F.2d 963 (Ark 1983) (Diver struck submerged rock at an area where Park Service knew of danger and posted no warning signs); McGruder v. Georgia Power Co., 191 S.E.2d 305 rev'd on other grounds, 194 S.E.2d 440 (Georgia 1972) (Child drowned while trapped in a drainage pipe leading between pools of water); North v. Taco Hills Inc., 286 S.E.2d 346 (Georgia 1981) (Angler slipped and fell forward into a patch of overgrown weeds and was injured when he landed on a rusty roll of fencing from an old garbage dump); Miller v. U.S. 597 F.2d 614 (III 1976) (Diver struck submerged object when he dove off a pier into water the U.S. knew was dangerous and failed to post warning signs); Kreves v. Ayers 358 A.2d 844 (NJ 1976) (Motorcycle rider injured when he struck a cable stretched across trail on landowners property); Estate of Thomas v. Consumers Power Co., 231 N.W.2d 653 (Mich 1975)(Two brothers killed when their snowmobile struck a guy wire supporting power company's utility pole).
More often than not the injured recreation user has not been successful in proving wilful and wanton misconduct or gross negligence. This is illustrated in Simpson v. United States, 564 F.Supp. 945 (Calif 1982) where the court held that the government had not wilfully or maliciously failed to guard against a dangerous condition when the ground gave way under a hiker and he fell into an underground hot water pool. The court found that the accident had occurred in an area that the government had fenced off and posted as prohibited to public entry due to the areas dangerous nature. In the courts view the fencing of the area and the posting of warning signs was a good faith, appropriate and reasonable response to the dangers in the area.

**Charging a User Fee**

In exchange for special liability protection the landowner is generally precluded from charging the user an entry fee—the so called consideration exclusion. This gratuitous use requirement is generally strictly interpreted by the courts so that the landowner cannot charge a fee and retain liability protection. A number of states allow user fee charges sufficient to pay property taxes or to cover basic expenses when the intent of the landowner is not to be engaged in a commercial recreation enterprise. See Table 1. However, the usual rule is that if a fee is charged, the recreation use statute does not apply, and the landowner loses the special liability protection. On paper, this seems to increase the liability risk exposure for the landowner, although it does not automatically follow that the landowner is at greater risk. Other legal defenses, such as the liability waiver, the doctrine of comparative negligence, the statute of limitations, and the absence of negligence are available to the landowner. At most, if the recreation use statute does not apply, the common law duties of care required of all landowners toward invitees or licensees is the applicable standard of care.

26 For cases where the courts held no wilful or wanton misconduct see Glover v. Mobile, 417 So.2d 175 ( Ala 1982), children trapped in a whirlpool in a river; Russell v. T.V.A., 564 F.Supp. 1043 (Tenn 1983) (Swimmer while sliding down a 200 foot spillway on a dam injured when she fell 20 feet over the edge and landed in the creek below); Clark v. T.V.A. 606 F.Supp. 130 (Tenn 1985), (Boat went over spillway of dam); O'Shea v. Claude C. Wood Co., 159 Cal. Rptr. 125 (Calif 1979) (Motorcyclist injured when he drove off the end of a mound of stockpiled dirt).


28 In a minority of jurisdictions, courts have distinguished an equipment rental fee, income from concessions or parking lot fees from the "consideration exception" and allowed the landowner to receive protection from the statute. See Herrington v. Stone Mountain Memorial Assoc., 168 S.E.2d 663 (Ga. 1969), rev'd 171 S.E.2d 521 (1969), aff'd 172 S.E.2d 434 (1970); Moss v. Dept. of Natural Resources, 404 N.E. 2d 742 (Ohio 1980); Huth v. Dept. of Natural Resources, 413 N.E.2d 1201 (Ohio 1980); Diodato v. Camden Co. Park Comm.392 A.2d 655 (NJ 1978); Kleer v. U.S. 761 F.2d 1492 (Fla 1982).
Table 1. Analysis of State Recreation Use Statutes

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<td>No</td>
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<td>Mich. Comp. Laws Ann. §300.201</td>
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<td>Miss. Code Ann. §§89-2-1 to 7, 21 to 27</td>
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Table 1. Analysis of State Recreation Use Statutes—continued

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<td>1950</td>
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Case Law

Protected Landowners & Recreation Activities

One of the purposes of this study was to review the appellate court cases invoking the state recreation uses statutes to ascertain any liability exposure patterns. Cases were analyzed on a state by state basis according to the type of landowner (public or private), the liability holding of the case, and the type of recreation activity engaged in by the injured user. A total of 380 cases involving injuries or death to recreation users were identified in which public and private landowners sought protection from liability under the recreation use statute. Public and private landowners were held liable in 88 appellate cases, or about 23 percent of the total. Information on the pattern of appellate court cases is presented in Table 2.

Public Landowners

Since the purpose of the statutes is to open up private land for public recreation there is little question that the statute applies to private landowners. The applicability of the statute to public entities is a question that has generated substantial litigation over the past 10 years. About 46 percent (178 cases) of the 380 appellate court cases involved public agencies. While the applicability of the statute to federal, state and local agencies varies, the decided trend is to allow public agencies to receive the immunity protection afforded by recreation uses statutes.29 Thus, public agencies may use governmental immunity statutes and recreation use statutes to escape liability for recreation user injuries.

Private Landowners

Based on the provisions of state recreation use statutes, private landowners in all states have substantial immunity from liability for recreation user injuries. In about 21 percent (43 cases) of the 202 private landowner appellate court cases were the landowners found legally responsible for the recreation users' injuries.

Litigation patterns involving private landowners varied among the states and does not always correspond with population. While the larger states, such as California, Michigan, New York and Pennsylvania accounted for 157 cases, or 41 percent of the total number of private landowner cases, some of the smaller states had a substantial body of appellate case law. Georgia, Louisiana, and Wisconsin generated 67 cases or some 18 percent of the total. These three less populous states have generated more case law than did the states of Florida, Illinois, Ohio, Texas, and Virginia, which have more residents.

Litigation by Type of Recreation Activity

Most recreation use statutes enumerate the outdoor recreation activities within the scope of liability coverage. Typically, statutes include 10 to 20 different recreation activities. The listing of recreation activities is intended to be illustrative and not exhaustive or exclusive so that if a specific

29 Courts in 18 states have tested the applicability of the statutes to public agencies with 15 states allowing the statute to be used by public agencies. These states include, Alabama, Georgia, Idaho, Kentucky, Michigan, Nebraska, New Jersey, New York, North Dakota, Ohio, Oregon, Pennsylvania, Texas, Washington, and Wisconsin. For a short but insightful article on the subject see Koziolowski, J.C.& Wright, B.A., "State Recreational Use Statutes and Their Applicability to Public Agencies: A Silver Lining or More Dark Clouds?", 7 Journal of Park & Recreation Administration 26-34. (Summer 1989).
activity is not listed, coverage is extended to that activity if it is within the rubric of "outdoor recreation." The Hawaii statute defines "recreation purposes" by listing a number of recreation activities and is illustrative of the pattern found in most statutes.

"Recreation purpose includes, but is not limited to, any of the following, or any combination thereof: hunting, fishing, swimming, boating, camping, picnicking, hiking, pleasure driving, nature study, water skiing, water sports, and viewing and enjoying historical, archaeological, scenic, or scientific sites."30

For the purposes of this study, 14 specific outdoor recreation activities were used in reviewing the appellate court cases (see Table 2). Excluded from the more detailed review were those athletic or cultural recreation activities typically associated public recreation and park agencies. Based on a review of appellate court cases by recreation activity, three important points can be made.

• First, water-related recreation activities (swimming, boating, and fishing) generated the largest number of appellate court cases and potentially pose the greatest liability risk exposure for landowners. The 137 water-related cases represent about 36 percent of the total appellate court cases brought under state recreation use statutes.

• Second, significant landowner liability exposure arises from the operation of motorized vehicles on the property. Forty-four (44) cases involved motorcycles, snowmobiles, ATV’s and other types of motorized vehicles. These ATV cases represent about 12 percent of the total number of appellate cases.

• Third, hunting, an activity traditionally associated with outdoor recreation and public access issues, provides relatively little risk exposure for landowners. Only 9 appellate court cases involving hunting were identified. From a landowner risk exposure perspective, hunting is a low liability risk activity when compared to swimming or the operation of ATV’s.

Clearly, the risk factors associated with different types of recreation activities will be an important consideration for a landowner in making public access decisions. Often a landowner will not have an opportunity to allow alternative recreation activities (such as hunting instead of swimming) because the land may not be suited for other activities. In those instances the deciding question should be whether public access is to be allowed at all.

30 HAWAII REV. STAT. ANN. tit.28,§ 520-2(3).
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RISK MANAGEMENT AND INSURANCE COVERAGE

Adding to the perception of landowner liability is the limited availability and high cost of liability insurance. "A catch-22" situation may exist--insurance companies resist offering liability coverage until better underwriting information is obtained and landowners refrain from allowing public access until liability insurance becomes available. It is clear from a review of the literature that landowners have little understanding about their liability insurance coverage and that limited coverage is available.

There are many types of insurance, each with its own advantages and disadvantages in the form of coverage. Landowners have three basic choices for insurance coverage when making a decision regarding allowing public recreation access to their lands. Liability insurance may be provided under:

1. a commercial general business liability policy providing general liability coverage in one contract (used were the prime use of the property is for a commercial recreation enterprise);
2. a owners, landlords and tenants (homeowners) liability policy (with or without a rider providing additional coverage for the recreation activity); or
3. a policy written specifically for that activity (not very common for incidental recreation uses of private lands).

Perhaps the most common approach is to seek coverage using the homeowners policy. While this type of policy may provide adequate coverage the following points need to be made. First, homeowner policies generally exclude from coverage liability arising out of "business pursuits." Under most policies the term business is typically defined to be a trade or profession or occupation other than the prime purpose for which the land is used. Where the recreation use is incidental to the primary use for the land, the recreation activity will probably not be construed as a business purpose. (Since many policies vary within a state and between states the landowner should check with a local insurance broker for coverage). Second, some insurance contracts contain language voiding the insurance if the insured fails to tell the insurer of any changes in activities in the use of the land. If in doubt, inform the insurer. Third, breach of contract and warranty claims are usually excluded from coverage.

In reviewing insurance coverage with an insurance agent or broker, the landowner should seek answers to the following checklist of questions:

a. what events are covered?
b. what property or activities are covered?
c. what persons and employees are covered?
d. what losses are covered?
e. what locations are covered?

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31 In a study of recreation ranch business in Wyoming, most ranchers indicated a general concern about the limited availability and cost of liability insurance coverage. This concern was reflected in a survey of 29 insurance companies in the State. Of the 29 insurance companies surveyed only 1 expressly provided an endorsement to cover ranch recreation activities and 7 companies indicated that their basic farm and ranch policy might cover what they termed "incidental recreation exposures," provided the recreation income represented only a small part of the ranch or farm's gross receipts. See Jacobs, et al., (1989) Managing Wyoming's Agricultural Resources to Increase from Tourism and Recreation. University of Wyoming, Department of Agricultural Economics, pp. 49-53.
f. what time periods, if any, are covered?
g. what special conditions are excluded?
h. what amount of loss will the insurer pay? and,
i. what steps must the insured take following an injury or loss?

Although this is not an exhaustive list of points and questions to be asked about insurance policies, they can assist the landowner in evaluating a specific policy.

CONCLUSIONS

As a result of the data analyzed in this study, four major conclusions can be drawn that have significant implications for continued efforts to open more private lands for public recreation.

• First, the so-called "liability crisis" that has plagued efforts to increase the number of recreational opportunities on private lands has been more mythical than real. Even though lawsuits against landowners involving recreational injuries occur annually, about half the cases reported since 1965 were filed against public entities such as municipalities and public land management agencies. When lawsuits were brought against private landowners, defendants were those often presumed to have "deep pockets" (for example, corporations, utility companies) rather than the typical farmer or rancher of more modest means.

Furthermore, the statistics regarding recreational accidents analyzed in this study suggest a decidedly downward trend in the number of accidents occurring each year. Therefore, landowner liability exposure for recreational use of private lands appear to be a significant perceptual problem, but in reality, the liability exposure of rural landowners is quite small.

• Second, inasmuch as the perception of legal risk is sufficient to keep many landowners from opening their lands to the recreating public, little solace can be found in the knowledge that the reality of the problem has been exaggerated. Landowners' perceptions are most important in driving their decisions regarding access. Until more is done to educate landowners regarding their actual risk exposure, these perceptions and the crisis mentality that often results, will continue to impede access. Hopefully, the findings reported in this study will provide some utility in debunking the myth.

• Third, although being found liable in a lawsuit is the most ominous concern, the threat of being sued and taken to court is, by itself, a major disincentive to opening more lands. The stress and anxiety associated with court appearances, and the costs of court and lawyer fees are often enough to dissuade landowners from allowing access to their properties. Current statutory language does little to indemnify landowners from these types of costs and aggravations.

• Finally, most state statutes predicate insulation from liability upon access being granted in a gratuitous manner. Because landowners often incur significant expenses related to providing recreational opportunities, their inability to even minimally recover these expenditures is another reason lands are not opened. Alabama, California and Texas have, in various ways, inserted language in their recreation use statutes that allows the assessment of fees for access without the loss of liability protection. However, other states have been slow to follow. Agencies concerned about increasing the amount of rural land available for recreation, as well as those concerned about the economic welfare of rural landowners, should be cognizant of these limitations.
INDIVIDUAL STATE DATA
Risk Exposure for Landowners in Alabama

In General. Alabama law limits the liability risk exposure for landowners, or their lessees, when they allow their land to be used for non-commercial public recreation purposes. The recreation use statutes encourage landowners to make their land available to the public for non-commercial recreation purposes by limiting their liability for injuries to persons using the property. This landowner protection program is intended to encourage public recreation use of land that would not otherwise be open to the public.

Impact of Charging a Fee. Landowners in Alabama may charge a fee for the recreational use of their property and not lose the special liability protection so long as:

1. the intent in allowing public recreation use is not for commercial purposes, which is defined as being profit motivated; and if
2. the fee is for maintenance purposes where the primary use of the land is for other than public recreational purposes.

So long as the primary use of the land is not for public recreation purposes, fees may be charged for the typical recreation activities including, but not limited to, hunting, fishing, water sports, hiking, camping, picnicking or viewing wildlife, plants, archaeological, historical, scenic or scientific sites.

Accident Rates

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*No State Data Available

Litigated Cases

Poole v. City of Gadsden, 541 So. 2d 510 (1989).

Gable v. City of Huntsville, 564 So. 2d 940 (1990).
ARTICLE 1. DUTY OF CARE OWED PERSONS ON PREMISES FOR SPORTING OR RECREATIONAL PURPOSES. [Current through Act 92-720, approved 10-9-92]

§ 35–15–1 No duty owed except as provided in section 35–15–3.

An owner, lessee or occupant of premises owes no duty of care to keep such premises safe for entry and use by others for hunting, fishing, trapping, camping, water sports, hiking, boating, sight-seeing, cave, cliff, rappel or engaging in other sporting or recreational activities upon such premises does not thereby extend any assurance that the premises are safe for such purpose nor constitute the person to whom permission has been granted the legal status of an invitee to whom a duty of care is owed or assume responsibility for or incur liability for any injury to person or property caused by an act of such person to whom permission has been granted, except as provided in section 35–15–3.

§ 35–15–2 Effect of permission to use premises.

An owner, lessee or occupant of premises who gives permission to another to hunt, fish, trap, camp, hike, sight-see, cave, climb, rappel or engage in other sporting or recreational activities upon such premises does not thereby extend any assurance that the premises are safe for such purpose nor constitute the person to whom permission has been granted the legal status of an invitee to whom a duty of care is owed or assume responsibility for or incur liability for any injury to person or property caused by an act of such person to whom permission has been granted, except as provided in section 35–15–3.

§ 35–15–3 Otherwise existing liability not limited.

This article does not limit the liability which otherwise exists for wilful or malicious failure to guard or warn against a dangerous condition, use, structure or activity; for injury suffered in any case where permission to hunt, fish, trap, camp, hike, cave, climb, rappel or sight-see was granted for commercial enterprise for profit; or for injury caused by acts of persons to whom permission to hunt, fish, trap, camp, hike or sight-see was granted to third persons as to whom the person granting permission, or the owner, lessee or occupant of the premises owed a duty to keep the premises safe or to warn of danger.

§ 35–15–4 General duty of care or ground of liability not created.

Nothing in this article creates a duty of care or ground of liability for injury to person or property.

§ 35–15–5 Right to go on lands of another without permission not created.

Nothing in this article shall be construed as granting or creating a right for any person to go on the lands of another without permission of the landowner.

ARTICLE 2. LIMITATION OF LIABILITY FOR NON-COMMERICAL PUBLIC RECREATIONAL USE OF LAND.

§ 35–15–20 Legislative intent.

It is hereby declared that there is a need for outdoor recreational areas in this state which are open for public use and enjoyment; that the use and maintenance of these areas will provide beauty and openness for the benefit of the public and assist in preserving the health, safety, and welfare of the population; that it is in the public interest to encourage owners of land to make such areas available to the public for non-commercial recreational purposes by limiting such owners’ liability towards persons entering thereon for such purposes; that such limitation on liability would encourage owners of land to allow non-commercial public recreational use of land which would not otherwise be open to the public, thereby reducing state expenditures needed to provide such areas.

§ 35–15–21 Definitions.

Unless the context thereof clearly indicates to the contrary, as used in this article the following terms shall have the following meanings:

(1) Owner. Any public or private organization of any character, including a partnership, corporation, association, any individual, or any federal, State or local political subdivision or any agency of any of the foregoing having a legal right of possession of outdoor recreational land. For the purpose of this article, an employee or agent of the owner, but not an independent contractor while conducting activities upon the outdoor recreational land, is deemed to be an owner.
(2) Outdoor recreational land. Land and water, as well as buildings, structures, machinery and other such appurtenances used for or susceptible of recreational use.

(3) Recreational use or Recreational purpose. Participation in or viewing of activities including, but not limited to, hunting, fishing, water sports, aerial sports, hiking, camping, picnicking, winter sports, animal or vehicular riding, or visiting, viewing or enjoying historical, archaeological, scenic or scientific sites, and any related activity.

(4) Person. Any individual, regardless of age, maturity, or experience.

(5) Commercial recreational use. Any use of land for the purpose of receiving consideration for opening such land to recreational use where such use or activity is profit-motivated. Consideration does not include any benefits provided by law in accordance with this article, any other state or federal law, or in the form of good will for permitting recreational use as stated in this article; nor does consideration include a charge by the landowner for maintenance fees where the primary use of the land is for other than public recreational purposes.

§ 35–15–22 Inspection and warning not required.
Except as specifically recognized by or provided in this article, an owner of outdoor recreational land who permits non-commercial public recreational use of such land owes no duty of care to inspect or keep such land safe for entry or use by any person for any recreational purpose, or to give warning of a dangerous condition, use, structure, or activity on such land to persons entering for such purposes.

§ 35–15–23 Limitations on legal liability of owner.
Except as expressly provided in this article, an owner of outdoor recreational land who either invites or permits non-commercial public recreational use of such land does not by invitation or permission thereby:

(1) Extend any assurance that the outdoor recreational land is safe for any purpose;

(2) Assume responsibility for or incur legal liability for any injury to the person or property owned or controlled by a person as a result of the entry on or use of such land by such person for any recreational purpose; or

(3) Confer upon such person the legal status of an invitee or licensee to whom a duty of care is owed.

§ 35–15–24 Otherwise existing liability not limited.
(a) Nothing in this article limits in any way legal liability which otherwise might exist when such owner has actual knowledge:

(1) That the outdoor recreational land is being used for non-commercial recreational purposes;

(2) That a condition, use, structure, or activity exists which involves an unreasonable risk of death or serious bodily harm;

(3) That the condition, use, structure, or activity is not apparent to the person or persons using the outdoor recreational land; and

(4) That having this knowledge, the owner chooses not to guard or warn, in disregard of the possible consequences.

(b) The test set forth in subsection (a) of this section shall exclude constructive knowledge by the owner as a basis of liability and does not create a duty to inspect the outdoor recreational land.

(c) Nothing in this article shall be construed to create or expand any duty or ground of liability or cause of action for injury to persons on property.

Nothing in this article shall be construed to relieve any person using outdoor recreational land open for non-commercial public recreational use from any obligation which such person may have in the absence of this article to exercise care in the use of such land and in the activities thereon, or from legal consequences of failure to employ such care.

§ 35–15–26 Provisions not applicable to commercial recreational enterprise.
The liability limitation provisions of this article shall not apply in any cause of action arising from acts or omissions occurring on or connected with land upon which any commercial recreational enterprise is conducted.

§ 35–15–27 Governmental immunity.
Nothing in this article shall be so construed as to alter or repeal any immunity from lawsuit presently conferred by law upon the state or political subdivision thereof, or any agency or instrumentality thereof.

ALABAMA-3
§ 35–15–28 Owner must establish public use.

(a) The liability limitation protection of this article may be asserted only by an owner who can reasonably establish that the outdoor recreational land was open for non-commercial use to the general public at the time of the injury to a person using such land for any public recreational purpose. Any owner may create a rebuttable presumption of having opened land for non-commercial public recreational use by:

(1) Posting signs around the boundaries and at the entrance(s) of such land; or

(2) Publishing a notice in a newspaper of general circulation in the locality in which the outdoor recreational land is situated, and describing such land; or

(3) Recording a notice in the public records of any county in which any part of the outdoor recreational land is situated, and describing such land; or

(4) Any act similar to subdivisions (1), (2), or (3) of subsection (a), which is designed to put the public on notice that such outdoor recreational land is open to non-commercial public recreational use.

(b) The assertion of any of the provisions of the article by an owner shall not be construed to be (1) expressed or implied dedication; (2) granting of an easement; or (3) granting of an irrevocable license, to any person or the public to use such outdoor recreational land.

(c) Any person who enters non-commercial outdoor recreational land for any recreational purpose either with or without an invitation or permission from the owner, and either with or without knowledge that the land is held open for non-commercial public recreational use is subject to the provisions of this article.

(d) The availability of outdoor recreational land for non-commercial public use may be conditioned upon reasonable restrictions on the time, place and manner of public use as the owner shall establish.
Risk Exposure for Landowners in Alaska

In General. Landowner liability for injuries to recreation users is governed by the recreation use statute and by common law. If the recreation use statute is not applicable then the landowner duties, obligations and liabilities are determined according to common law.

Under the Alaska recreation use statute public and private landowners are not liable in tort when they allow their unimproved land to be used for recreation purposes. "Unimproved land" is property where no improvements have been made to benefit the recreation user. Landowners may be liable in tort under common law rules for recreational injuries on improved land and facilities.

Exceptions. Public and private landowners do not have statutory liability protection when their reckless or intentional misconduct or gross negligence directly causes an injury to the recreational user. This type of conduct is not statutorily defined but is left to judicial determination. The statute does not specifically address landowner liability for injuries to trespassing children. In the absence of a specific provision, landowner liability for injuries to trespassing children will be determined under the common law attractive nuisance doctrine.

Impact of Charging a Fee. By charging a fee for the recreational use of their property landowners lose only their statutory immunity from liability and then common law liability and immunity rules apply. Under common law, the status of the recreation user—either invitee, licensee or trespasser—defines the liability risk exposure for the landowner.

Accident Rates

Trend Analysis of Fatalities
Involving Hunting, Fishing, and All-Terrain Vehicles, 1982-1991

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*No State Data Available

Litigated Cases

ALASKA STATUTES

AS § 09.45.795. Civil Liability for personal injuries or death occurring on unimproved land.

(a) An owner of unimproved land is not liable in tort, except for an act or omission that constitutes gross negligence or reckless or intentional misconduct, for damages for the injury to or death of a person who enters onto or remains on the unimproved portion of land if:

(1) the injury or death resulted from a natural condition of the unimproved portion of the land or the person entered onto the land for recreation; and

(2) the person had no responsibility to compensate the owner for the person's use or occupancy of the land.

(b) This section does not enhance or diminish rights granted under former 43 U.S.C. 932.

(c) In this section, “unimproved land” includes land that contains

(1) a trail;

(2) an abandoned aircraft landing area; or

(3) a road built to provide access for natural resource extraction, but which is no longer maintained or used. [§ 1 ch 138 SLA 1980; am §§ 2,3 ch 168 SLA 1988].
Risk Exposure for Landowners in Arizona

*In General.* Landowner liability for injuries to recreation users is determined in part by the recreation use statute and by common law. If the recreation use statute is not applicable then landowner duties, obligations and liabilities are determined according to common law.

Under the Arizona recreation use statute, public and private landowners, easement holders, tenants or occupants have immunity from liability when they allow their land and facilities to be used for educational and outdoor recreation purposes. Land is defined to include water, buildings and other improvements on the land.

*Exceptions.* Public and private landowners do not have statutory liability protection when their willful, malicious or grossly negligent conduct directly causes an injury to the educational or recreational user. Willful, malicious or grossly negligent conduct is not statutorily defined but is left to judicial determination. Landowners do not have any statutory protection for injuries caused to trespassing children under the attractive nuisance doctrine except for injuries caused by dams and other flood control structures.

*Impact of Charging a Fee.* By charging a fee for the educational or recreational use of their property landowners lose only their statutory immunity from liability and then common law liability and immunity rules apply. Under common law, the status of the recreation user—either invitee, licensee or trespasser—defines the liability risk exposure for the landowner.

**Accident Rates**

<table>
<thead>
<tr>
<th>Trend Analysis of Fatalities</th>
<th>Involving Hunting, Fishing and All-Terrain Vehicles, 1982–1991</th>
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<tr>
<td>All-Terrain Vehicles</td>
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<td>Hunting</td>
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</tbody>
</table>

*No State Data Available*

**Litigated Cases**


§ 33–1551. Duty of owner, lessee or occupant of premises to recreational users; liability; definitions
A. A public or private owner, easement holder, lessee or occupant of a premises is not liable to a recreational or educational user except upon a showing that the owner, easement holder, lessee or occupant was guilty of willful, malicious or grossly negligent conduct which was a direct cause of the injury to the recreational or educational user.
B. As used in this section:
1. “Educational user” means a person to whom permission has been granted or implied without the payment of an admission fee or other consideration to enter upon premises to participate in an educational program, including but not limited to, the viewing of historical, natural, archaeological or scientific sights.
2. “Premises” means agricultural, range, open space, park, flood control, mining, forest or railroad lands, and any other similar lands, wherever located, which are made available to a recreational or educational user, including, but not limited to, paved or unpaved multi-use trails and special purpose roads or trails not open to automotive use by the public and any building, improvement, fixture, water conveyance system, body of water, channel, canal, or lateral road, trail or structure on such lands.
3. “Recreational user” means a person to whom permission has been granted or implied without the payment of an admission fee or other consideration to travel across or to enter upon premises to hunt, fish, trap, camp, hike, ride, exercise, swim or engage in similar pursuits. The purchase of a state hunting, trapping or fishing license is not the payment of an admission fee or other consideration as provided in this section.
C. This section does not limit the liability which otherwise exists for maintaining an attractive nuisance, except with respect to dams, channels, canals and lateral ditches used for flood control, agricultural, industrial, metallurgical or municipal purposes.
Risk Exposure for Landowners in Arkansas

*In General.* Landowner liability for injuries to recreation users is determined in part by the state recreation use statute and by common law. Common law rules are derived from appellate court cases. If the recreation use statute is not applicable then landowner duties, obligations and liabilities are determined according to common law.

Under the Arkansas recreation use statute a landowner who gratuitously invites or permits a person to use the property for recreation purposes does not have a duty to keep the premises safe; to warn of dangerous conditions; to assume responsibility for any natural or artificial condition on the premises; nor does the landowner extend an assurance that the property is safe; or confer upon the recreation user the status of invitee or licensee.

*Exceptions.* Landowners do not have statutory immunity from liability when their malicious failure to guard or warn against a known ultra-hazardous condition, use or activity causes an injury to the recreational user. Malicious conduct is not statutorily defined but is left to judicial interpretation. Since the statute does not contain express provisions regarding landowner obligations to trespassing children liability is determined by the judicial doctrine of attractive nuisance.

*Impact of Charging a Fee.* By charging a fee for the recreational use of their property landowners lose only their statutory immunity from liability. There is one exception to this rule. A landowner may charge for a fee to use the land provided the fee is used to reduce or offset costs and eliminate losses. In essence, the landowner can charge a fee to break even but not make a profit. Common law liability rules apply in the absence of statutory protection.

### Accident Rates

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</tr>
</tbody>
</table>

*No State Data Available

### Litigated Cases

*Mandel v. United States,* 719 F.2d 963 (1983)
ARKANSAS CODE OF 1987 ANNOTATED
TITLE 18. PROPERTY
SUBTITLE 2. REAL PROPERTY
CHAPTER 11. REAL PROPERTY INTERESTS GENERALLY
SUBCHAPTER 3. RECREATIONAL USES—OWNER’S LIABILITY

§ 18–11–301. Purpose.
The purpose of this subchapter is to encourage owners of land to make land and water areas available to the public for recreational purposes by limiting their liability toward persons entering thereon for such purposes. History. Acts 1965, No. 51, § 1; A.S.A. 1947, § 50–1101.

As used in this subchapter, unless the context otherwise requires:

(1) “Land” means land, roads, water, watercourses, private ways and buildings, structures, and machinery or equipment when attached to the realty;

(2) “Owner” means the possessor of a fee interest, a tenant, lessee, occupant, or person in control of the premises;

(3) “Recreational purpose” includes, but is not limited to, any of the following, or any combination thereof:
   (A) Hunting;
   (B) Fishing;
   (C) Swimming;
   (D) Boating;
   (E) Camping;
   (F) Picnicking;
   (G) Hiking;
   (H) Pleasure driving;
   (I) Nature study;
   (J) Water skiing;
   (K) Winter sports;
   (L) Spelunking; and
   (M) Viewing or enjoying historical, archaeological, scenic, or scientific sites; and
   (N) Any other activity undertaken for exercise, education, relaxation, or pleasure on land owned by another;

(4) “Charge” means an admission fee for permission to go upon or use the land, but does not include:
   (A) The sharing of game, fish, or other products of recreational use; or
   (B) Contributions in kind, services, or cash paid to reduce or offset costs and eliminate losses from recreational use;


§ 18–11–303. Construction.
Nothing in this subchapter shall be construed to:

(1) Create a duty of care or ground of liability for injury to persons or property;

(2) Relieve any person using the land of another for recreational purposes from any obligation which he may have in the absence of this subchapter to exercise care in his use of the land and in his activities thereon or relieve any
person from the legal consequences of failure to employ such care. [History. Acts 1965, No. 51, § 7; A.S.A. 1947, § 50–1107.]

§ 18–11–304. Duty of care.
Except as specifically recognized by or provided in § 18–11–307, an owner of land owes no duty of care to keep the premises safe for entry or use by others for recreational purposes or to give any warning of a dangerous condition, use, structure, or activity on the premises to persons entering for recreational purposes. [History. Acts 1965, No. 51, § 3; A.S.A. 1947, § 50–1103.]

§ 18–11–305. Owner's immunity from liability.
Except as specifically recognized by or provided in § 18–11–307, an owner of land who, either directly or indirectly, invites or permits without charge any person to use his property for recreational purposes does not thereby:

(1) Extend any assurance that the lands or premises are safe for any purpose;
(2) Confer upon the person the legal status of an invitee or licensee to whom a duty of care is owed;
(3) Assume responsibility for or incur liability for any injury to person or property caused by an act or omission of such persons;
(4) Assume responsibility for or incur liability for injury to the person or property caused by any natural or artificial condition, structure, or personal property on the land. [History. Acts 1965, No. 51, § 4; 1983, No. 168, § 3; A.S.A. 1947, § 50–1104.]

§ 18–11–306. Land leased to state.
Unless otherwise agreed in writing, the provisions of §§ 18–11–304 and 18–11–305 shall be deemed applicable to the duties and liability of an owner of land leased to the state, or any subdivision thereof, for recreational purposes. [History. Acts 1965, No. 51, § 5; A.S.A. 1947, § 50–1105.]

§ 18–11–307. Exceptions to owner's immunity.
Nothing in this subchapter limits in any way liability which otherwise exists:

(1) For malicious, but not mere negligent, failure to guard or warn against an ultra-hazardous condition, structure, personal property, use, or activity actually known to the owner to be dangerous; and
(2) For injury suffered in any case where the owner of land charges the person or persons who enter or go on the land for the recreational use thereof, except that, in the case of land leased to the state, a subdivision thereof, or to a third person, any consideration received by the owner for the lease shall not be deemed a charge within the meaning of this section. [History. Acts 1965, No. 51, § 6; 1983, No. 168, § 4; A.S.A. 1947, § 50–1106.]
Risk Exposure for Landowners in California

In General. Landowner liability for injuries to recreation users is governed in part by the recreation use statute and by common law. Common law rules are derived from appellate court cases. If the recreation use statute is not applicable then landowner duties, obligations and liabilities are determined according to common law.

The California recreation use statute protects private landowners, easement holders, tenants, occupants, or any owner of an estate in property, from liability when they allow their land and facilities to be gratuitously used for recreation purposes. A landowner, who gratuitously allows a person to use the property for recreation purposes does not have a duty of care to keep the premises safe; to warn of hazardous conditions; nor does the landowner extend an assurance that the property is safe; or confer upon the recreation user the status of invitee or licensee.

Exceptions. Landowners do not have any statutory liability protection for their willful or malicious failure to guard or warn against a dangerous condition, use, structure or activity, or when they expressly invite, rather than merely permit, a recreation user to come on the property. Willful or malicious is not defined in the statute but it is left to the courts to judicial interpretation. Since the statute does not contain express provisions regarding landowner obligations to trespassing children liability is determined by the judicial doctrine of attractive nuisance.

Impact of Charging a Fee. If a landowner charges a fee for the recreational use of their property they lose only their statutory immunity from liability and then common law landowner liability rules apply. Fees paid to the landowner by the state for purposes of opening up the land to public recreational use are allowed and the landowner does not lose immunity from liability.

Accident Rates

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<tr>
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<tr>
<td>Fishing</td>
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<td>Hunting</td>
<td>*</td>
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</tbody>
</table>

*No State Data Available

Litigated Cases


*Moore v. City of Torrance, 101 Cal.App.3d 56, 166 Cal.Rptr. 192.*


CALIFORNIA CIVIL CODE
DIVISION 2. PROPERTY
PART 2. REAL OR IMMOVABLE PROPERTY
TITLE 3. RIGHTS AND OBLIGATIONS OF OWNERS
CHAPTER 2. OBLIGATIONS OF OWNERS

§ 846. Permission to enter for recreational purposes

An owner of any estate or any other interest in real property, whether possessory or nonpossessory, owes no duty of care to keep the premises safe for entry or use by others for any recreational purpose or to give any warning of hazardous conditions, uses of, structures, or activities on such premises to persons entering for such purpose, except as provided in this section.

A “recreational purpose,” as used in this section, includes such activities as fishing, hunting, camping, water sports, hiking, spelunking, sport parachuting, riding, including animal riding, snowmobiling, and all other types of vehicular riding, rock collecting, sightseeing, picnicking, nature study, nature contacting, recreational gardening, gleaming, hang gliding, winter sports, and viewing or enjoying historical, archaeological, scenic, natural, or scientific sites. An owner of any estate or any other interest in real property, whether possessory or nonpossessory, who gives permission to another for entry or use for the above purpose upon the premises does not thereby (a) extend any assurance that the premises are safe for such purpose, or (b) constitute the person to whom permission has been granted the legal status of an invitee or licensee to whom a duty of care is owed, or (c) assume responsibility for or incur liability for any injury to person or property caused by any act of such person to whom permission has been granted except as provided in this section.

This section does not limit the liability which otherwise exists (a) for willful or malicious failure to guard or warn against a dangerous condition, use, structure or activity; or (b) for injury suffered in any case where permission to enter for the above purpose was granted for a consideration other than the consideration, if any, paid to said land-owner by the state, or where consideration has been received from others for the same purpose; or (c) to any persons who are expressly invited rather than merely permitted to come upon the premises by the landowner.

Nothing in this section creates a duty of care or ground of liability for injury to person or property.


CALIFORNIA CODES
GOVERNMENT CODE
TITLE 5. LOCAL AGENCIES
DIVISION 1. CITIES AND COUNTIES
PART 1. POWERS AND DUTIES COMMON TO CITIES AND COUNTIES CHAPTER 7.
AGRICULTURAL LAND

ARTICLE 2.5. AGRICULTURAL PRESERVES

§ 51238.5. Private land; agreement to allow use for free public recreation; agreement to indemnify owner

If an owner of land agrees to permit the use of his land for free public recreation, the board or council may agree to indemnify such owner against all claims arising from such public use. The owner's agreement that his land be used for free, public recreation shall not be construed as an implied dedication to such use. (Added by Stats.1972, c. 1353, p. 2687, § 2. Amended by Stats.1978, c. 1120, p. 3429, § 7.)
Risk Exposure for Landowners in Colorado

In General. Landowner liability for injuries to recreation users is controlled in part by the state recreation use statute and by common law. Common law rules are derived from appellate court cases. If the recreation use statute is not applicable then the landowner duties, obligations and liabilities are determined according to common law.

The Colorado recreation use statute provides public and private landowners, easement holders, tenants, occupants, or anyone with a right to grant permission to use the land with immunity from liability when they allow their land and facilities to be used for recreation or sports purposes. Under the statute, a landowner who gratuitously invites or permits a person to use the property for recreation and sports purposes does not extend any assurances that the property is safe; incur liability to an injured person when the injury was caused by an act or omission of the injured person; nor confer upon the recreation user the status of invitee or licensee.

Exceptions. Landowner liability is not limited when their willful or malicious failure to guard or warn against a known dangerous condition, use or activity causes an injury to the recreational user. Landowners are liable for injuries to trespassing children under the common law attractive nuisance doctrine.

Impact of Charging a Fee. By charging a fee for the entry on or use of their land or facilities landowners only lose their statutory immunity from liability and then common law liability and immunity rules apply. Landowner liability is not limited if an injury occurs on land on which a commercial or business enterprise of any description is being carried on. Fees paid to the landowner by the state for purposes of opening up the land to public recreational use are allowed and the landowner does not lose immunity from liability.

Accident Rates

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<td>Hunting</td>
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*No State Data Available*

Litigated Cases

ARTICLE 41. OWNERS OF RECREATIONAL AREAS—LIABILITY

§ 33–41–101. Legislative declaration
The purpose of this article is to encourage owners of land within rural areas to make land and water areas available for recreational purposes by limiting their liability toward persons entering thereon for such purposes.

As used in this article, unless the context otherwise requires:

(1) "Charge" means a consideration paid for entry upon or use of the land or any facilities thereon or adjacent thereto.

(2) "Land" also means roads, water, watercourses, private ways, and buildings, structures, and machinery or equipment thereon, when attached to real property.

(3) "Owner" includes, but is not limited to, the possessor of a fee interest, a tenant, lessee, occupant, the possessor of any other interest in land, or any person having a right to grant permission to use the land, or any public entity as defined in the "Colorado Governmental Immunity Act", article 10 of title 24, C.R.S., which has an interest in land.

(4) "Person" includes any individual, regardless of age, maturity, or experience, or any corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership, or association, or any other legal entity. (4.5) "Public entity" means the same as defined in section 24–10–103(5), C.R.S.

(5) "Recreational purpose" includes, but is not limited to, any sports or other recreational activity of whatever nature undertaken by a person while using the land, including ponds, lakes, reservoirs, streams, paths, and trails appurtenant thereto, of another and includes, but is not limited to, any hobby, diversion, or other sports or other recreational activity such as: hunting, fishing, camping, picnicking, hiking, horseback riding, snowshoeing, cross country skiing, bicycling, riding or driving motorized recreational vehicles, swimming, tubing, diving, spelunking, sight-seeing, exploring, hang gliding, rock climbing, kite flying, roller skating, bird watching, gold panning, target shooting, ice skating, ice fishing, photography, or engaging in any other form of sports or other recreational activity. (Repealed and reenacted Laws 1969, H.B.1038, § 1. Laws 1973, H.B.1203, § 1; Laws 1983, H.B.1115, §§ 1, 2; Laws 1988, H.B.1344, § 1.)

§ 33–41–103. Limitation on landowner’s liability

(1) Subject to the provision of section 33–41–105, an owner of land who either directly or indirectly invites or permits, without charge, any person to use such property for recreational purposes does not thereby:
(a) Extend any assurance that the premises are safe for any purpose;
(b) Confer upon such person the legal status of an invitee or licensee to whom a duty of care is owed;
(c) Assume responsibility or incur liability for any injury to person or property or for the death of any person caused by an act or omission of such person.

(2) (a) The total amount of damages which may be recovered from a private landowner who leases land or a portion thereof to a public entity for recreational purposes or who grants an easement or other rights to use land or a portion thereof to a public entity for recreational purposes for injuries resulting from the use of the land by invited guests for recreational purposes shall be:
(I) For any injury to one person in any single occurrence, the amount specified in section 24–10–114(1)(a), C.R.S.;
(II) For an injury to two or more persons in any single occurrence, the amount specified in section 24–10–114(1)(b), C.R.S.

(b) The limitations in this subsection (2) shall apply only when access to the property is limited, to the extent practicable, to invited guests, when the person injured is an invited guest of the public entity, when such use of the land by the injured person is for recreational purposes, and only during the term of such lease, easement, or other grant.

COLORADO-2
(c) Nothing in this subsection (2) shall limit, enlarge, or otherwise affect the liability of a public entity.

(d) In order to ensure the independence of public entities in the management of their recreational programs and to protect private landowners of land used for public recreational purposes from liability therefor, except as otherwise agreed by the public entity and a private landowner, a private landowner shall not be liable for a public entity's management of the land or portion thereof which is used for recreational purposes.

(e) For purposes of this subsection (2) only, unless the context otherwise requires:

(I) "Invited guests" means all persons or guests of persons present on the land for recreational purposes, at the invitation or consent of the public entity, and with or without permit or license to enter the land, and all persons present on the land at the invitation or consent of the public entity or the landowner for business or other purposes relating to or arising from the use of the land for recreational purposes if the public entity receives all of the revenues, if any, which are collected for entry onto the land. "Invited Guests" does not include any such persons or guests of any person present on the land for recreational purposes at the invitation or consent of the public entity or the landowner if the landowner retains all or a portion of the revenue collected for entry onto the land or if the landowner shares the revenue collected for entry onto the land with the public entity. For the purposes of this subparagraph (I), "revenue collected for entry" does not include lease payments, lease-purchase payments, or rental payments.

(II) "Land" means real property, or a body of water and the real property appurtenant thereto, which is leased to a public entity or for which an easement or other right is granted to a public entity for recreational purposes. "Land", as used in this subsection (2), does not include real property, buildings, or portions thereof which are not the subject of a lease, easement, or other right of use granted to a public entity.

(II.5) "Lease" or "leased" includes a lease-purchase agreement containing an option to purchase the property. Any lease in which a private landowner leases land or a portion thereof to a public entity for recreational purposes shall contain a disclosure advising the private landowner of the right to bargain for indemnification from liability for injury resulting from use of the land by invited guests for recreational purposes.

(III) "Recreational purposes" includes, but is not limited to, any sports or other recreational activity of whatever nature undertaken by an invited guest while using the land, including ponds, lakes, reservoirs, streams, paths, and trails appurtenant to, of another and includes, but is not limited to, any hobby, diversion, or other sports or other recreational activity such as: Fishing, picnicking, hiking, horseback riding, snowshoeing, cross country skiing, bicycling, swimming, tubing, diving, sight-seeing, exploring, kite flying, bird watching, gold panning, ice skating, ice fishing, photography, or engaging in any other form of sports or other recreational activity, as well as any activities related to such sports or recreational activities, and any activities directly or indirectly resulting from such sports or recreational activity.

(f) Nothing in this subsection (2) shall limit the protections provided, as applicable, to a landowner under section 13-21-115, C.R.S. (Repealed and reenacted Laws 1969, H.B.1038, § 1. Laws 1988, H.B.1344, § 2; Laws 1989, H.B.1092, § 1.)

§ 3-41-104. When liability is not limited

(1) Nothing in this article limits in any way any liability which would otherwise exist:

(a) For willful or malicious failure to guard or warn against a known dangerous condition, use, structure, or activity likely to cause harm;

(b) For injury suffered by any person in any case where the owner of land charges the person who enters or goes on the land for the recreational use thereof; except that, in case of land leased to a public entity or in which a public entity has been granted an easement or other rights to use land for recreational purposes any consideration received by the owner for such lease, easement, or other right shall not be deemed a charge within the meaning of this article nor shall any consideration received by an owner from any federal governmental agency for the purpose of admitting any person constitute such a charge;

(c) For maintaining an attractive nuisance;

(d) For injury received on land incidental to the use of land on which a commercial or business enterprise of any description is being carried on; except that in the case of land leased to a public entity for recreational purposes or in which a public entity has been granted an easement or other rights to use land for recreational purposes, such land shall not be considered to be land upon which a business or commercial enterprise is being carried on. (Repealed and reenacted Laws 1969, H.B.1038, § 1. Laws 1988, H.B.1344, § 3.)
§ 33-41-105. Article not to create liability or relieve obligation

(1) Nothing in this article shall be construed to:
   (a) Create, enlarge, or affect in any manner any liability for willful or malicious failure to guard or warn against a known dangerous condition, use, structure, or activity likely to cause harm, or for injury suffered by any person in any case where the owner of land charges for that person to enter or go on the land for the recreational use thereof;
   (b) Relieve any person using the land of another for recreational purposes from any obligation which he may have in the absence of this article to exercise care in his use of such land and in his activities thereon or from the legal consequences of failure to employ such care;
   (c) Limit any liability of any owner to any person for damages resulting from any occurrence which took place prior to January 1, 1970.

§ 33-41-106. Ownership of recreational area by another state

No other state of the United States, or agency or political subdivision thereof, shall acquire, own, or operate any land or interest therein in the state of Colorado for park or recreational purposes, except under the terms of an interstate compact. (Laws 1975, H.B.1475, § 1.)
Risk Exposure for Landowners in Connecticut

In General. Landowner liability for injuries to recreation users is controlled in part by the state recreation use statute and by common law. Common law rules are derived from appellate court cases. If the recreation use statute is not applicable then the landowner duties, obligations and liabilities are determined according to common law.

Under the Connecticut recreation use statute a landowner who gratuitously invites a person to use the property for recreation purposes does not have a duty to keep the premises safe; to warn of dangerous conditions or activities on the property; nor does the landowner extend an assurance that the property is safe; or confer upon the recreation user the status of invitee or licensee. Connecticut law extends liability protection to landowners who allow their property to be used for all-terrain vehicle use or for the harvesting of less than 100 cords of firewood.

Exceptions. Landowners do not have any statutory liability protection for their wilful or malicious failure to guard or warn against a dangerous condition, use or activity. Wilful and malicious conduct is not statutorily defined but is left to judicial interpretation. In the case of harvesting firewood, a landowner may be liable for an injury caused by an owner's failure to warn of a dangerous hidden hazard. Landowners are liable for injuries to trespassing children under the common law attractive nuisance doctrine.

Impact of Charging a Fee. If a landowner charges a fee for the recreational use of property they lose only their statutory immunity from liability and then common law landowner liability and immunity rules apply. Fees paid to the landowner by the state for purposes of opening up the land to public recreational use are allowed and the landowner does not lose immunity from liability.

Accident Rates

| Trend Analysis of Fatalities Involving Hunting, Fishing and All-Terrain Vehicles, 1982–1991 |
|-----------------------------------------------|-----------------------------------------------|-----------------------------------------------|-----------------------------------------------|-----------------------------------------------|-----------------------------------------------|-----------------------------------------------|-----------------------------------------------|-----------------------------------------------|-----------------------------------------------|-----------------------------------------------|
| All-Terrain Vehicles | 0 | 0 | 0 | 1 | 2 | 1 | 2 | 1 | 0 | 1 |
| Fishing | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Hunting | * | * | * | * | * | 0 | 0 | 0 | 0 | 0 |

*No State Data Available*

Litigated Cases

§ 52–557f. Landowner liability for recreational use of land. Definitions

As used in sections 52–557f to 52–557i, inclusive:

(1) "Charge" means the admission price or fee asked in return for invitation or permission to enter or go upon the land;

(2) "Land" means land, roads, water, watercourses, private ways and buildings, structures, and machinery or equipment when attached to the realty;

(3) "Owner" means the possessor of a fee interest, a tenant, lessee, occupant or person in control of the premises;


§ 52–557g. Liability of owner of land available to public for recreation; exceptions

(a) Except as provided in section 52–557h, an owner of land who makes all or any part of the land available to the public without charge, rent, fee or other commercial service for recreational purposes owes no duty of care to keep the land, or the part thereof so made available, safe for entry or use by others for recreational purposes, or to give any warning of a dangerous condition, use, structure or activity on the land to persons entering for recreational purposes.

(b) Except as provided in section 52–557h, an owner of land who, either directly or indirectly, invites or permits without charge, rent, fee or other commercial service any person to use the land, or part thereof, for recreational purposes does not thereby: (1) Make any representation that the premises are safe for any purposes; (2) confer upon the person who enters or uses the land for recreational purposes the legal status of an invitee or licensee to whom a duty of care is owed; or (3) assume responsibility for or incur liability for any injury to person or property caused by an act or omission of the owner.

(c) Unless otherwise agreed in writing, the provisions of subsections (a) and (b) of this section shall be deemed applicable to the duties and liability of an owner of land leased to the state or any subdivision thereof for recreational purposes. (1971, P.A. 249, §§ 2 to 4, eff. May 24, 1971; 1973, P.A. 73–70, § 1, eff. April 17, 1973; 1982, P.A. 82–160, § 228.)

§ 52–557h. Owner liable, when

Nothing in sections 52–557f to 52–557i, inclusive, limits in any way the liability of any owner of land which otherwise exists: (1) For willful or malicious failure to guard or warn against a dangerous condition, use, structure or activity; (2) for injury suffered in any case where the owner of land charges the person or persons who enter or go on the land for the recreational use thereof, except that, in the case of land leased to the state or a subdivision thereof, any consideration received by the owner for the lease shall not be deemed a charge within the meaning of this section. (1971, P.A. 249, § 5, eff. May 24, 1971; 1982, P.A. 82–160, § 229.)

§ 52–557i. Obligation of user of land

Nothing in sections 52–557f to 52–557i, inclusive, shall be construed to relieve any person using the land of another for recreational purposes from any obligation which he may have in the absence of said sections to exercise care in his use of such land and in his activities thereon, or from the legal consequences of failure to employ such care. (1971, P.A. 249, § 6, eff. May 24, 1971.)

§ 52–557j. Liability of landowner upon whose land snowmobiles, all-terrain vehicles, motorcycles, minibikes or minibikes are operated

No landowner may be held liable for any injury sustained by any person operating a snowmobile, all-terrain vehicle, as defined in section 14–379, motorcycle or minibike or minicycle, as defined in section 14–1, upon the landowner's
property or by any passenger in the snowmobile, all-terrain vehicle or motorcycle, minibike or minicycle, whether or not the landowner had given permission, written or oral, for the operation upon his land unless the landowner charged a fee for the operation, or unless the injury is caused by the wilful or malicious conduct of the landowner. (1971, P.A. 440, § 1; 1973, P.A. 73–67, § 1, eff. April 17, 1973; 1973, P.A. 73–676, § 2; 1982, P.A. 82–160, § 230.)

§ 52–557k. Liability of landowner who allows general public to harvest firewood

(a) As used in this section:
   (1) "Owner" means the possessor of a fee interest, a tenant, occupant or person in control of the premises;
   (2) "harvesting" means the cutting and removal of designated standing trees, down trees, tree tops and other logging slash or debris suitable for use as firewood;
   (3) "charge" means the fee asked in return for a specified volume of firewood and the right to harvest such firewood.

(b) Any owner of land who invites or permits any person to enter the land or a part thereof to harvest firewood, with or without charge, shall not be liable for damages as a result of injury to such person when such injury arises out of the use of the land or out of the act of harvesting firewood, unless such injury is caused by such owner's failure to warn of a dangerous hidden hazard actually known to such owner.

(c) This section shall not apply to owners who sell more than one hundred cords of firewood each calendar year. (1979, P.A. 79–12, § 1, eff. Nov. 21, 1979.)
Risk Exposure for Landowners in Delaware

In General. Landowner liability for injuries to recreation users is controlled in part by the state recreation use statute and by common law. Common law rules are derived from appellate court cases. If the recreation use statute is not applicable then the landowner duties, obligations and liabilities are determined according to common law.

Under the Delaware recreation use statute a landowner who gratuitously invites or permits a person to use the property for recreation purposes has immunity from liability. A landowner does not have a duty to keep the premises safe; to warn of dangerous conditions or activities on the property; nor does the landowner extend an assurance that the property is safe; or confer upon the recreation user the common law status of invitee or licensee. This landowner protection applies whether the user entered with or without the owners consent.

Exceptions. Landowner liability is not limited for a willful or malicious failure to guard or warn against a dangerous condition, use structure or activity on the property. Willful and malicious conduct is not statutorily defined but is left to judicial interpretation. Landowners are liable for injuries to trespassing children under the common law attractive nuisance doctrine.

Impact of Charging a Fee. By charging a fee for the recreational use of property landowners lose only their statutory immunity from liability and then common law landowner liability rules apply. Fees paid to the landowner by the state for purposes of opening up the land to public recreational use are allowed and the landowner does not lose immunity from liability.

Accident Rates

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<th>Involving Hunting, Fishing and All-Terrain Vehicles, 1982–1991</th>
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*No State Data Available

Litigated Cases

TITLE 7.
CONSERVATION

§ 5901 Purpose.
The purpose of this chapter is to encourage owners of land to make land and water areas available to the public for recreational purposes by limiting their liability toward persons entering thereon for such purposes, whether such persons entered upon the land of the owner with or without consent of the owner. (7 Del. C. 1953, § 5901; 55 Del. Laws, c. 449; 67 Del. Laws, c. 107, § 1.)

§ 5902 Definitions.
As used in this chapter:

(1) "Land" means land, roads, water, watercourses, private ways and buildings, structures, and machinery or equipment when attached to the realty.

(2) "Owner" means the possessor of a fee interest, tenant, lessee, occupant or person in control of the premises.

(3) "Recreational purpose" includes, but is not limited to, any of the following, or any combination thereof: Hunting, fishing, swimming, boating, camping, picnicking, hiking, pleasure driving, nature study, water skiing, winter sports, and viewing or enjoying historical, archaeological, scenic or scientific sites.

(4) "Charge" means the admission price or fee asked in return for invitation or permission to enter or go upon the land. (7 Del. C. 1953, § 5902; 55 Del. Laws, c. 449.)

§ 5903 Limitation on duty of owner.
Except as specifically recognized by or provided in § 5906 of this title, an owner of land owes no duty of care to keep the premises safe for entry or use by others for recreational purposes, or to give any warning of a dangerous condition, use, structure or activity on such premises to persons entering for such purposes. The limitation of duty of the owner granted by this section applies whether such persons entered upon the land of the owner with or without consent of the owner. (7 Del. C. 1953, § 5903; 55 Del. Laws, c. 449; 67 Del. Laws, c. 107, § 2.)

§ 5904 Use of land without charge; limits of liability.

(a) Except as specifically recognized by or provided in § 5906 of this title, an owner of land who either directly or indirectly invites or permits without charge any person to use such property for recreational purposes does not thereby:

(1) Extend any assurance that the premises are safe for any purpose;

(2) Confer upon such person the legal status of an invitee or licensee to whom a duty of care is owed;

(3) Assume responsibility, or incur liability, for any injury to person or property caused by an act of omission of such persons.

(b) The limits of liability of an owner as set forth under this section shall apply whether the person entered upon the land of the owner with or without consent of the owner. (7 Del. C. 1953, § 5904; 55 Del. Laws, c. 449; 67 Del. Laws, c. 107, § 3.)

§ 5905 Written waivers.
Unless otherwise agreed in writing, §§ 5903 and 5904 of this title shall be applicable to the duties and liability of an owner of land leased to the State, or any subdivision thereof, for recreational purposes. (7 Del. C. 1953, § 5905; 55 Del. Laws, c. 449.)
§ 5906 Limitations on exemption from liability.

Nothing in this chapter limits in any way any liability which otherwise exists:

(1) For willful or malicious failure to guard or warn against a dangerous condition, use, structure or activity;

(2) For injury suffered in any case where the owner of land charges the person or persons who enter or go on the land for the recreational use thereof, except that in the case of land leased to the State or a subdivision thereof, any consideration received by the owner for such lease shall not be deemed a charge within the meaning of this section. (7 Del. C. 1953, § 5906; 55 Del. Laws, c. 449.)

§ 5907 Exemptions.

Nothing in this chapter shall be construed to:

(1) Create a duty of care, or ground of liability, for injury to persons or property;

(2) Relieve any person using the land of another for recreational purposes from any obligation which he may have in the absence of this chapter to exercise care in his use of such land and in his activities thereon, or from the legal consequences of failure to employ such care. (7 Del. C. 1953, § 5907; 55 Del. Laws, c. 449.)
Risk Exposure for Landowners in Florida

In General. Landowner liability for injuries to outdoor recreation users is controlled in part by the state recreation use statute and by common law. Common law rules are derived from appellate court cases. If the recreation use statute is not applicable then the landowner duties, obligations and liabilities are determined according to common law.

Under the Florida recreation use statute a landowner who gratuitously invites a person to use the property for recreation purposes does not have a duty to keep the premises safe, to warn of dangerous conditions or activities on the property, nor does the landowner extend an assurance that the property is safe or confer upon the recreation user the common law status of invitee or licensee. These landowner protections apply when the property is leased to the state for outdoor recreation use.

Exceptions. Landowners do not have limited liability protection for deliberate, willful or malicious injury to persons or property. Wilful and malicious conduct is not statutorily defined but is left to judicial interpretation.

Impact of Charging a Fee. If a fee is charged for the recreational use of property, or if any commercial activity is conducted on the property whereby a profit is derived from public use, landowners lose only their statutory immunity from liability. At that point common law landowner liability rules and protection apply.

Accident Rates

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*No State Data Available

Litigated Cases

Chapman v. Pinellas County, App., 423 So.2d 578 (1982).
Metropolitan Dade County v. Yelvington, App., 392 So.2d 911 (1980).
§ 375.251. Limitation on liability of persons making available to public certain areas for recreational purposes without charge

(1) The purpose of this act is to encourage persons to make available to the public land, water areas and park areas for outdoor recreational purposes by limiting their liability to persons going thereon and to third persons who may be damaged by the acts or omissions of persons going thereon.

(2)(a) An owner or lessee who provides the public with a park area or other land for outdoor recreational purposes owes no duty of care to keep that park area or land safe for entry or use by others, or to give warning to persons entering or going on that park area or land of any hazardous conditions, structures, or activities thereon. An owner or lessee who provides the public with a park area or other land for outdoor recreational purposes shall not by providing that park area or land:

1. Be presumed to extend any assurance that such park area or land is safe for any purpose,

2. Incur any duty of care toward a person who goes on that park area or land, or

3. Become liable or responsible for any injury to persons or property caused by the act or omission of a person who goes on that park area or land.

(b) This section shall not apply if there is any charge made or usually made for entering or using such park area or land, or any part thereof, or if any commercial or other activity, whereby profit is derived from the patronage of the general public, is conducted on such park area or land, or any part thereof.

(3)(a) An owner of land or water area leased to the state for outdoor recreational purposes owes no duty of care to keep that land or water area safe for entry or use by others, or to give warning to persons entering or going on that land or water of any hazardous conditions, structures, or activities thereon. An owner who leases land or water area to the state for outdoor recreational purposes shall not by giving such lease:

1. Be presumed to extend any assurance that such land or water area is safe for any purpose,

2. Incur any duty of care toward a person who goes on the leased land or water area, or

3. Become liable or responsible for any injury to persons or property caused by the act or omission of a person who goes on the leased land or water area.

(b) The foregoing applies whether the person going on the leased land or water area is an invitee, licensee, trespasser, or otherwise.

(4) This act does not relieve any person of liability which would otherwise exist for deliberate, willful or malicious injury to persons or property. The provisions hereof shall not be deemed to create or increase the liability of any person.

(5) The term “outdoor recreational purposes” as used in this act shall include, but not necessarily be limited to, hunting, fishing, swimming, boating, camping, picnicking, hiking, pleasure driving, nature study, water skiing, motorcycle, and visiting historical, archaeological, scenic, or scientific sites.
Risk Exposure for Landowners in Georgia

In General. Landowner liability for injuries to recreation users is controlled in part by the Georgia recreation use statute and by common law. Common law rules are derived from appellate court cases. If the recreation use statute is not applicable then the landowner duties, obligations and liabilities are determined according to common law.

Under the Georgia recreation use statute a landowner who gratuitously invites a person to use the property for recreation purposes has immunity from liability. The statute specifies that a landowner does not have a duty to keep the premises safe, to warn of dangerous conditions or activities on the property, nor does the landowner extend an assurance that the property is safe or confer upon the recreation user the common law status of invitee or licensee. These landowner protections apply when the property is leased to the state for outdoor recreation use.

Exceptions. Landowner liability is not limited when their willful or malicious failure to guard or warn against a known dangerous condition, use or activity on the property causes an injury to the recreational user. Wilful and malicious conduct is not statutorily defined but is left to judicial interpretation. Landowners are liable for injuries to trespassing children under the common law attractive nuisance doctrine.

Impact of Charging a Fee. If a fee is charged for the recreational use of property, or if any commercial activity is conducted on the property whereby a profit is derived from public use, landowners lose only their statutory immunity from liability. At that point common law landowner liability and immunity rules apply.

Accident Rates

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*No State Data Available*

Litigated Cases


§ 51-3-20. Purpose of article.

The purpose of this article is to encourage owners of land to make land and water areas available to the public for recreational purposes by limiting the owners' liability toward persons entering thereon for recreational purposes. (Ga. L. 1965, p. 476, § 1.)


As used in this article, the term:

1. "Charge" means the admission price or fee asked in return for invitation or permission to enter or go upon the land.
2. "Land" means land, roads, water, watercourses, private ways and buildings, structures, and machinery or equipment when attached to the realty.
3. "Owner" means the possessor of a fee interest, a tenant, a lessee, an occupant, or a person in control of the premises.
4. "Recreational purpose" includes, but is not limited to, any of the following or any combination thereof: hunting, fishing, swimming, boating, camping, picnicking, hiking, pleasure driving, nature study, water skiing, winter sports, and viewing or enjoying historical, archaeological, scenic, or scientific sites. (Ga. L. 1965, p. 476, § 2.)

§ 51-3-22. Duty of owner of land to those using same for recreation generally.

Except as specifically recognized by or provided in Code Section 51-3-25, an owner of land owes no duty of care to keep the premises safe for entry or use by others for recreational purposes or to give any warning of a dangerous condition, use, structure, or activity on the premises to persons entering for recreational purposes.

§ 51-3-23. Effect of invitation or permission to use land for recreation.

Except as specifically recognized by or provided in Code Section 51-3-25, an owner of land who either directly or indirectly invites or permits without charge any person to use the property for recreational purposes does not thereby:

1. Extend any assurance that the premises are safe for any purpose;
2. Confer upon such person the legal status of an invitee or licensee to whom a duty of care is owed; or
3. Assume responsibility for or incur liability for any injury to person or property caused by an act of omission of such persons. (Ga. L. 1965, p. 476, § 4.)

§ 51-3-24. Applicability of Code Sections 51-3-22 and 51-3-23 to owner of land leased to state or subdivision for recreation.

Unless otherwise agreed in writing, Code Sections 51-3-22 and 51-3-23 shall be deemed applicable to the duties and liability of an owner of land leased to the state or any subdivision thereof for recreational purposes. (Ga. L. 1965, p. 476, § 5.)

§ 51-3-25. Certain liability not limited.

Nothing in this article limits in any way any liability which otherwise exists:

1. For willful or malicious failure to guard or warn against a dangerous condition, use, structure, or activity; or
2. For injury suffered in any case when the owner of land charges the person or persons who enter or go on the land for the recreational use thereof, except that, in the case of land leased to the state or a subdivision thereof, consideration received by the owner for the lease shall not be deemed a charge within the meaning of this Code section. (Ga. L. 1965, p. 476, § 6.)

§ 51-3-26. Construction of article.

Nothing in this article shall be construed to:

1. Create a duty of care or ground of liability for injury to persons or property; or
2. Relieve any person using the land of another for recreational purposes from any obligation which he may have in the absence of this article to exercise care in his use of the land and in his activities thereon or from the legal consequences of failure to employ such care. (Ga. L. 1965, p. 476, § 7.)

(a) Any person who goes upon or through the premises, including, but not limited to, lands, waters, and private ways, of another with or without permission to hunt, fish, swim, trap, camp, hike, sightsee, or for any other purpose, without the payment of monetary consideration, or with the payment of monetary consideration directly or indirectly on his behalf by an agency of the state or federal government, is not thereby entitled to any assurance that the premises are safe for such purpose. The owner of such premises does not assume responsibility for or incur liability for any injury to person or property caused by an act or failure to act of other persons using such premises.

(b) Nothing in this Code section shall be construed as affecting the existing case law of Georgia regarding liability of owners or possessors of premises with respect to business invitees in commercial establishments or to invited guests, nor shall this Code section be construed so as to affect the attractive nuisance doctrine. In addition, nothing in this Code section shall excuse the owner or occupant of premises from liability for injury to persons or property caused by the malicious or illegal acts of the owner or occupant. (Ga. L. 1972, p. 142, § 6.)
Risk Exposure for Landowners in Hawaii

In General. Landowner liability for injuries to recreation users is controlled in part by the state recreation use statute and by common law. If the recreation use statute is not applicable then the landowner duties, obligations and liabilities are determined according to common law.

Under the Hawaii recreation use statute a landowner who gratuitously invites a person to use the property for recreation purposes has immunity from liability. The statute specifies that a landowner does not have a duty of care to keep the premises safe, to warn of dangerous conditions or activities on the property, to extend an assurance that the property is safe of confer upon the recreation user the common law status of invitee or licensee. These protections do not apply to a house guest, even though the injuries were suffered by the house guest while engaged in recreation activities.

Exceptions. Landowners do not have limited liability protection for a willful or malicious failure to guard or warn against a dangerous condition, use, or structure which the owner knowingly creates, pursues or perpetuates. Wilful and malicious conduct is not statutorily defined but is left to judicial interpretation. Since the statute is silent regarding landowner obligations to trespassing children, landowner liability is probably determined by judicial doctrine of attractive nuisance.

Impact of Charging a Fee. If a fee is charged for the recreational use of the property landowners lose only their statutory immunity from liability. At that point, common law landowner liability rules and protection apply. Any fees paid to the landowner by the state for purposes of opening up the land to public recreational use are allowed and the landowner does not lose immunity from liability.

Accident Rates

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*No State Data Available

Litigated Cases

Jones v. Halekulani Hotel, Inc., 557 F.2d 1308 (9th Cir. 1977).
DIVISION 3. PROPERTY; FAMILY
TITLE 28. PROPERTY
(CHAPTEER 520. LANDOWNER’S LIABILITY)

§ 520–1. Purpose.
The purpose of this chapter is to encourage owners of land to make land and water areas available to the public for recreational purposes by limiting their liability toward persons entering thereon for such purposes. [L 1969, c 186, § 1]

§ 520–2. Definitions.
As used in this chapter:

(1) “Land” means land, roads, water, water courses, private ways and buildings, structures, and machinery or equipment when attached to realty, other than lands owned by the government.

(2) “Owner” means the possessor of a fee interest, a tenant, lessee, occupant, or person in control of the premises.

(3) “Recreational purpose” includes, but is not limited to, any of the following, or any combination thereof: hunting, fishing, swimming, boating, camping, picnicking, hiking, pleasure driving, nature study, water skiing, winter sports, and viewing or enjoying historical, archaeological, scenic, or scientific sites.

(4) “Charge” means the admission price or fee asked in return for invitation or permission to enter or go upon the land.

(5) “House guest” means any person specifically invited by the owner or a member of the owner’s household to visit at the owner’s home whether for dinner, or to a party, for conversation or any other similar purposes including for recreation, and include playmates of the owner’s minor children. [L 1969, c 186, § 2; am imp L 1984, c 90, § 1]

Except as specifically recognized by or provided in section 520–6, an owner of land owes no duty of care to keep the premises safe for entry or use by others for recreational purposes, or to give any warning of a dangerous condition, use, structure, or activity on such premises to persons entering for such purposes. [L 1969, c 186, § 3]

§ 520–4. Liability of owner limited.
Except as specifically recognized by or provided in section 520–6, an owner of land who either directly or indirectly invites or permits without charge any person to use such property for recreational purposes does not thereby:

(1) Extend any assurance that the premises are safe for any purpose.

(2) Confer upon such person the legal status of an invitee or licensee to whom a duty of care is owed.

(3) Assume responsibility for or incur liability for any injury to person or property caused by an act of omission or commission of such persons. [L 1969, c 186, § 4]

§ 520–5. Exceptions to limitations.
Nothing in this chapter limits in any way any liability which otherwise exists:

(1) For willful or malicious failure to guard or warn against a dangerous condition, use, or structure which the owner knowingly creates or perpetuates and for willful or malicious failure to guard or warn against a dangerous activity which the owner knowingly pursues or perpetuates.

(2) For injury suffered in any case where the owner of land charges the person or persons who enter or go on the land for the recreational use thereof, except that in the case of land leased to the State or a political subdivision thereof, any consideration received by the owner for such lease shall not be deemed a charge within the meaning of this section.

(3) For injuries suffered by a house guest while on the owner’s premises, even though the injuries were incurred by the house guest while engaged in one or more of the activities designated in section 520–2(3). [L 1969, c 186, § 5]

Nothing in this chapter shall be construed to:

(1) Create a duty of care or ground of liability for injury to persons or property.

(2) Relieve any person using the land of another for recreational purposes from any obligation which the person may have in the absence of this chapter to exercise care in the person's use of such land and in the person's activities thereon, or from the legal consequences of failure to employ such care. [L 1969, c 186, § 6; am imp L 1984, c 90, § 1]


No person shall gain any rights to any land by prescription or otherwise, as a result of any usage thereof for recreational purposes as provided in this chapter. [L 1969, c 186, § 7]


The department of land and natural resources shall make rules and regulations pursuant to chapter 91, as it deems necessary to carry out the purpose of this chapter. [L 1969, c 186, § 8]
Risk Exposure for Landowners in Idaho

In General. Landowner liability for injuries to recreation users is controlled in part by the Idaho recreation use statute and by common law. If the recreation use statute is not applicable then the landowner duties, obligations and liabilities are determined according to common law.

Under the Idaho recreation use statute a public or private landowner who gratuitously invites or permits a person to use the property for recreation purposes has immunity from liability. A landowner does not have a duty of care to keep the premises safe; to warn of dangerous conditions or activities on the property; to extend an assurance that the property is safe; or confer upon the recreation user the common law status of invitee or licensee. This protection applies when the landowner leases the property to the state for outdoor recreation use.

Exceptions. The statute does not include a provision as to landowner liability for deliberate, willful, wanton or malicious acts that cause injury to the recreation user. It could be argued that landowners are liable under common law for this type of conduct since the statute only grants protection for specified acts and no others. Since the statute is silent regarding landowner obligations to trespassing children, landowner liability is probably determined by judicial doctrine of attractive nuisance.

Impact of Charging a Fee. If a fee is charged for the recreational use of property landowners lose only their statutory immunity from liability. At that point, common law landowner liability rules and protections apply.

Accident Rates

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<td>Hunting</td>
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*No State Data Available*

Litigated Cases

§ 36-1604. Limitation of liability of landowner.

(a) Statement of Purpose. The purpose of this section is to encourage owners of land to make land and water areas available to the public without charge for recreational purposes by limiting their liability toward persons entering thereon for such purposes.

(b) Definitions. As used in this section:
1. "Land" means private or public land, roads, trails, water, water-courses, irrigation dams, water control structures, headgates, private or public ways and buildings, structures, and machinery or equipment when attached to or used on the realty.
2. "Owner" means the possessor of a fee interest, a tenant, lessee, occupant or person in control of the premises.
3. "Recreational Purposes" includes, but is not limited to, any of the following or any combination thereof: Hunting, fishing, swimming, boating, rafting, tubing, camping, picnicking, hiking, pleasure driving, nature study, water skiing, animal riding, motorcycling, snowmobiling, recreational vehicles, winter sports, and viewing or enjoying historical, archaeological, scenic, or scientific sites, when done without charge of the owner.

(c) Owner Exempt from Warning. An owner of land owes no duty of care to keep the premises safe for entry by others for recreational purposes, or to give any warning of a dangerous condition, use, structure, or activity on such premises to persons entering for such purposes. Neither the installation of a sign or other form of warning of a dangerous condition, use, structure, or activity, nor any modification made for the purpose of improving the safety of others, nor the failure to maintain or keep in place any sign, other form of warning, or modification made to improve safety, shall create liability on the part of an owner of land where there is no other basis for such liability.

(d) Owner Assumes No Liability. An owner of land or equipment who either directly or indirectly invites or permits without charge any person to use such property for recreational purposes does not thereby:
1. Extend any assurance that the premises are safe for any purpose.
2. Confer upon such person the legal status of an invitee or licensee to whom a duty of care is owed.
3. Assume responsibility for or incur liability for any injury to person or property caused by an act of omission of such persons.

(e) Provisions Apply to Leased Public Land. Unless otherwise agreed in writing, the provisions of this section shall be deemed applicable to the duties and liability of an owner of land leased to the state or any subdivision thereof for recreational purposes.

(f) Owner Not Required to Keep Land Safe. Nothing in this section shall be construed to:
1. Create a duty of care or ground of liability for injury to persons or property.
2. Relieve any person using the land of another for recreational purposes from any obligation which he may have in the absence of this section to exercise care in his use of such land and in his activities thereon, or from legal consequences or failure to employ such care.
3. Apply to any person or persons who for compensation permits the land to be used for recreational purposes.

(g) User Liable for Damages. Any person using the land of another for recreational purposes, with or without permission, shall be liable for any damage to property, livestock or crops which he may cause while on said property. [I.C., § 36-1604, as added by 1976, ch. 95, § 2, p. 315; am. 1980, ch. 161, § 1, p. 349; am. 1988, ch. 230, § 1, p. 443; am. 1988, ch. 336, § 1, p. 1002.]
Risk Exposure for Landowners in Illinois

In General. Landowner liability for injuries to recreation users is controlled in part by the state recreation use statute and by common law. Common law rules are derived from the holdings of appellate court cases. If the recreation use statute is not applicable then the landowner duties, obligations and liabilities are determined according to common law.

Under the Illinois recreation use statute a landowner who gratuitously invites a person to use the property for recreation purposes does not have a duty of care to keep the premises safe; to warn of dangerous conditions; to assume responsibility for any natural or artificial condition on the premises; nor does the landowner extend an assurance that the property is safe; or confer upon the recreation user the status of invitee or licensee.

Exceptions. Landowners do not have any statutory liability protection when their willful and wanton failure to guard or warn against a dangerous condition, use or activity causes an injury to the recreational user. Willful and wanton conduct is not statutorily defined but is left to judicial interpretation. Since the statute is silent regarding landowner obligations to trespassing children, landowner liability is probably determined by judicial doctrine of attractive nuisance.

Impact of Charging a Fee. If a landowner charges a fee for the recreational use of their property they lose only their statutory immunity from liability. There is one exception to this rule. A landowner may charge (charge includes contributions in kind, services or cash) for permission to use the land provided the consideration is used for the purpose of conserving the land.

Accident Rates

<table>
<thead>
<tr>
<th>Trend Analysis of Fatalities</th>
<th>Involving Hunting, Fishing and All-Terrain Vehicles, 1982–1991</th>
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<tbody>
<tr>
<td>All-Terrain Vehicles</td>
<td>0</td>
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<tr>
<td>Fishing</td>
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<td>Hunting</td>
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</tbody>
</table>

*No State Data Available

Litigated Cases

CHAPTER 70. INJURIES
RECREATIONAL USE OF LAND AND WATER AREAS

§ 31. Short title—Purpose

1. The purpose of this Act is to encourage owners of land to make land and water areas available to the public for recreational or conservation purposes by limiting their liability toward persons entering thereon for such purposes. [Laws 1965, p. 2263, § 1, eff. Aug. 2, 1965. Amended by P.A. 85–959, § 2, eff. Dec. 8, 1987].

§ 32. Definitions

2. As used in this Act, unless the context otherwise requires:
   (a) "Land" includes roads, water, watercourses, private ways and buildings, structures, and machinery or equipment when attached to the realty.
   (b) "Owner" includes the possessor of any interest in land, whether it be a tenant, lessee, occupant, the State of Illinois and its political subdivisions, or person in control of the premises.
   (c) "Recreational or conservation purpose" means any activity undertaken for conservation, resource management, exercise, education, relaxation, or pleasure on land owned by another.
   (d) "Charge" means an admission fee for permission to go upon the land, but does not include: the sharing of game, fish or other products of recreational use; or benefits to or arising from the recreational use; or contributions in kind, services or cash made for the purpose of properly conserving the land.

§ 33. Duty of care or warning of dangerous condition

3. Except as specifically recognized by or provided in Section 6 of this Act, an owner of land owes no duty of care to keep the premises safe for entry or use by any person for recreational or conservation purposes, or to give any warning of a natural or artificial dangerous condition, use, structure, or activity on such premises to persons entering for such purposes. [Laws 1965, p. 2263, § 3, eff. Aug. 2, 1965. Amended by P.A. 85–959, § 2, eff. Dec. 8, 1987].

§ 34. Effect of invitation or permission

4. Except as specifically recognized by or provided in Section 6 of this Act, an owner of land who either directly or indirectly invites or permits without charge any person to use such property for recreational or conservation purposes does not thereby:
   (a) Extend any assurance that the premises are safe for any purpose.
   (b) Confer upon such person the legal status of an invitee or licensee to whom a duty of care is owed.
   (c) Assume responsibility for or incur liability for any injury to person or property caused by an act or omission of such person or any other person who enters upon the land.

§ 35. Duties and liabilities of owner of lands leased to state

5. Unless otherwise agreed in writing, the provisions of Sections 3 and 4 of this Act are applicable to the duties and liability of an owner of land leased to the state or any subdivision thereof for recreational or conservation purposes. [Laws 1965, p. 2263, § 5, eff. Aug. 2, 1965. Amended by P.A. 85–959, § 2, eff. Dec. 8, 1987].

ILLINOIS–2
§ 36. Willful and wanton acts—Injury suffered by persons paying admission

6. Nothing in this Act limits in any way any liability which otherwise exists:

(a) For willful and wanton failure to guard or warn against a dangerous condition, use, structure, or activity.

(b) For injury suffered in any case where the owner of land charges the person or persons who enter or go on the land for the recreational use thereof, except that in the case of land leased to the State or a subdivision thereof, any consideration received by the owner for such lease is not a charge within the meaning of this Section. [Laws 1965, p. 2263, § 6, eff. Aug. 2, 1965. Amended by P.A. 85-959, § 2, eff. Dec. 8, 1987].

§ 37. Duty of care or grounds of liability—Exercise of care

7. Nothing in this Act shall be construed to:

(a) Create a duty of care or ground of liability for injury to persons or property.

(b) Relieve any person using the land of another for recreational purposes from any obligation which he may have in the absence of this Act to exercise care in his use of such land and in his activities thereon, or from the legal consequences of failure to employ such care. [Laws 1965, p. 2263, § 7, eff. Aug. 2, 1965].
Risk Exposure for Landowners in Indiana

In General. Landowner liability for injuries to recreation users is controlled in part by the Indiana recreation use statute and by common law. Common law rules are derived from the holdings of appellate court cases. If the recreation use statute is not applicable then landowner duties, obligations and liabilities are determined according to common law rules for invitees, licensees and trespassers.

Under the Indiana recreation use statute any recreation user who enters the property of another, with or without permission, is not entitled to any assurances that the property is safe. The landowner does not assume responsibility for nor incur liability for any injury caused by other persons using the property.

Exceptions. Landowners do not have any statutory liability protection for injuries to their invited guests or for their malicious or illegal acts. Under these circumstances common law rules apply. Further, landowner obligations to trespassing children are determined by common law doctrine of attractive nuisance.

Impact of Charging a Fee. If a landowner charges a fee for the recreational use of their property they lose only the statutory immunity from liability. There is one exception to this rule. Any fees paid to the landowner by the state for purposes of opening up the land to public recreational use are allowed and the landowner does not lose immunity from liability.

Accident Rates

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*No State Data Available

Litigated Cases

TITLE 14. RECREATION AND LAND MANAGEMENT
ARTICLE 2. FISH AND WILDLIFE ACT
CHAPTER 6. WILDLIFE CONTROLS.

§ 14-2-6-3 Restrictions on landowner's liability to persons using land for recreational activities
Sec. 3. Any person who goes upon or through the premises including, but not as a limitation, lands, caves, waters, and private ways of another with or without permission to hunt, fish, swim, trap, camp, hike, sightsee, or for any other purposes, without the payment of monetary consideration, or with the payment of monetary consideration directly or indirectly on his behalf by an agency of the state or federal government, is not thereby entitled to any assurance that the premises are safe for such purpose. The owner of such premises does not assume responsibility for nor incur liability for any injury to person or property caused by an act or failure to act of other persons using such premises. The provisions of this section shall not be construed as affecting the existing case law of Indiana of liability of owners or possessors of premises with respect to business invitees in commercial establishments nor to invited guests nor shall this section be construed as to affect the attractive nuisance doctrine. Nothing in this section contained shall excuse the owner or occupant of premises from liability for injury to persons or property caused by the malicious or illegal acts of the owner or occupant. [As amended by PL-177-1983, SEC.1].

TITLE 4. STATE OFFICES AND ADMINISTRATION
ARTICLE 16. STATE LANDS—GENERAL
CHAPTER 3. DISCLAIMER OF LIABILITY OF OWNERS OF LANDS LEASED TO THE DEPARTMENT OF NATURAL RESOURCES OR STATE SUPPORTED INSTITUTIONS

§ 4-16-3-1 Premises; defined
Sec. 1. The word "premises", as used in this chapter, includes lands, waters, private ways, and structures thereon. [As amended by PL-5-1984, SEC.82].

§ 4-16-3-2 Disclaimer of liability
Sec. 2. Any person who goes upon or through premises leased to the state of Indiana or to any tax-supported institution to study, hunt, swim, fish, trap, camp, hike, sightsee or for any other purpose is not entitled to any assurance that the premises are safe for such purpose. The owner of such premises does not assume responsibility for or incur liability for any injury to person or property caused by an act or failure to act of persons using such premises.

§ 4-16-3-3 Duty of care
Sec. 3. Nothing in this chapter creates a duty of care or ground of liability for injury to person or property. [As amended by PL-5-1984, SEC.83].
Risk Exposure for Landowners in Iowa

In General. Landowner liability for injuries to recreation users is controlled in part by the state recreation use statute and by common law. If the recreation use statute is not applicable then the landowner duties, obligations and liabilities are determined according to common law.

Under the Iowa recreation use statute a private landowner (state and local agencies not covered by the statute) who gratuitously invites or permits a person to use the property for recreation purposes has immunity from liability. The statute specifies that a landowner does not have a duty of care to keep the premises safe; to warn of dangerous conditions or activities on the property; to extend an assurance that the property is safe; nor confer upon the recreation user the common law status of invitee or licensee. Landowners retain this immunity when they lease land to a public agency for recreation purposes.

Exceptions. Landowners do not have immunity from liability for a willful or malicious failure to guard or warn against a dangerous condition, use, or activity. Wilful and malicious conduct is not statutorily defined but is left to judicial interpretation. Landowner obligations to trespassing children are determined by the attractive nuisance doctrine.

Impact of Charging a Fee. If a fee is charged for the recreational use of the property, landowners lose only their statutory immunity from liability. At that point, common law landowner liability rules and protections apply. Any fees paid to the landowner by the state for purposes of opening up the land to public recreational use are allowed and the landowner does not lose immunity from liability.

Accident Rates

<table>
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<tr>
<th>Trend Analysis of Fatalities</th>
<th>Involving Hunting, Fishing and All-Terrain Vehicles, 1982–1991</th>
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<td>Hunting</td>
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</tbody>
</table>

*No State Data Available

Litigated Cases

TITLE V. POLICE POWER
CHAPTER 111C. PUBLIC USE OF PRIVATE LANDS AND WATERS

§ 111C.1. Purpose

The purpose of this chapter is to encourage private owners of land to make land and water areas available to the public for recreational purposes by limiting their liability toward persons entering thereon for such purposes. Acts 1967 (62 G.A.) ch. 149, § 1, eff. July 1, 1967.

§ 111C.2. Definitions

As used in this chapter, unless the context otherwise requires:

1. "Land" means abandoned or inactive surface mines, caves, and land used for agricultural purposes, including marshlands, timber, grasslands and the privately owned roads, water, water courses, private ways and buildings, structures and machinery or equipment appurtenant thereto.

2. "Holder" means the possessor of a fee interest, a tenant, lessee, occupant or person in control of the premises; provided, however, holder shall not mean the state of Iowa, its political subdivisions, or any public body or any agencies, departments, boards or commissions thereof.

3. "Recreational purpose" means the following or any combination thereof: Hunting, trapping, horseback riding, fishing, swimming, boating, camping, picnicking, hiking, pleasure driving, motorcycling, nature study, water skiing, snowmobiling, other summer and winter sports, and viewing or enjoying historical, archaeological, scenic, or scientific sites while going to and from or actually engaged therein.


§ 111C.3. Liability of owner limited

Except as specifically recognized by or provided in section 111C.6, an owner of land owes no duty of care to keep the premises safe for entry or use by others for recreational purposes, or to give any warning of a dangerous condition, use, structure, or activity on such premises to persons entering for such purposes.

§ 111C.4. Users not invitees or licensees

Except as specifically recognized by or provided in section 111C.6, a holder of land who either directly or indirectly invites or permits without charge any person to use such property for recreational purposes does not thereby:

1. Extend any assurance that the premises are safe for any purpose.

2. Confirm upon such person the legal status of an invitee or licensee to whom the duty of care is owed.

3. Assume responsibility for or incur liability for any injury to person or property caused by an act or omission of such persons.

§ 111C.5. Duties and liabilities of owner of leased land

Unless otherwise agreed in writing, the provisions of sections 111C.3 and 111C.4 shall be deemed applicable to the duties and liability of an owner of land leased, or any interest or right therein transferred to, or the subject of any agreement with, the United States or any agency thereof, or the state or any agency or subdivision thereof, for recreational purposes.
§ 111C.6. When liability lies against owner

Nothing in this chapter limits in any way any liability which otherwise exists:

1. For willful or malicious failure to guard or warn against a dangerous condition, use, structure, or activity.
2. For injury suffered in any case where the owner of land charges the person or persons who enter or go on the land for the recreational use thereof, except that in the case of land or any interest or right therein, leased or transferred to, or the subject of any agreement with, the United States or any agency thereof or the state or any agency thereof or subdivision thereof, any consideration received by the holder for such lease, interest, right or agreement, shall not be deemed a charge within the meaning of this section.

§ 111C.7. Construction of law

Nothing in this chapter shall be construed to:

1. Create a duty of care or ground of liability for injury to persons or property.
2. Relieve any person using the land of another for recreational purposes from any obligation which the person may have in the absence of this chapter to exercise care in the use of such land and in the person’s activities thereon, or from the legal consequences of failure to employ such care.
3. Amend, repeal or modify the common law doctrine of attractive nuisance.
Risk Exposure for Landowners in Kansas

In General. Landowner liability for injuries to recreation users is controlled in part by the state recreation use statute and by common law. If the recreation use statute is not applicable then the landowner duties, obligations and liabilities are determined according to common law.

The Kansas recreation use statute makes a distinction between "agricultural" and "nonagricultural land" which is important for allowing a fee to be charged without losing immunity from liability. Under the statute a private landowner who gratuitously invites or permits a person to use the property for recreation purposes does not have a duty of care to keep the premises safe; to warn of dangerous conditions or activities on the property; nor do they extend an assurance that the property is safe; or confer upon the recreation user the common law status of invitee or licensee. Landowners retain this immunity when they lease land to a public agency for recreation purposes.

Exceptions. Landowners do not have immunity from liability for a willful or malicious failure to guard or warn against a dangerous condition, use, structure or activity. Wilful and malicious conduct is not statutorily defined but is left to judicial interpretation. Since the statute is silent regarding landowner obligations to trespassing children, landowner liability is probably determined by common law doctrine of attractive nuisance.

Impact of Charging a Fee. If a fee is charged for the recreational use of the property, landowners of "nonagricultural" land lose only their statutory immunity from liability. At that point, common law landowner liability rules and protections apply. However, owners of "agricultural" land (defined as land suitable for farming) may charge a fee and not lose their statutory immunity from liability. Any fees paid to the landowner by the state for purposes of opening up the land to public recreational use are allowed and the landowner does not lose immunity from liability.

Accident Rates

<table>
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*No State Data Available*

Litigated Cases

CHAPTER 58. PERSONAL AND REAL PROPERTY
ARTICLE 32. LAND AND WATER RECREATIONAL AREAS

§ 58–3201. Limiting liability of property owners to persons entering premises for recreational purposes.

The purpose of this act is to encourage owners of land to make land and water areas available to the public for recreational purposes by limiting their liability toward persons entering thereon for such purposes. [History: L. 1965, ch. 559, § 1; July 1.]

§ 58–3202. Limiting liability of property owners to persons entering premises for recreational purposes; definitions.

As used in this act:

(a) "Land" means land, roads, water, watercourses, private ways and buildings, structures, and machinery or equipment when attached to the realty and includes agricultural and nonagricultural land.

(b) "Owner" means the possessor of a fee interest, a tenant, lessee, occupant or person in control of the premises.

(c) "Recreational purpose" includes, but is not limited to, any of the following, or any combination thereof: Hunting, fishing, swimming, boating, camping, picnicking, hiking, pleasure driving, nature study, water skiing, winter sports, and viewing or enjoying historical, archaeological, scenic, or scientific sites.

(d) "Charge" means the admission price or fee asked in return for invitation or permission to enter or go upon the land.

(e) "Agricultural land" means land suitable for use in farming and includes roads, water, watercourses and private ways located upon or within the boundaries of such agricultural land and buildings, structures and machinery or equipment when attached to such agricultural land.

(f) "Farming" means the cultivation of land for the production of agricultural crops, the raising of poultry, the production of eggs, the production of milk, the production of fruit or other horticultural crops, grazing or the production of livestock.

(g) "Nonagricultural land" means all land other than agricultural land.

§ 58–3203. Same; care of premises; duty of landowner.

Except as specifically recognized by or provided in K.S.A. 58–3206, an owner of land owes no duty of care to keep the premises safe for entry or use by others for recreational purposes, or to give any warning of a dangerous condition, use, structure, or activity on such premises to persons entering for such purposes.

§ 58–3204. Same; responsibility of landowner.

Except as specifically recognized by or provided in K.S.A. 58–3206, and amendments thereto, an owner of land who either directly or indirectly invites or permits any person to use such property for recreational purposes or an owner of nonagricultural land who either directly or indirectly invites or permits without charge any person to use such property for recreational purposes does not thereby:

(a) Extend any assurance that the premises are safe for any purpose.

(b) Confer upon such person the legal status of an invitee or licensee to whom a duty of care is owed.

(c) Assume responsibility for or incur liability for any injury to person or property caused by an act or omission of such persons.

§ 58–3205. Same; application to lands leased to state or subdivision.

Unless otherwise agreed in writing, the provisions of K.S.A. 58–3203 and 58–3204 shall be deemed applicable to the duties and liability of an owner of land leased to the state or any subdivision thereof for recreational purposes.
§ 58-3206. Same; nonapplication of act to certain liabilities.

Nothing in this act limits in any way any liability which otherwise exists:

(a) For willful or malicious failure to guard or warn against a dangerous condition, use, structure, or activity.

(b) For injury suffered in any case where the owner of nonagricultural land charges the person or persons who enter or go on the nonagricultural land for the recreational use thereof, except that in the case of nonagricultural land leased to the state or a subdivision thereof, any consideration received by the owner for such lease shall not be deemed a charge within the meaning of this section.

§ 58-3207. Same; construction of act as to certain liabilities and obligations.

Nothing in this act shall be construed to:

(a) Create a duty of care or ground of liability for injury to persons or property.

(b) Relieve any person using the land of another for recreational purposes from any obligation which such person may have in the absence of this act to exercise care in his or her use of such land and in his or her activities thereon, or from the legal consequences of failure to employ such care.
Risk Exposure for Landowners in Kentucky

In General. Landowner liability for injuries to recreation users is controlled in part by the state recreation use statute and by common law. If the recreation use statute is not applicable then the landowner duties, obligations and liabilities are determined according to common law.

Under the Kentucky recreation use statute a landowner who gratuitously invites or permits a person to use the property for recreation purposes does not have a duty to keep the premises safe; to warn of dangerous conditions or activities on the property; nor does the landowner extend an assurance that the property is safe; or confer upon the recreation user the common law status of invitee or licensee. Landowners retain this immunity when they lease land to a public agency for recreation purposes.

Exceptions. Landowners do not have immunity from liability for a willful or malicious failure to guard or warn against a dangerous condition, use, or activity. Wilful and malicious conduct is not statutorily defined but is left to judicial interpretation. Since the statute is silent regarding landowner obligations to trespassing children, landowner liability is probably determined by common law doctrine of attractive nuisance.

Impact of Charging a Fee. If a fee is charged for the recreational use of the property, landowners lose only their statutory immunity from liability. At that point, common law landowner liability rules and protections apply. Any fees paid to the landowner by the state for purposes of opening up the land to public recreational use are allowed and the landowner does not lose immunity from liability.

Accident Rates

| Trend Analysis of Fatalities Involving Hunting, Fishing and All-Terrain Vehicles, 1982–1991 |
|---|---|---|---|---|---|---|---|---|---|---|
| All-Terrain Vehicles | 0 | 0 | 2 | 5 | 5 | 12 | 7 | 5 | 6 | 2 |
| Fishing | 0 | 0 | 2 | 6 | 8 | 1 | 0 | 2 | 0 | 2 |
| Hunting | * | * | * | * | * | 3 | 7 | 2 | 2 | 3 |

*No State Data Available

Litigated Cases

Page v. City of Louisville, 722 S.W.2d 60 (1986).
Sublett v. United States, 688 S.W.2d 328 (1985).
TITLE XII. CONSERVATION AND STATE DEVELOPMENT
CHAPTER 150. FISH AND WILDLIFE RESOURCES

§ 150.645 Liability of landowner consenting to hunting, fishing, trapping, camping or hiking on premises.

An owner, lessee or occupant of premises who gives permission to another person to hunt, fish, trap, camp or hike upon such premises shall owe no duty to keep the premises safe for entry or use by such person or to give warning of any hazardous conditions on such premises, and such owner, lessee or occupant, by giving such permission, does not thereby extend any assurance that the premises are safe for such purpose, or constitute the person to whom permission is granted an invitee to whom a duty of care is owed. The owner, lessee or occupant giving permission for any of the purposes stated above shall not be liable for any injury to any person or property caused by the negligent acts of any person to whom permission is granted. This section shall not limit the liability which would otherwise exist for willful and malicious failure to guard, or to warn against, a dangerous condition, use, structure or activity, or for injury suffered in any case where permission to hunt, fish, trap, camp or hike was granted for a consideration other than the consideration, if any, paid to said owner, lessee or occupant by the state. The word "premises" as used in this section includes lands, private ways and any buildings and structures thereon. Nothing in this section limits in any way any liability which otherwise exists. (Enact. Acts 1968, ch. 38, § 29.)

TITLE XXXVI. STATUTORY ACTIONS AND LIMITATIONS
CHAPTER 411. RIGHTS OF ACTION AND SURVIVAL OF ACTIONS

§ 411.190 Obligations of owner to persons using land for recreation.

(1) As used in this section:
(a) "Land" means land, roads, water, watercourses, private ways and buildings, structures, and machinery or equipment when attached to the realty.
(b) "Owner" means the possessor of a fee interest, a tenant, lessee, occupant or person in control of the premises.
(c) "Recreational purpose" includes, but is not limited to, any of the following, or any combination thereof: hunting, fishing, swimming, boating, camping, picnicking, hiking, pleasure driving, nature study, waterskiing, winter sports, and viewing or enjoying historical, archaeological, scenic, or scientific sites.
(d) "Charge" means the admission price or fee asked in return for invitation or permission to enter or go upon the land.

(2) The purpose of this section is to encourage owners of land to make land and water areas available to the public for recreational purposes by limiting their liability toward persons entering thereon for such purposes.

(3) Except as specifically recognized by or provided in subsection (6), an owner of land owes no duty of care to keep the premises safe for entry or use by others for recreational purposes, or to give any warning of a dangerous condition, use, structure, or activity on such premises to persons entering for such purposes.

(4) Except as specifically recognized by or provided in subsection (6), an owner of land who either directly or indirectly invites or permits without charge any person to use such property for recreational purposes does not thereby:
(a) Extend any assurance that the premises are safe for any purpose.
(b) Confer upon such person the legal status of an invitee or licensee to whom a duty of care is owed.
(c) Assume responsibility for or incur liability for any injury to person or property caused by an act or omission of such persons.

(5) Unless otherwise agreed in writing, the provisions of subsections (3) and (4) shall be deemed applicable to the duties and liability of an owner of land leased to the state or any subdivision thereof for recreational purposes.

(6) Nothing in this section limits in any way any liability which otherwise exists:
(a) For willful or malicious failure to guard or warn against a dangerous condition, use, structure, or activity.
(b) For injury suffered in any case where the owner of land charges the person or persons who enter or go on the land for recreational use thereof, except that in the case of land leased to the state or a subdivision thereof, any consideration received by the owner for such lease shall not be deemed a charge within the meaning of this section.

(7) Nothing in this section shall be construed to:
(a) Create a duty of care or ground of liability for injury to persons or property.
(b) Relieve any person using the land of another for recreational purposes from any obligation which he may have in the absence of this section to exercise care in his use of such land and in his activities thereon, or from the legal consequences of failure to employ such care. (Enact. Acts 1966, ch. 252, §§ 1 to 7.)
Risk Exposure for Landowners in Louisiana

In General. Landowner liability for injuries to recreation users is controlled in part by the state recreation use statute and by judicial decisions. If the recreation use statute is not applicable then the landowner duties, obligations and liabilities are determined according to court rulings.

Under the Louisiana recreation use statute a landowner who gratuitously invites or permits a person to use the property for recreation purposes has no duty to keep the premises safe; to warn of dangerous conditions or activities on the property; nor do they extend an assurance that the property is safe; or confer upon the recreation user the common law status of invitee or licensee. Landowners retain this immunity when they lease land to a public agency for recreation purposes.

Exceptions. Landowners do not have immunity from liability for a willful or malicious failure to guard or warn against a dangerous condition, use, or activity. Willful and malicious conduct is not statutorily defined but is left to judicial interpretation. Since the statute is silent regarding landowner obligations to trespassing children, landowner liability is probably determined by judicial doctrine of attractive nuisance.

Impact of Charging a Fee. If a fee is charged for the recreational use of the property, landowners lose only their statutory immunity from liability. At that point, judicial rules on landowner liability apply. Any fees paid to the landowner by the state for purposes of opening up the land to public recreational use are allowed and the landowner does not lose immunity from liability.

Accident Rates

| Trend Analysis of Fatalities Involving Hunting, Fishing and All-Terrain Vehicles, 1982–1991 |
|-----------------------------------------------|-------------------------------------------------------------|
| All-Terrain Vehicles                         | 3    | 8    | 6    | 7    | 7    | 4    | 4    | 5    | 5    | 1    |
| Fishing                                      | 0    | 2    | 6    | 16   | 4    | 3    | 7    | 3    | 3    |     |
| Hunting                                      | *    | *    | 6    | 8    | *    | 8    | 7    | 3    | 1    | 8    |

*No State Data Available

Litigated Cases

Rushing v. State, 381 So.2d 1250 (1980).

Keelen v. Dept. of Culture, Recreation and Tourism, 463 So.2d 1287 (1985).
Cooper v. Brownlow, 491 So.2d 693 (1986).
Wadsworth v. Town of Berwick, 484 So.2d 762 (1986).

LOUISIANA-1
Stuart v. City of Morgan City, 504 So.2d 934 (1987).
Peterson v. Western World Ins., 536 So.2d 639 (1988).

§ 2791. Liability of owner or occupant of property not used primarily for commercial recreational purposes

A. An owner, lessee, or occupant of premises owes no duty of care to keep such premises safe for entry or use by others for hunting, fishing, camping, hiking, sightseeing or boating or to give warning of any hazardous conditions, use of, structure or activities on such premises to persons entering for such purposes. If such an owner, lessee or occupant give permission to another to enter the premises for such recreational purposes he does not thereby extend any assurance that the premises are safe for such purposes or constitute the person to whom permission is granted one to whom a duty of care is owed, or assume responsibility for or incur liability for any injury to persons or property caused by any act of person to whom permission is granted.

B. This Section does not exclude any liability which would otherwise exist for deliberate and willful or malicious injury to persons or property, nor does it create any liability where such liability does not now exist. Furthermore the provisions of this Section shall not apply when the premises are used principally for a commercial, recreational enterprise for profit; existing law governing such use is not changed by this Section.

C. The word “premises” as used in this Section includes lands, roads, waters, water courses, private ways and buildings, structures, machinery or equipment thereon.

D. The limitation of liability extended by this Section to the owner, lessee, or occupant of premises shall not be affected by the granting of a lease, right of use, or right of occupancy for any recreational purpose which may limit the use of the premises to persons other than the entire public or by the posting of the premises so as to limit the use of the premises to persons other than the entire public. [Added by Acts 1964, No. 248, §§ 1 to 3. Amended by Acts 1989, No. 534, § 1.]

§ 2795. Limitation of liability of landowner of property used for recreational purposes; property owned by the Department of Wildlife and Fisheries

A. As used in this Section:

(1) "Land" means land, roads, water, watercourses, private ways and buildings, structures, and machinery or equipment when attached to the estate.

(2) "Owner" means the possessor of a fee interest, a tenant, lessee, occupant or person in control of the premises.

(3) "Recreational purposes" includes, but is not limited to, any of the following, or any combination thereof: hunting, fishing, trapping, swimming, boating, camping, picnicking, hiking, horseback riding, bicycle riding, motorized vehicle operation for recreation purposes, nature study, water skiing, ice skating, sledding, snowmobiling, snowsking, summer and winter sports, and viewing or enjoying historical, archaeological, scenic, or scientific sites.

(4) "Charge" means the admission price or fee asked in return for permission to use lands.

(5) "Person" means individuals regardless of age.

B. (1) Except for willful or malicious failure to warn against a dangerous condition, use, structure, or activity, an owner of land, except an owner of commercial recreational developments or facilities, who permits with or without charge any person to use his land for recreational purposes as herein defined does not thereby:

(a) Extend any assurance that the premises are safe for any purposes.

(b) Constitute such person the legal status of an invitee or licensee to whom a duty of care is owed.

(c) Incur liability for any injury to person or property incurred by such person.

(2) The provisions of this Subsection shall apply to owners of commercial recreational developments or facilities for injury to persons or property arising out of the commercial recreational activity permitted at the recreational development or facility that occurs on land which does not comprise the commercial recreational development or facility and over which the owner has no control when the recreational activity commences, occurs, or terminates on the commercial recreational development or facility.

C. Unless otherwise agreed in writing, the provisions of Subsection B shall be deemed applicable to the duties and liability of an owner of land leased for recreational purposes to the federal government or any state or political subdivision thereof or private persons.
D. Nothing in this Section shall be construed to relieve any person using the land of another for recreational purposes from any obligation which he may have in the absence of this Section to exercise care in his use of such land and in his activities thereon, or from the legal consequences of failure to employ such care.

E. The limitation of liability provided in this Section shall apply to any lands or waterbottoms owned, leased, or managed by the Department of Wildlife and Fisheries, regardless of the purposes for which the land or waterbottoms are used, and whether they are used for recreational or nonrecreational purposes.

F. The limitation of liability extended by this Section to the owner, lessee, or occupant of premises shall not be affected by the granting of a lease, right of use, or right of occupancy for any recreational purpose which may limit the use of the premises to persons other than the entire public or by the posting of the premises so as to limit the use of the premises to persons other than the entire public. [Added by Acts 1975, No. 615, §§ 2 to 5. Amended by Acts 1986, No. 967, § 1; Acts 1986, No. 976, § 1; Acts 1989, No. 534, § 1.]
Risk Exposure for Landowners in Maine

In General. Landowner liability for injuries to recreation users is controlled in part by the state recreation use statute and by common law. If the recreation use statute is not applicable then the landowner duties, obligations and liabilities are determined according to common law.

Under the Maine recreation use statute a landowner who gratuitously invites or permits a person to use the property for outdoor recreation, or harvesting purposes, has no duty to keep the premises safe; to warn of dangerous conditions or activities on the property; nor does the landowner extend an assurance that the property is safe; or confer upon the recreation user the common law status of invitee or licensee. Landowners retain this immunity when they lease land to a public agency for recreation purposes.

Exceptions. Landowners do not have immunity from liability for a willful or malicious failure to guard or warn against a dangerous condition, use, or activity. Wilful and malicious conduct is not statutorily defined but is left to judicial interpretation. While the statute is silent regarding landowner obligations to trespassing children, a Maine court held that a landowner liability is not liable for injuries to a child under the attractive nuisance doctrine.

Impact of Charging a Fee. If a fee is charged for the recreational use of the property, landowners lose only their statutory immunity from liability. At that point, common law rules on landowner liability apply. Any fees paid to the landowner by the state for purposes of opening up the land to public recreational use are allowed and the landowner does not lose immunity from liability.

Accident Rates

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<tr>
<td>Hunting</td>
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</tbody>
</table>

*No State Data Available

Litigated Cases

§ 159-A. Limited liability for recreational or harvesting activities

1. Definitions. As used in this section, unless the context indicates otherwise, the following terms shall have the following meanings.
   A. "Premises" shall mean improved and unimproved lands, private ways, any buildings or structures on those lands and waters standing on, flowing through or adjacent to those lands.
   B. "Recreational or harvesting activities" means recreational activities conducted out of doors, including hunting, fishing, trapping, camping, hiking, sight-seeing, operation of snow—traveling and all-terrain vehicles, skiing, hang—gliding, boating, sailing, canoeing, rafting or swimming or activities that involve harvesting or gathering forest products. It shall include entry, use of and passage over premises in order to pursue these activities.

2. Limited duty. An owner, lessee or occupant of premises shall owe no duty of care to keep the premises safe for entry or use by others for recreational or harvesting activities or to give warning of any hazardous condition, use, structure or activity on these premises to persons entering for those purposes.

3. Permissive use. An owner, lessee or occupant who gives permission to another to pursue recreational or harvesting activities on the premises shall not thereby:
   A. Extend any assurance that the premises are safe for those purposes;
   B. Make the person to whom permission is granted an invitee or licensee to whom a duty of care is owed; or
   C. Assume responsibility for or incur liability for any injury to person or property caused by any act of persons to whom the permission is granted.

4. Limitations on section. This section shall not limit the liability which would otherwise exist:
   A. For a willful or malicious failure to guard or to warn against a dangerous condition, use, structure or activity;
   B. For an injury suffered in any case where permission to pursue any recreational or harvesting activities was granted for a consideration other than the consideration, if any, paid to the landowner by the State; or
   C. For an injury caused, by acts of persons to whom permission to pursue any recreational or harvesting activities was granted, to other persons to whom the person granting permission, or the owner, lessee or occupant of the premises, owed a duty to keep the premises safe or to warn of danger.

5. No duty created. Nothing in this section shall create a duty of care or ground of liability for injury to a person or property.

6. Costs and fees. The court shall award any direct legal costs, including reasonable attorneys' fees, to an owner, lessee or occupant who is found not to be liable for injury to a person or property pursuant to this section. [1979, c. 253, § 2; 1979, c. 514, § 1-1979, c. 663, § 75, eff. March 28, 1980; 1983, c. 297, § 2, eff. July 1, 1984; 1985, c. 762, § 25, eff. July 1, 1986.]
MARYLAND

Risk Exposure for Landowners in Maryland

In General. Landowner liability for injuries to recreational and educational users is controlled in part by the state recreation use statute and by common law. If the recreation use statute is not applicable then the landowner duties, obligations and liabilities are determined according to common law.

Under the Maryland recreation use statute a landowner who gratuitously invites or permits a person to use the property for recreational, educational, or firewood harvesting purposes, has no duty to keep the premises safe; to warn of dangerous conditions or activities on the property; nor do they extend an assurance that the property is safe; or confer upon the recreation user the common law status of invitee or licensee. Landowners retain this immunity when they lease land to a public agency for recreation purposes.

Exceptions. Landowners do not have immunity from liability for a willful or malicious failure to guard or warn against a dangerous condition, use, or activity. Wilful and malicious conduct is not statutorily defined but is left to judicial interpretation. Since the statute is silent regarding landowner obligations to trespassing children, liability is probably determined by the judicial doctrine of attractive nuisance.

Impact of Charging a Fee. If a fee is charged for the recreational use of the property, landowners lose only their statutory immunity from liability. At that point, common law rules on landowner liability apply. If land is leased to the state or its political subdivisions, any consideration the owner receives from the lease is not a fee and the landowner does not lose immunity from liability.

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*No State Data Available

Litigated Cases

None
NATURAL RESOURCES
TITLE 5. FORESTS AND PARKS.

§ 5–1101. Definitions.

(a) In general.— In this subtitle the following words have the meanings indicated.

(b) Charge.— “Charge” means price or fee asked for services, entertainment, recreation performed, or products offered for sale on land or in return for invitation or permission to enter or go upon land.

(c) Educational purpose.— “Educational purpose” includes any of the following or any combination of the following: Nature study, farm visitations for purposes of learning about the farming operation, practice judging of livestock, dairy cattle, poultry, other animals, agronomy crops, horticultural crops, or other farm products, organized visits to farms by school children, 4–H clubs, FFA clubs and others as part of their educational programs, and viewing historical, archaeological, or scientific sites.

(d) Land.— “Land” means land, roads, water, watercourses, private ways and buildings, structures, and machinery or equipment when attached to realty.

(e) Owner.— “Owner” means the possessor of a fee interest, tenant, lessee, or person who possesses the premises.

(f) Recreational purpose.— “Recreational purpose” includes the following or any combination of the following: Hunting, fishing, swimming, boating, camping, picnicking, hiking, pleasure driving, nature study, water skiing, winter sports, horseback riding or horse driving, operating motorized recreational vehicles, jogging, marathon racing, hang gliding, hot air ballooning, and operating light airplanes and other forms of recreational aircraft, and viewing or enjoying historical, archaeological, scenic, or scientific sites. (An. Code 1957, art. 66C, § 410K; 1973, 1st Sp. Sess., ch. 4, § 1; 1988, ch. 692; 1989, ch. 639.)

§ 5–1102. Purpose and construction of subtitle.

(a) Purpose.— The purpose of this subtitle is to encourage any owner of land to make land, water, and airspace above the land and water areas available to the public for any recreational and educational purpose by limiting the owner's liability toward any person who enters on land, water, and airspace above the land and water areas for these purposes.

(b) Construction.— This subtitle does not:

1. create a duty of care or ground of liability for injury to persons or property,

2. relieve any person using the land of another for any recreational or educational purpose from any obligation which he might have in the absence of this subtitle to exercise care in using the land and in his activities on the land, or from the legal consequences of his failure to employ care. (An. Code 1957, art. 66C, §§ 410J, 410P; 1973, 1st Sp. Sess., ch. 4, § 1; 1988, ch. 692; 1989, ch. 639.)

§ 5–1103. Landowner not required to keep premises safe for recreational use.

Except as specifically recognized by or provided in § 5–1106 of this subtitle, an owner of land owes no duty of care to keep the premises safe for entry or use by others for any recreational or educational purpose, or to give any warning of a dangerous condition, use, structure, or activity on the premises to any person who enters on the land for these purposes. (An. Code 1957, art. 66C, § 410I; 1973, 1st Sp. Sess., ch. 4, § 1; 1981, ch. 481; 1988, ch. 692.)

§ 5–1104. Liability of landowner who permits recreational use of land without charge.

Except as specifically recognized by or provided in § 5–1106 of this subtitle, an owner of land who either directly or indirectly invites or permits without charge persons to use the property for any recreational or educational purpose or to cut firewood for personal use does not by this action: (1) Extend any assurance that the premises are safe for any purpose; (2) Confer upon the person the legal status of an invitee or licensee to whom a duty of care is owed; or (3) Assume responsibility for or incur liability as a result of any injury to the person or property caused by an act of omission of the person. (An. Code 1957, art. 66C, § 410M; 1973, 1st Sp. Sess., ch. 4, § 1; 1981, ch. 481; 1982, ch. 391; 1988, ch. 692.)
§ 5–1105. Applicability of §§ 5–1103 and 5–1104 to land leased by the State.

Unless otherwise agreed in writing, the provisions of §§ 5–1103 and 5–1104 are applicable to any duty and liability of an owner of land leased to the State or any of its political subdivisions for any recreational or educational purpose. (An. Code 1957, art. 66C, § 410N; 1973, 1st Sp. Sess., ch. 4, § 1; 1988, ch. 692.)

§ 5–1106. Liability for willful or malicious conduct; liability of landowner who charges for recreational use of land.

The provisions of this subtitle do not limit in any way any liability which otherwise exists for willful or malicious failure to guard or warn against a dangerous condition, use, structure, or activity; or for injury suffered where the owner of the land charges the person who enters or goes on the land for recreational or educational use. However, if land is leased to the State or any of its political subdivisions, any consideration the owner receives for the lease is not a charge within the meaning of this section. (An. Code 1957, art. 66C, § 410–O; 1973, 1st Sp. Sess., ch. 4, § 1; 1988, ch.

§ 5–1107. Notice by landowner of private lands; written consent to enter private lands.

Whenever the owner desires, he may post in conspicuous places notices informing the public that the land is private. The landowner, by written consent, may grant permission to enter on the land. (An. Code 1957, art. 66C, § 410Q; 1973, 1st Sp. Sess., ch. 4, § 1; 1988, ch. 692.)

§ 5–1108. Permission cards.

(a) To facilitate a method of providing written consent, the Secretary shall distribute permission cards, to be available to the public and to landowners.

(b) One side of the card shall read:

PERMISSION TO ENTER

I hereby grant the person named on the reverse side permission to enter my property, subject to the terms of the agreement, on the following dates:

Signed..................................................................................................................

(Landowner)

(c) The reverse side shall read:

AGREEMENT

In return for the privilege of entering on the private property for any recreational or educational purpose as defined in the Natural Resources Article § 5–1101, I agree to adhere to every law, observe every safety precaution and practice, take every precaution against fire, and assume all responsibility and liability for my person and my property, while on the landowner's property.

Signed..................................................................................................................

(Signed 410R; 1973, 1st Sp. Sess., ch. 4, § 1; 1987, ch. 676; 1988, ch. 692.)
Risk Exposure for Landowners in Massachusetts

In General. Landowner liability for injuries to recreation users is controlled in part by the state recreation use statute and by common law. If the recreation use statute is not applicable then the landowner duties, obligations and liabilities are determined according to common law.

Under the Massachusetts recreation use statute a landowner who gratuitously invites or permits a person to use the property for recreational, or firewood gathering purposes is not liable for user injuries nor do they confer upon the recreation user the common law status of invitee or licensee. Landowners retain immunity when they lease land to a public agency for recreation purposes.

Exceptions. Landowners do not have immunity from liability for willful, wanton, or reckless conduct that causes an injury to the recreation user. Wilful and malicious conduct is not statutorily defined but is left to judicial interpretation. Since the statute is silent regarding landowner obligations to trespassing children, liability is probably determined by the judicial doctrine of attractive nuisance.

Impact of Charging a Fee. If a fee is charged for the recreational use of the property, landowners lose only their statutory immunity from liability. At that point, common law rules on landowner liability apply. If land is leased to the state or its political subdivisions, any consideration the owner receives from the lease is probably not considered a fee and the landowner does not lose immunity from liability.

Accident Rates

| Trend Analysis of Fatalities Involving Hunting, Fishing and All-Terrain Vehicles, 1982–1991 |
|-----------------------------------------------|---|---|---|---|---|---|---|---|---|
| All-Terrain Vehicles                          | 0    | 0    | 3    | 4    | 4    | 3    | 3    | 1    | 1    |
| Fishing                                       | 2    | 2    | 0    | 2    | 3    | 0    | 2    | 7    | 1    | 3    |
| Hunting                                       | *    | *    | *    | *    | *    | 1    | 0    | 0    | 3    | 1    |

*No State Data Available

Litigated Cases

§ 17C. Public use of land for recreational purposes; landowner's liability limited; exception

An owner of land who permits the public to use such land for recreational purposes without imposing a charge or fee therefor, or who leases his land for said purposes to the commonwealth, or any political subdivision thereof, shall not be liable to any member of the public who uses said land for the aforesaid purposes for injuries to person or property sustained by him while on said land in the absence of willful, wanton or reckless conduct by such owner, nor shall such permission be deemed to confer upon any person so using said land the status of an invitee or licensee to whom any duty would be owed by said owner. The liability of an owner who imposes a charge or fee for the use of his land by the public for recreational purposes shall not be limited by any provision of this section. No contributions or other voluntary payments not required to be made to use such land shall be considered a charge or fee within the meaning of this section.
Risk Exposure for Landowners in Michigan

In General. Landowner liability for injuries to recreational users is controlled in part by the state recreation use statute and by common law. If the recreation use statute is not applicable then the landowner duties, obligations and liabilities are determined according to common law.

Under the Michigan recreation use statute differential obligations are imposed on the landowner based on the purpose of the use. The four different categories of users recognized under the statute are (1) the outdoor recreational user, (2) the firewood gatherer, (3) the angler or hunter on farmland and (4) the U-Pick crop harvester.

Outdoor Recreation User. A landowner who gratuitously allows a person to use the property for outdoor recreation purposes is not liable for any user injuries unless the injuries were caused by the gross negligence or willful and wanton misconduct of the owner. If a fee is charged for the recreational use of the property, landowners lose only their statutory immunity from liability. At that point, common law rules on landowner liability apply.

Firewood Gatherer. A landowner who allows a person to use the property to “glean agricultural or farm products” from the land is not liable for user injuries unless the injuries were caused by gross negligence or willful and wanton misconduct. Landowners may charge a fee for this type of activity and not lose their immunity.

Angler or Hunter on Farmland. A farmland owner who charges a fee for hunting or fishing on the land is not liable for user injuries, unless the injuries were caused by a condition which involved an unreasonable risk of harm and all of the conditions applied (1) the dangerous condition was not known or obvious to the user, (2) the owner had knowledge (or reason to know) of the dangerous condition and (3) the owner did not warn the user of the danger or remove it.

U-Pick Crop Harvester. A landowner who allows a person to enter the property for the purpose of picking ("U-Pick basis"), and purchasing farm products is not liable for user injuries unless the injuries were caused by a condition which involved an unreasonable risk of harm and all of the conditions applied (1) the dangerous condition was not known or obvious to the user, (2) the owner had knowledge (or reason to know) of the dangerous condition and (3) the owner did not warn the user of the danger or remove it. Landowners may charge a fee for this type of activity and not lose their immunity.

Since the Michigan recreation use statute does not contain express provisions regarding landowner obligations to trespassing children, liability is probably determined by the judicial doctrine of attractive nuisance. Wilful, wanton and gross misconduct is not statutorily defined but is left to judicial interpretation.

Accident Rates

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*No State Data Available*
Litigated Cases


CHAPTER 300. FISH AND GAME
LIABILITY OF LANDOWNERS

§ 300.201. Liability of landowners for injuries to guests; gross negligence; willful and wanton misconduct; cause of action; definitions

Sec. 1. (1) Except as provided in subsection (3), no cause of action shall arise for injuries to any person who is on the lands of another without paying to the owner, tenant, or lessee of the lands a valuable consideration for the purpose of fishing, hunting, trapping, camping, hiking, sightseeing, motorcycling, snowmobiling, or any other outdoor recreational use, with or without permission, against the owner, tenant, or lessee of the land unless the injuries were caused by the gross negligence or willful and wanton misconduct of the owner, tenant, or lessee.

(2) No cause of action shall arise against the owner, tenant, or lessee of land or premises for injuries to any person who is on that land or premises for the purpose of gleaning agricultural or farm products, unless that person's injuries were caused by the gross negligence or willful and wanton misconduct of the owner, tenant, or lessee.

(3) No cause of action shall arise against the owner, tenant, or lessee of a farm used in the production of agricultural goods as defined by section 351(h) of the single business tax act, Act No. 228 of the Public Acts of 1975, being section 208.33 of the Michigan Compiled Laws, for injuries to any person who is on that farm and has paid the owner, tenant, or lessee valuable consideration for the purpose of fishing or hunting, unless that person's injuries were caused by a condition which involved an unreasonable risk of harm and all of the following apply:
   (a) The owner, tenant, or lessee knew or had reason to know of the condition or risk.
   (b) The owner, tenant, or lessee failed to exercise reasonable care to make the condition safe, or to warn the person of the condition or risk.
   (c) The person injured did not know or did not have reason to know of the condition or risk.

(4) No cause of action shall arise against the owner, tenant, or lessee of land or premises for injuries to any person, other than an employee or contractor of the owner, tenant, or lessee, who is on the land or premises for the purpose of picking and purchasing agricultural or farm products at a farm or "u-pick" operation, unless the person's injuries were caused by a condition which involved an unreasonable risk of harm and all of the following apply:
   (a) The owner, tenant, or lessee knew or had reason to know of the condition or risk.
   (b) The owner, tenant, or lessee failed to exercise reasonable care to make the condition safe, or to warn the person of the condition or risk.
   (c) The person injured did not know or did not have reason to know of the condition or risk.

(5) As used in this section, "agricultural or farm products" means the natural products of the farm, nursery, grove, orchard, vineyard, garden, and apiary, including, but not limited to, trees and firewood. (Amended by P.A.1987, No. 110, § 1, Ind. Eff. July 13.)
Risk Exposure for Landowners in Minnesota

In General. Landowner liability for injuries to recreational and educational users is controlled in part by the state recreation use statute and by common law. If the recreation use statute is not applicable then the landowner duties, obligations and liabilities are determined according to common law.

Under the Minnesota recreation use statute a landowner who gratuitously invites or permits a person to use the property for a recreation purposes, has no duty to keep the premises safe; to warn of dangerous conditions on the property; nor does the landowner extend an assurance that the property is safe; or confer upon the recreation user the common law status of invitee or licensee. Landowners retain this immunity when they lease land to a public agency for recreation purposes.

Exceptions. Landowners do not have immunity from liability for willful conduct that causes an injury to the user. Willful conduct is not statutorily defined but is left to judicial interpretation. The statute does not limit the landowners common law duty of care to a trespasser. Since the statute does not contain express provisions regarding landowner obligations to trespassing children, liability is probably determined by the judicial doctrine of attractive nuisance.

Impact of Charging a Fee. If a fee is charged for the recreational use of the property, landowners lose only their statutory immunity from liability. At that point, common law rules on landowner liability apply. If land is leased to the state or its political subdivisions, any consideration the owner receives from the lease is probably not a fee and the landowner does not lose immunity from liability.

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*No State Data Available

Litigated Cases

Hovet v. City of Bagley, 325 N.W.2d 813 (1982).
CHAPTER 87. PRIVATE LANDS AND WATERS, PUBLIC USE

§ 87.01. Policy

It is the policy of the state, in furtherance of the public health and welfare, to encourage and promote the use of privately owned lands and waters by the public for beneficial recreational purposes, and the provisions of this chapter are enacted to that end. [Laws 1961, c. 638, § 1. Amended by Laws 1971, c. 946, § 1, eff. June 8, 1971.]

§ 87.021. Definitions

Subdivision 1. For the purposes of this chapter the terms defined in this section have the meanings given them, except where the context clearly indicates otherwise.

Subd. 2. "Land" means privately owned or leased land, roads, water, watercourses, private ways and buildings, structures, and machinery or equipment when attached to the land.

Subd. 3. "Owner" means the possessor of a fee interest or a life estate, a tenant, lessee, occupant or person in control of the land.

Subd. 4. "Recreational purpose" includes, but is not limited to, any of the following, or any combination thereof: hunting, trapping, fishing, swimming, boating, camping, picnicking, hiking, bicycling, horseback riding, firewood gathering, pleasure driving including snowmobiling and the operation of any motorized vehicle or conveyance upon a road or upon or across any land in any manner whatsoever, nature study, water skiing, winter sports, and viewing or enjoying historical, archaeological, scenic, or scientific sites.

Subd. 5. "Charge" means any admission price asked or charged for services, entertainment, recreational use or other activity or the offering of products for sale to the recreational user by a commercial for profit enterprise directly related to the use of the land. [Amended by Laws 1982, c. 373, §§ 1 to 4.]

§ 87.0221. Owner’s duty of care or duty to give warnings

Except as specifically recognized by or provided in section 87.025, an owner (a) owes no duty of care to render or maintain the land safe for entry or use by other persons for recreational purposes, (b) owes no duty to warn those persons of any dangerous condition on the land, whether patent or latent, (c) owes no duty of care toward those persons except to refrain from willfully taking action to cause injury, and (d) owes no duty to curtail use of the land during its use for recreational purposes. [Added by Laws 1973, c. 703, § 1, eff. May 25, 1973.]

§ 87.023. Owner’s liability

Except as provided in section 87.025, an owner who either directly or indirectly invites or permits without charge any person to use the land for recreational purposes does not thereby:

(a) Extend any assurance that the land is safe for any purpose;

(b) Confer upon such person the legal status of an invitee or licensee to whom a duty of care is owed;

(c) Assume responsibility for or incur liability for any injury to person or property caused by an act or omission of such persons.

§ 87.024. Liability; leased land, water filled mine pits

Unless otherwise agreed in writing, the provisions of sections 87.021 and 87.023 shall be deemed applicable to the duties and liability of an owner of the following described land: (1) land leased to the state or any subdivision thereof for recreational purposes; or (2) idled or abandoned, water filled, mine pits whose pit walls may slump or cave, and to which water the public has access from a water access site operated by a public entity. [Amended by Laws 1988, c. 530, § 3.]

§ 87.025. Owner’s liability; not limited

Except as provided in this chapter nothing herein limits in any way any liability which otherwise exists:

(a) For conduct which, at law, entitles a trespasser to maintain an action and obtain relief for the conduct complained of;
(b) For injury suffered in any case where the owner charges the person, or persons who enter or go on the land for the recreational use thereof, except that in the case of land leased to the state or a subdivision thereof, any consideration received from the state or subdivision thereof by the owner for such lease shall not be deemed a charge within the meaning of this section.

§ 87.026. Land user's liability

Nothing in this chapter shall be construed to:

(a) Create a duty of care or ground of liability for injury to persons or property;

(b) Relieve any person using the land of another for recreational purposes from any obligation which he may have in the absence of this chapter to exercise care in his use of such land and in his activities thereon, or from the legal consequences of failure to employ such care. [Added by Laws 1971, c. 946, § 7, eff. June 8, 1971.]

§ 87.03. Dedication

No dedication of any land in connection with any use by any person for a recreational purpose shall take effect in consequence of the exercise of such use for any length of time hereafter except as expressly permitted or provided by the owner.
Risk Exposure for Landowners in Mississippi

In General. Landowner liability for injuries to recreation users is controlled in part by the state recreation use statute and by common law. If the recreation use statute is not applicable then the landowner duties, obligations and liabilities are determined according to common law.

Under the Mississippi recreation use statute a landowner who gratuitously invites or permits a person to use the property for an outdoor recreation purposes has no duty to keep the premises safe; to warn of hazardous conditions; structures and activities on the property; nor do they extend an assurance that the property is safe; or confer upon the recreation user the common law status of invitee. Landowners retain this immunity when they lease land to a public agency for recreation purposes.

Exceptions. Landowners do not have immunity from liability for a willful or malicious failure to guard or warn against a hazardous condition, use, structure or activity that causes an injury to the user. Wilful conduct is not statutorily defined but is left to judicial interpretation. Further, landowners are liable for injuries to third persons if those injuries were caused by acts recreation users. Since the statute does not contain express provisions regarding landowner obligations to trespassing children, liability is probably determined by the judicial doctrine of attractive nuisance.

Impact of Charging a Fee. If a fee is charged for the recreational use of the property, or if any concession is operated on the property, landowners lose only their statutory immunity from liability. At that point, common law rules on landowner liability apply. If land is leased to the federal government, the state or its political subdivisions, any consideration paid to the owner under the lease is not a fee and the landowner does not lose immunity from liability.

Accident Rates

<table>
<thead>
<tr>
<th>Trend Analysis of Fatalities</th>
<th>All-Terrain Vehicles</th>
<th>Fishing</th>
<th>Hunting</th>
</tr>
</thead>
<tbody>
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</tr>
<tr>
<td>Hunting</td>
<td>*</td>
<td>*</td>
<td>*</td>
</tr>
</tbody>
</table>

*No State Data Available

Litigated Cases

_Dumas v Pike County_ 642 F Supp 131 (1986).
§ 89–2–1. Declaration of purpose; effect of opening property for outdoor recreational purposes.

The purpose of this chapter is to encourage persons to make available to the public land and water areas for outdoor recreational purposes. A lessee or owner who opens a land or water area to the public for outdoor recreational purposes shall not, by opening such land or water for such use:

(a) Be presumed to extend any assurance that such land or water area is safe for any purpose;
(b) Incur any duty of care toward a person who goes on the land or water area; or
(c) Become liable or responsible for any injury to persons or property caused by the act or omission of a person who goes on the land or water area. The foregoing applies, whether the person going on the land or water area is an invitee, licensee, trespasser or otherwise. [Laws, 1978, ch. 488, § 1(1), eff from and after July 1, 1978.]


The term “outdoor recreational purposes” as used in this chapter shall include, but not necessarily be limited to, hunting, fishing, swimming, boating, camping, picnicking, hiking, pleasure driving, nature study, water skiing and visiting historical, archaeological, scenic or scientific sites.

§ 89–2–5. Certain liability not limited.

This chapter does not relieve any person of liability which would otherwise exist for deliberate, willful or malicious injury to persons or property. The provisions hereof shall not be deemed to create or increase the liability of any person.


The provisions of this chapter shall not apply if any fee is charged for entering or using any part of such land or water outdoor recreational area, or if any concession is operated on said area offering to sell or selling any item or product to persons entering thereon for recreational purposes. Said chapter shall not apply unless public notice of the availability of such lands for such public use shall have been published once annually in a newspaper of general circulation in the county where such lands are situated.


For the purposes of this article, the following words shall have the meanings ascribed herein, unless the context otherwise requires:

(a) “Land” or “premises” means all real property, waters and private ways, and all trees, buildings and structures which are located on such real property, waters and private ways.
(b) “Landowner” means the legal titleholder or owner of land or premises, and includes any lessee, occupant or any other person in control of such land or premises.

§ 89–2–23. Landowner’s duty of care with respect to recreational users of land.

Except as provided for in Section 89–2–27, a landowner:

(a) shall owe no duty of care to keep land or premises safe for entry or use by others for hunting, fishing, trapping, camping, water sports, hiking or sightseeing; and
(b) shall not be required to give any warning to any person entering on land or premises for hunting, fishing, trapping, camping, water sports, hiking or sightseeing as to any hazardous conditions or uses of, or hazardous structures or activities on such land or premises.
§ 89-2-25. Effect of landowner’s permission to use land.

Any landowner who gives permission to another person to hunt, fish, trap, camp, hike or sightsee upon land or premises shall not, by the sole act of giving such permission, be considered or construed to have:

(a) Extended any assurance that the premises are safe for such purposes;
(b) Caused the person to whom permission has been granted to be constituted the legal status of an invitee to whom a duty of care is owed; or
(c) Assumed responsibility or liability for any injury to such person or his property caused by any act of such person to whom permission has been granted, except as provided in Section 89-2-27.

§ 89-2-27. Exceptions to limitation of liability.

This article shall not limit any liability which otherwise exists for:

(a) Willful or malicious failure to guard or warn against a hazardous condition, use, structure or activity;
(b) Injuries suffered in any case where permission to hunt, fish, trap, camp, hike, sightsee or engage in any other lawful activity was granted for a consideration other than the consideration, if any, paid to the landowner by the State of Mississippi, the federal government, or any other governmental agency; or
(c) Injuries to third persons or to persons to whom the landowner owed a duty to keep the land or premises safe or to warn of danger, which injuries were caused by acts of persons to whom permission to hunt, fish, camp, hike, sightsee or engage in any other lawful activity was granted.
Risk Exposure for Landowners in Missouri

*In General.* Landowner liability for injuries to recreation users is controlled in part by the state recreation use statute and by common law. If the recreation use statute is not applicable then the landowner duties, obligations and liabilities are determined according to common law.

Under the Missouri recreation use statute a landowner who gratuitously invites or permits a person to use the property for a recreation purposes has no duty to keep the premises safe; to warn of natural or artificial conditions or structures on the property; nor do they extend an assurance that the property is safe; or confer upon the recreation user the common law status of invitee or licensee.

*Exceptions.* Landowners do not have immunity from liability for a malicious or grossly negligent failure to guard or warn against a dangerous or ultrahazardous condition or structure that causes an injury to the user. Malicious or grossly negligent conduct is not statutorily defined but is left to judicial interpretation. Liability protection is not extended for injuries occurring on or in any land within a city limits, any swimming pool or in any residential area. Since the statute does not contain express provisions regarding landowner obligations to trespassing children, liability is probably determined by the judicial doctrine of attractive nuisance.

*Impact of Charging a Fee.* If a fee is charged for the recreational use of the property landowners lose only their statutory immunity from liability. At that point, common law rules on landowner liability apply.

Accident Rates

<table>
<thead>
<tr>
<th>Trend Analysis of Fatalities</th>
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<td>Hunting</td>
<td>*</td>
</tr>
</tbody>
</table>

*No State Data Available*

Litigated Cases

None
TITLE XXXVI. STATUTORY ACTIONS AND TORTS
CHAPTER 537. TORTS AND ACTIONS FOR DAMAGES

§ 537.345. Definitions for sections § 537.345 to § 537.347

As used in sections 537.345 to 537.347, the following terms mean:

1. “Charge”, the admission price of fee asked by an owner of land or an invitation or permission without price or fee to use land for recreational purposes when such invitation or permission is given for the purpose of sales promotion, advertising or public goodwill in fostering business purposes;

2. “Land”, all real property, land and water, and all structures, fixtures, equipment and machinery thereon;

3. “Owner”, any individual, legal entity or governmental agency that has any ownership or security interest whatever or lease or right of possession in land;

4. “Recreational use”, hunting, fishing, camping, picnicking, biking, nature study, winter sports, viewing or enjoying archaeological or scenic sites, or other similar activities undertaken for recreation, exercise, education, relaxation, or pleasure on land owned by another. (L.1983, S.B. No. 162, p. 915, § 1.)

§ 537.346. Landowner owes no duty of care to persons entering without fee to keep land safe for recreational use

Except as provided in sections 537.345 to 537.348, an owner of land owes no duty of care to any person who enters on the land without charge to keep his land safe for recreational use or to give any general or specific warning with respect to any natural or artificial condition, structure, or personal property thereon. (L.1983, S.B. No. 162, p. 915, § 2.)

§ 537.347. Landowner directly or indirectly invites or permits persons on land for recreation, effect

Except as provided in sections 537.345 to 537.348, an owner of land who directly or indirectly invites or permits any person to enter his land for recreational use, without charge, whether or not the land is posted, does not thereby:

1. Extend any assurance that the premises are safe for any purpose;

2. Confer upon such person the status of an invitee, or any other status requiring of the owner a duty of special or reasonable care;

3. Assume responsibility for or incur liability for any injury to such person or property caused by any natural or artificial condition, structure or personal property on the premises; or

4. Assume responsibility for any damage or injury to any other person or property caused by an act or omission of such person. (L.1983, S.B. No. 162, p. 915, § 3.)

§ 537.348. Landowner liable, when—definitions

Nothing in this act shall be construed to create liability, but it does not limit liability that otherwise would be incurred by those who use the land of others, or by owners of land for:

1. Malicious or grossly negligent failure to guard or warn against a dangerous condition, structure, personal property which the owner knew or should have known to be dangerous, or negligent failure to guard or warn against an ultra-hazardous condition which the owner knew or should have known to be dangerous;

2. Injury suffered by a person who has paid a charge for entry to the land; or

3. Injuries occurring on or in:
   a. Any land within the corporate boundaries of any city, municipality, town, or village in this state;
   b. Any swimming pool. “Swimming pool” means a pool or tank, especially an artificial pool or tank, intended and adapted for swimming and held out as a swimming pool;
   c. Any residential area. “Residential area” as used herein means a tract of land of one acre or less predominately used for residential purposes, or a tract of land of any size used for multifamily residential services; or
   d. Any noncovered land. “Noncovered land” as used herein means any portion of any land, the surface of which portion is actually used primarily for commercial, industrial, mining or manufacturing purposes; provided, however, that use of any portion of any land primarily for agricultural, grazing, forestry, conservation, natural area, owner’s recreation or similar or related uses or purposes shall not under any circumstances be deemed to be use of such portion for commercial, industrial, mining or manufacturing purposes.

MISSOURI-2
Risk Exposure for Landowners in Montana

In General. Landowner liability for injuries to recreation users is controlled in part by the state recreation use statute and by common law. If the recreation use statute is not applicable then the landowner duties, obligations and liabilities are determined according to common law.

Under the Montana recreation use statute a landowner who gratuitously invites a person to use the property for a recreation purposes has no duty to keep the premises safe; nor to extend an assurance that the property is safe.

Exceptions. Landowners do not have immunity from liability for willful or wanton misconduct that causes an injury to the recreation user. Willful or wanton misconduct is not statutorily defined but is left to judicial interpretation. Since the statute does not contain express provisions regarding landowner obligations to trespassing children, liability is probably determined by the judicial doctrine of attractive nuisance.

Impact of Charging a Fee. If a fee is charged for the recreational use of the property landowners lose only their statutory immunity from liability. At that point, common law rules on landowner liability apply.

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</tr>
</tbody>
</table>

*No State Data Available*

Litigated Cases

None
CHAPTER 16. RIGHTS AND OBLIGATIONS INCIDENTAL TO OWNERSHIP IN REAL PROPERTY
PART 3. GRATUITOUS PERMITTEE FOR RECREATION

§ 70–16–301. Recreational purposes defined.

"Recreational purposes", as used herein, shall include hunting, fishing, swimming, boating, water skiing, camping, picnicking, pleasure driving, winter sports, hiking, touring or viewing cultural and historical sites and monuments, or other pleasure expeditions. [History: En. Sec. 2, Ch. 138, L. 1965; R.C.M. 1947, 67–809; amd. Sec. 1, Ch. 531, L. 1987.]

§ 70–16–302. Restriction on liability of landowner or his agent or tenant.

(1) A person who makes recreational use of any property in the possession or under the control of another, with or without permission and without giving a valuable consideration therefor, does so without any assurance from the landowner, his agent, or his tenant that the property is safe for any purpose. The landowner, his agent, or his tenant owes the person no duty of care with respect to the condition of the property, except that the landowner, his agent, or his tenant is liable to such person for any injury to person or property for an act or omission that constitutes willful or wanton misconduct.

(2) The department of fish, wildlife, and parks, when operating under an agreement with a landowner or tenant to provide recreational snowmobiling opportunities, including but not limited to a snowmobile area, subject to the provisions of subsection (1), on the landowner’s property and when not also acting as a snowmobile area operator on the property, does not extend any assurance that such property is safe for any purpose, and the department, the landowner, or the landowner’s tenant may not be liable to any person for any injury to person or property resulting from any act or omission of the department unless such act or omission constitutes willful or wanton misconduct. [History: En. Sec. 1, Ch. 138, L. 1965; R.C.M. 1947, 67–808; amd. Sec. 3, Ch. 209, L. 1987; amd. Sec. 8, Ch. 440, L. 1987.]

TITLE 23. PARKS, RECREATION, SPORTS, AND GAMBLING
CHAPTER 2. RECREATION
PART 3. RECREATIONAL USE OF STREAMS

§ 23–2–321. Restriction on liability of landowner and supervisor.

(1) A person who makes recreational use of surface waters flowing over or through land in the possession or under the control of another, pursuant to 23–2–302, or land while portaging around or over barriers or while portaging or using portage routes, pursuant to 23–2–311, is owed no duty by a landowner, his agent, or his tenant other than that provided in subsection (2).

(2) A landowner, his agent, or tenant is liable to a person making recreational use of waters or land described in subsection (1) only for an act or omission that constitutes willful or wanton misconduct.

(3) No supervisor or any member of the arbitration panel who participates in a decision regarding the placement of a portage route is liable to any person who is injured or whose property is damaged because of placement or use of the portage route except for an act or omission that constitutes willful and wanton misconduct. History: En. Sec. 4, Ch. 556, L. 1985; amd. Sec. 1, Ch. 209, L. 1987.

§ 23–2–322. Prescriptive easement not acquired by recreational use of surface waters.

(1) A prescriptive easement is a right to use the property of another that is acquired by open, exclusive, notorious, hostile, adverse, continuous, and uninterrupted use for a period of 5 years.

(2) A prescriptive easement cannot be acquired through:
   (a) recreational use of surface waters, including:
      (i) the streambeds underlying them;
      (ii) the banks up to the ordinary high-water mark; or
      (iii) any portage over and around barriers; or
   (b) the entering or crossing of private property to reach surface waters. History: En. Sec. 5, Ch. 556, L. 1985.
Risk Exposure for Landowners in Nebraska

In General. Landowner liability for injuries to recreation users is controlled in part by the state recreation use statute and by common law. Common law rules are derived from appellate court cases. If the recreation use statute is not applicable then the landowner duties, obligations and liabilities are determined according to common law.

Under the Nebraska recreation use statute a landowner who gratuitously invites, or permits, a person to use the property for recreation purposes does not have a duty to keep the premises safe; to warn of dangerous conditions, use, structure or activity on the property; nor does the landowner extend an assurance that the property is safe; or confer upon the recreation user the common law status of invitee or licensee. When a landowner leases the property to the state for a recreational purpose, the landowner retains the statutory immunity from liability.

Exceptions. Landowners liability is not limited for a willful or malicious failure to guard or warn against a dangerous condition, use, structure or activity on the property. Wilful and malicious conduct is not statutorily defined but is left to judicial interpretation. Since the statute does not contain express provisions regarding landowner obligations to trespassing children, liability is probably determined by the judicial doctrine of attractive nuisance.

Impact of Charging a Fee. By charging a fee for the recreational use of property landowners lose only their statutory immunity from liability and then common law landowner liability and immunity rules apply. However, rental paid by a group, organization, corporation or public agency for the recreational use of the land is not a fee and the landowner does not lose immunity from liability.

Accident Rates

<table>
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<tr>
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<td>*</td>
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</tbody>
</table>

*No State Data Available*

Litigated Cases

None
CHAPTER 37. GAME AND PARKS
ARTICLE 10. RECREATION LIABILITY

§ 37–1001. Limitation of liability; purpose of sections.
The purpose of sections 37–1001 to 37–1008 is to encourage owners of land to make available to the public land and water areas for recreational purposes by limiting their liability toward persons entering thereon and toward persons who may be injured or otherwise damaged by the acts or omissions of persons entering thereon. [Neb. Rev. St. § 37–1001]

§ 37–1002. Landowner; duty of care.
Subject to the provisions of section 37–1005, an owner of land owes no duty of care to keep the premises safe for entry or use by others for recreational purposes, or to give any warning of a dangerous condition, use, structure, or activity on such premises to persons entering for such purposes.

§ 37–1003. Landowner; invitee; permittee; liability; limitation.
Subject to the provisions of section 37–1005, an owner of land who either directly or indirectly invites or permits without charge any person to use such property for recreational purposes does not thereby (1) extend any assurance that the premises are safe for any purpose, (2) confer upon such persons the legal status of an invitee or licensee to whom a duty of care is owed, or (3) assume responsibility for or incur liability for any injury to person or property caused by an act or omission of such persons.

§ 37–1004. Land leased to state; duty of landowner.
Unless otherwise agreed in writing, an owner of land leased to the state for recreational purposes owes no duty of care to keep that land safe for entry or use by others or to give warning to persons entering or going upon such land of any hazardous conditions, uses, structures, or activities thereon. An owner who leases land to the state for recreational purposes shall not by giving such lease (1) extend any assurance to any person using the land that the premises are safe for any purpose, (2) confer upon such persons the legal status of an invitee or licensee to whom a duty of care is owed, or (3) assume responsibility for or incur liability for any injury to person or property caused by an act or omission of a person who enters upon the leased land. The provisions of this section shall apply whether the person entering upon the leased land is an invitee, licensee, trespasser, or otherwise.

§ 37–1005. Landowner; liability; exceptions.
Nothing in sections 37–1001 to 37–1008 limits in any way any liability which otherwise exists (1) for willful or malicious failure to guard or warn against a dangerous condition, use, structure, or activity, or (2) for injury suffered in any case where the owner of land charges the person or persons who enter or go on the land. Rental paid by a group, organization, corporation, the state or federal government shall not be deemed a charge made by the owner of the land.

§ 37–1006. Sections, how construed.
Nothing in sections 37–1001 to 37–1008 creates a duty of care or ground of liability for injury to person or property.

Nothing in sections 37–1001 to 37–1008 limits in any way the obligation of a person entering upon or using the land of another for recreational purposes to exercise due care in his use of such land in his activities thereon.

§ 37–1008. Terms, defined.
For purposes of sections 37–1001 to 37–1008: (1) The term land includes roads, water, watercourses, private ways and buildings, structures, and machinery or equipment thereon when attached to the realty; (2) the term owner includes tenant, lessee, occupant, or person in control of the premises; (3) the term recreational purposes shall include, but not be limited to, any one or any combination of the following: Hunting, fishing, swimming, boating, camping, picnicking, hiking, pleasure driving, nature study, water-skiing, winter sports, and visiting, viewing, or enjoying historical, archaeological, scenic, or scientific sites, or otherwise using land for purposes of the user; and (4) the term charge shall mean the amount of money asked in return for an invitation to enter or go upon the land.
Risk Exposure for Landowners in Nevada

In General. Landowner liability for injuries to recreation users is controlled in part by the state recreation use statute and by common law. Common law rules are derived from appellate court cases. If the recreation use statute is not applicable then the landowner duties, obligations and liabilities are determined according to common law.

Under the Nevada recreation use statute a landowner who permits a person to use the property for recreation purposes, or to cross over to public land, does not have a duty to keep the premises safe; to warn of a dangerous condition, use, structure or activity on the property; nor does the landowner extend an assurance that the property is safe; or confer upon the recreation user the common law status of invitee or licensee.

Exceptions. Landowners liability is not limited for a willful or malicious failure to guard or warn against a dangerous condition, use, structure or activity on the property. Wilful and malicious conduct is not statutorily defined but is left to judicial interpretation. Since the statute does not contain express provisions regarding landowner obligations to trespassing children, liability is probably determined by the judicial doctrine of attractive nuisance.

Impact of Charging a Fee. By charging a fee for the recreational use of property landowners lose only their statutory immunity from liability and then common law landowner liability and immunity rules apply. If land is leased to the state or its political subdivisions, any consideration the owner receives from the lease is not a fee and the landowner does not lose immunity from liability.

Accident Rates

| Trend Analysis of Fatalities Involving Hunting, Fishing and All-Terrain Vehicles, 1982-1991 |
|-----------------------------------------------|-----------------------------------------------|
|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|
| All-Terrain Vehicles  | 0     | 0     | 2     | 1     | 7     | 3     | 2     | 2     | 2     |
| Fishing           | 0     | 0     | 2     | 2     | 4     | 0     | 0     | 0     | 1     |
| Hunting          | *     | *     | *     | *     | *     | 0     | 0     | 0     | 0     |

*No State Data Available

Litigated Cases

§ 41.510. Limitation of liability; exceptions for malicious acts, when consideration given or when other duty exists. [Effective until March 1, 1992 and after June 30, 1995.]

1. Except as otherwise provided in subsection 3, an owner, lessee or occupant of premises owes no duty to keep the premises safe for entry or use by others for crossing over to public land, hunting, fishing, trapping, camping, hiking, sightseeing, hang gliding, para-gliding or for any other recreational purposes, or to give warning of any hazardous condition, activity or use of any structure on the premises to persons entering for those purposes.

2. Except as otherwise provided in subsection 3, when an owner, lessee or occupant of premises gives permission to another to cross over to public land, hunt, fish, trap, camp, hike, sightsee, hang glide, para-glide or participate in other recreational activities, upon his premises:

   (a) He does not thereby extend any assurance that the premises are safe for that purpose, constitute the person to whom permission is granted an invitee to whom a duty of care is owed, or assume responsibility for or incur liability for any injury to person or property caused by any act of persons to whom the permission is granted.

   (b) That person does not thereby acquire any property rights in or rights of easement to the premises.

3. This section does not limit the liability which would otherwise exist for:

   (a) Willful or malicious failure to guard, or to warn against, a dangerous condition, use, structure or activity.

   (b) Injury suffered in any case where permission to cross over to public land, hunt, fish, trap, camp, hike, sightsee, hang glide, para-glide or participate in other recreational activities, was granted for a consideration other than the consideration, if any, paid to the landowner by the state or any subdivision thereof.

   (c) Injury caused by acts of persons to whom permission to cross over to public land, hunt, fish, trap, camp, hike, sightsee, hang glide, para-glide or participate in other recreational activities was granted, to other persons as to whom the person granting permission, or the owner, lessee or occupant of the premises, owed a duty to keep the premises safe or to warn of danger.

NEW HAMPSHIRE

Risk Exposure for Landowners in New Hampshire

In General. Landowner liability for injuries to recreation users is controlled in part by the state recreation use statute and by common law. Common law rules are derived from appellate court cases. If the recreation use statute is not applicable then the landowner duties, obligations and liabilities are determined according to common law.

Under the New Hampshire recreation use statute a landowner who permits a person to use the property for recreation purposes, or as a spectator of a recreational activity does not have a duty to keep the premises safe; to warn of a hazardous condition, use, structure or activity on the property; nor does the landowner extend an assurance that the property is safe; or confer upon the recreation user, or spectator, the common law status of invitee.

Exceptions. Landowners liability is not limited for a willful or malicious failure to guard or warn against a dangerous condition, use, structure or activity on the property. Wilful and malicious conduct is not statutorily defined but is left to judicial interpretation. Since the statute does not contain express provisions regarding landowner obligations to trespassing children, liability is probably determined by the judicial doctrine of attractive nuisance.

Impact of Charging a Fee. By charging a fee for the recreational use of property, landowners lose only their statutory immunity from liability and then common law landowner liability and immunity rules apply. However, a landowner who gratuitously permits or charges a person to gather produce from the land under a “pick-your-own” or “cut-your-own” arrangement is not liable for injuries unless caused by willful, wanton or reckless conduct. Fees paid to the landowner by the state for purposes of opening the land to public recreational use are allowed and the landowner does not lose immunity from liability.

Accident Rates

<table>
<thead>
<tr>
<th>Trend Analysis of Fatalities</th>
<th>Involving Hunting, Fishing and All-Terrain Vehicles, 1982–1991</th>
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</thead>
<tbody>
<tr>
<td>All-Terrain Vehicles</td>
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<td>Fishing</td>
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<tr>
<td>Hunting</td>
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*No State Data Available

Litigated Cases

TITLE XVIII. FISH AND GAME
LIABILITY OF LANDOWNERS

§ 212:34. Duty of Care

I. An owner, lessee or occupant of premises owes no duty of care to keep such premises safe for entry or use by others for hunting, fishing, trapping, camping, water sports, winter sports or OHRVs as defined in RSA 215-A, hiking, sightseeing, or removal of fuelwood, or to give any warning of hazardous conditions, uses of, structures, or activities on such premises to persons entering for such purposes, except as provided in paragraph III hereof.

II. An owner, lessee or occupant of premises who gives permission to another to hunt, fish, trap, camp, hike, use OHRVs as defined in RSA 215-A, sightsee upon, or remove fuelwood from, such premises, or use said premises for water sports, or winter sports does not thereby:

(a) Extend any assurance that the premises are safe for such purpose, or
(b) Constitute the person to whom permission has been granted the legal status of an invitee to whom a duty of care is owed, or
(c) Assume responsibility for or incur liability for an injury to person or property caused by any act of such person to whom permission has been granted except as provided in paragraph III hereof.

III. This section does not limit the liability which otherwise exists:

(a) For willful or malicious failure to guard or warn against a dangerous condition, use, structure or activity; or
(b) For injury suffered in any case where permission to hunt, fish, trap, camp, hike, use for water sports, winter sports or use of OHRVs as defined in RSA 215-A, sightsee, or remove fuelwood was granted for a consideration other than the consideration, if any, paid to said landowner by the state; or
(c) The injury caused by acts or person to whom permission to hunt, fish, trap, camp, hike, use for water sports, winter sports or use of OHRVs as defined in RSA 215-A, sightsee, or remove fuelwood was granted, to third persons as to whom the person granting permission, or the owner, lessee or occupant of the premises, owed a duty to keep the premises safe or to warn of danger. [Source. 1961, 201:1. 1969, 77:1-3. 1973, 560:4. 1977, 208:1. 1981, 146:5, VI, eff. Jan. 1, 1982; 538:7, 13, eff. June 30, 1981.]


I. An owner, occupant, or lessee of land, including the state or any political subdivision, who without charge permits any person to use land for recreational purposes or as a spectator of recreational activity, shall not be liable for personal injury or property damage in the absence of intentionally caused injury or damage. [Source. 1975, 231:1. 1979, 439:1. 1981, 293:2. 1985, 193:2.]

II. An owner of land who permits another person to gather the produce of the land under pick-your-own or cut-your-own arrangements, provided said person is not an employee of the landowner and notwithstanding that the person picking or cutting the produce may make remuneration for the produce to the landowner, shall not be liable for personal injury or property damage to any person in the absence of willful, wanton, or reckless conduct by such owner. [Source. 1975, 231:1. 1979, 439:1. 1981, 293:2. 1985, 193:2.]
Risk Exposure for Landowners in New Jersey

In General. Landowner liability for injuries to recreation users is controlled in part by the state recreation use statute and by common law. Common law rules are derived from appellate court cases. If the recreation use statute is not applicable then the landowner duties, obligations and liabilities are determined according to common law.

Under the New Jersey recreation use statute, a landowner who gratuitously permits a person to use the property for sport or recreation purposes does not have a duty to keep the premises safe; to warn of a hazardous condition, use, structure or activity on the property; nor does the landowner extend an assurance that the property is safe; or confer upon the sport or recreation user the common law status of invitee. A farmland owner who permits a person to use the property for ATV use, or horseback riding, does not extend an assurance that the property, including any natural or man-made conditions, is safe or confer upon the user the common law status of invitee or licensee.

Exceptions. Landowners liability is not limited for a willful or malicious failure to guard or warn against a dangerous condition, use, structure or activity on the property. Wilful and malicious conduct is not statutorily defined but is left to judicial interpretation. Additionally, landowner liability is not limited for an injury to a 3rd person caused by the recreation user. Since the statute does not contain express provisions regarding landowner obligations to trespassing children, liability is probably determined by the judicial doctrine of attractive nuisance.

Impact of Charging a Fee. By charging a fee for the recreational use of property, landowners lose only their statutory immunity from liability and then common law landowner liability and immunity rules apply. Fees paid to the landowner by the state for purposes of opening the land to public recreational use are allowed and the landowner does not lose immunity from liability.

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*No State Data Available*

Litigated Cases

§ 2A:42A–2. Sport and recreational activities; definition
As used in this act “sport and recreational activities” means and includes: hunting, fishing, trapping, horseback riding, training of dogs, hiking, camping, picnicking, swimming, skating, skiing, sledding, tobogganing, operating or riding snowmobiles, all-terrain vehicles or dirt bikes, and any other outdoor sport, game and recreational activity including practice and instruction in any thereof. For purposes of P.L.1968, c. 73 (C. 2A:42A-1 et seq.) “all-terrain vehicle” means a motor vehicle, designed to travel over any terrain, of a type possessing between three and six rubber tires and powered by a gasoline engine not exceeding 600 cubic centimeters, but shall not include golf carts; “snowmobile” means any motor vehicle, designed primarily to travel over ice or snow, of a type which uses sled type runners, skis, an endless belt tread, cleats or any combination of these or other similar means of contact with the surface upon which it is operated, but does not include any farm tractor, highway or other construction equipment, or any military vehicle; “dirt bike” means a motor powered vehicle possessing two or more tires, designed to travel over any terrain and capable of travelling off of paved roads, whether or not such vehicle is subject to registration with the Division of Motor Vehicles. [L. 1991, c. 496, § 1. eff. Jan. 1, 1992]

§ 2A: 42A–3 Duty to keep premises safe for entry or use of others
Except as provided in section 3 of this act:

a. An owner, lessee or occupant of premises, whether or not posted as provided in section 23:7-7 of the Revised Statutes, and whether or not improved or maintained in a natural condition, or used as part of a commercial enterprise, owes no duty to keep the premises safe for entry or use by others for sport and recreational activities, or to give warning of any hazardous condition of the land or in connection with the use of any structure or by reason of any activity on such premises to persons entering for such purposes;

b. An owner, lessee or occupant of premises who gives permission to another to enter upon such premises for a sport or recreational activity or purpose does not thereby (1) extend any assurance that the premises are safe for such purpose, or (2) constitute the person to whom permission is granted an invitee to whom a duty of care is owed, or (3) assume responsibility for or incur liability for any injury to person or property caused by any act of persons to whom the permission is granted. [L. 1991, c. 496, § 1. eff. Jan. 1, 1992]

§ 2A:42A–4. Liability towards persons injured on premises
This act shall not limit the liability which would otherwise exist:

a. For willful or malicious failure to guard, or warn against, a dangerous condition, use structure, or activity; or,

b. For injury suffered in any case where permission to engage in sport or recreational activity on the premises was granted for a consideration other than the consideration, if any, paid to said landowner by the State; or

c. For injury caused by acts of persons to whom permission to engage in sport or recreational activity was granted, to other persons as to whom the person granting permission, or the owner, lessee or occupant of the premises, owes a duty to keep the premises safe or to warn of danger. [L. 1968, c. 73, § 3. eff. July 1, 1968.]

§ 2A:42A–5. Damages for death or injury to persons or property
Nothing in this act shall create a duty of care or ground of liability for damages for the death or injury to persons or property.

§ 2A:42A–5.1 Liberal construction
The provisions of P.L.1968, c. 73 (C. 2A:42A–2 et seq.) shall be liberally construed to serve as an inducement to the owners, lessees and occupants of property, that might otherwise be reluctant to do so for fear of liability, to permit persons to come onto their property for sport and recreational activities.

§ 2A:42A–6. Grant of use of land, liability of owner, lessee or occupant of land
An owner, lessee or occupant of agricultural or horticultural lands as defined in P.L.1983, c. 522 (C. 2C:18–4 et seq.) who grants permission to operate a motorized vehicle, snowmobile, all-terrain vehicle or dirt bike or to ride horseback thereon pursuant to subsection a. of section 2 of that act does not thereby: 
a. extend any assurance that the premises, including any natural or man-made conditions, are safe for the purposes set forth in that subsection;
b. constitute the person to whom permission is granted an invitee or licensee to whom a duty of care is owned; or
c. assume responsibility for, or incur liability for, an injury to person or property caused by the act of a person to whom the permission is granted.

§ 2A:42A-6.1. Definitions of ATV, snowmobile, dirt bike

For purposes of P.L. 1985, c. 431 (C. 2A:42A-6 et seq.) “all-terrain vehicle” means a motor vehicle, designed to travel over any terrain, of a type possessing between three and six rubber tires and powered by a gasoline engine not exceeding 600 cubic centimeters, but shall not include golf carts; “snowmobile” means any motor vehicle, designed primarily to travel over ice or snow, of a type which uses sled type runners, skis, an endless belt tread, cleats or any combination of these or other similar means of contact with the surface upon which it is operated, but does not include any farm tractor, highway or other construction equipment, or any military vehicle; “dirt bike” means a motor powered vehicle possessing two or more tires, designed to travel over any terrain and capable of travelling off of paved roads, whether or not such vehicle is subject to registration with the Division of Motor Vehicles.

§ 2A:42A-6.2. Liberal construction

The provisions of P.L. 1985, c. 431 (C. 2A:42A-6 et seq.) shall be liberally construed to serve as an inducement to the owners, lessees and occupants of property, that might otherwise be reluctant to do so for fear of liability, to permit persons to come onto their property for operating a motorized vehicle, snowmobile, all-terrain vehicle or dirt bike or to ride horseback.

§ 2A:42A-7. Wilful or malicious failure to guard or warn against dangerous condition, use, structure or activity

This act shall not limit the liability which would otherwise exist for willful or malicious failure to guard, or to warn against a dangerous condition, use structure or activity.
Risk Exposure for Landowners in New Mexico

In General. Landowner liability for injuries to recreation users is controlled in part by the state recreation use statute and by common law. Common law rules are derived from appellate court cases. If the recreation use statute is not applicable then the landowner duties, obligations and liabilities are determined according to common law.

Under the New Mexico recreation use statute, a landowner who gratuitously permits a person to use the property for a recreation purposes does not have a duty to keep the premises safe; nor extend an assurance that the property is safe; or confer upon the recreation user the common law status of invitee or licensee.

Exceptions. The statute does not include an express provision regarding landowners liability for willful or malicious conduct. Landowners could be liable under common law for this type of conduct since the statute only grants protection for specified acts and no others. Since the statute does not contain express provisions regarding landowner obligations to trespassing children, liability is probably determined by the judicial doctrine of attractive nuisance.

Impact of Charging a Fee. By charging a fee for the recreational use of property, landowners lose only their statutory immunity from liability and then common law landowner liability and immunity rules apply. Fees paid to the landowner by federal, state or local agencies for purposes of opening the land to public recreational use are allowed and the landowner does not lose immunity from liability.

Accident Rates

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<td>Hunting</td>
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*No State Data Available

Litigated Cases

CHAPTER 16. Parks, Recreation and Fairs
ARTICLE 3. State Trails System

§ 16-3-9. Limitation of liability of owners of land used for recreational purposes.
No person or corporation, or their successors in interest, who has granted a right-of-way or easement across his land to the energy, minerals and natural resources department for use in the state trails system shall be liable to any user of the trail for injuries suffered on the right-of-way or easement unless the injuries are caused by the willful or wanton misconduct of the grantor. [History: 1953 Comp., § 4-9A-10, enacted by Laws 1973, ch. 372, § 10; 1977, ch. 254, § 39; 1987, ch. 234, § 33.]

CHAPTER 17. Game and Fish
ARTICLE 4. Propagation of Fish and Game

§ 17-4-7. Liability of landowner permitting persons to hunt, fish or use lands for recreation; duty of care; exceptions.
A. Any owner, lessee or person in control of lands who, without charge or other consideration, other than a consideration paid to said landowner by the state, the federal government or any other governmental agency, grants permission to any person or group to use his lands for the purpose of hunting, fishing, trapping, camping, hiking, sightseeing or any other recreational use does not thereby:
   (1) extend any assurance that the premises are safe for each purpose; or
   (2) assume any duty of care to keep such lands safe for entry or use; or
   (3) assume responsibility or liability for any injury or damage to, or caused by, such person or group;
   (4) assume any greater responsibility, duty of care or liability to such person or group, than if such permission had not been granted and such person or group were trespassers.
B. This section shall not limit the liability of any landowner, lessee or person in control of lands which may otherwise exist by law for injuries to any person granted permission to hunt, fish, trap, camp, hike, sightsee or use the land for recreation in exchange for a consideration, other than a consideration paid to said landowner by the state, the federal government or any other governmental agency. [History: 1953 Comp., § 53-4-5.1, enacted by Laws 1967, ch. 6, § 1.]

CHAPTER 66. Motor Vehicles
ARTICLE 3. Registration Laws; Security Interests; Anti-Theft Provisions; Bicycles; Equipment; Unsafe Vehicles; Off-Highway Motor Vehicles; Mopeds Part 11. OFF-HIGHWAY MOTOR VEHICLES

§ 66-3-1013. [Riding on private lands; landowner's liability.]
A. No landowner shall be held liable for damages arising out of off-highway motor vehicle-related accidents or injuries occurring on his lands in which he is not directly involved unless the entry on the lands is subject to payment of a fee.
B. It is unlawful to operate an off-highway motor vehicle on private lands except with the express permission of the owner of the lands. [History: 1953 Comp., § 64-42-13, enacted by Laws 1975, ch. 240, § 13; recompiled as 1953 Comp., § 64-3-1013, by Laws 1978, ch. 35, § 209; 1985, ch. 209, § 209.]

NEW MEXICO-2
Risk Exposure for Landowners in New York

In General. Landowner liability for injuries to recreation users is controlled in part by the state recreation use statute and by common law. Common law rules are derived from appellate court cases. If the recreation use statute is not applicable then the landowner duties, obligations and liabilities are determined according to common law.

Under the New York recreation use statute, a landowner who gratuitously permits a person to use the property for a recreation purposes does not have a duty to keep the premises safe; to warn of a hazardous condition, use, structure or activity on the property; nor does the landowner extend an assurance that the property is safe; or confer upon the recreation user the common law status of invitee.

A farmland owner owes no duty to keep the farm safe; or to warn of a hazardous condition, use, structure or activity on the property, to a person who enters the farm without the owners consent. Liability for a farmland owners gross negligence that causes an injury to the trespasser is not limited.

Exceptions. Landowners liability is not limited for a willful or malicious failure to guard or warn against a dangerous condition, use, structure or activity on the property. Willful and malicious conduct is not statutorily defined but is left to judicial interpretation. Since the statute does not contain express provisions regarding landowner obligations to trespassing children, liability may be determined by the attractive nuisance doctrine or by a foreseeability test--i.e. whether it was foreseeable to the landowner that children would be trespassers.

Impact of Charging a Fee. By charging a fee for the recreational use of property, landowners lose only their statutory immunity from liability and then common law landowner liability and immunity rules apply. Fees paid to the landowner by the state for purposes of opening the land to public recreational use are allowed and the landowner does not lose immunity from liability.

Accident Rates

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*No State Data Available*

Litigated Cases


**Wight v. State, 93 Misc.2d 560, 403 N.Y.S.2d 450 (1978).**


**Curtiss v. Chemung County, 78 A.D.2d 908, 433 N.Y.S.2d 514 (1980).**


**Rochette v. Town of Newburgh, 88 A.D.2d 614, 449 N.Y.S.2d 1013 (1982).**


**Sega v. State, 60 N.Y.2d 183, 469 N.Y.S.2d 51, 456 N.E.2d 1174 (1983).**

**O'Keefe v. State, 104 A.D.2d 43, 481 N.Y.S.2d 920 (1986).**

GENERAL OBLIGATIONS LAW
CHAPTER 24-A OF THE CONSOLIDATED LAWS
ARTICLE 9—OBLIGATIONS OF CARE
TITLE 1. CONDITIONS ON REAL PROPERTY

§ 9–103. No duty to keep premises safe for certain uses; responsibility for acts of such users

1. Except as provided in subdivision two,
   a. an owner, lessee or occupant of premises, whether or not posted as provided in section 11–2111 of the environmental conservation law, owes no duty to keep the premises safe for entry or use by others for hunting, fishing, organized gleaning as defined in section seventy-one-y of the agriculture and markets law, canoeing, boating, trapping, hiking, cross-country skiing, tobogganing, sledding, speleological activities, horseback riding, bicycle riding, hang gliding, motorized vehicle operation for recreational purposes, snowmobile operation, cutting or gathering of wood for non-commercial purposes or training of dogs, or to give warning of any hazardous condition or use of or structure or activity on such premises to persons entering for such purposes;
   b. an owner, lessee or occupant of premises who gives permission to another to pursue any such activities upon such premises does not thereby (1) extend any assurance that the premises are safe for such purpose, or (2) constitute the person to whom permission is granted an invitee to whom a duty of care is owed, or (3) assume responsibility for or incur liability for any injury to person or property caused by any act of persons to whom the permission is granted.
   c. an owner, lessee or occupant of a farm, as defined in section six hundred seventy-one of the labor law, whether or not posted as provided in section 11–2111 of the environmental conservation law, owes no duty to keep such farm safe for entry or use by a person who enters or remains in or upon such farm without consent or privilege, or to give warning of any hazardous condition or use of or structure or activity on such farm to persons so entering or remaining.

This shall not be interpreted, or construed, as a limit on liability for acts of gross negligence in addition to those other acts referred to in subdivision two of this section.

2. This section does not limit the liability which would otherwise exist
   a. for willful or malicious failure to guard, or to warn against, a dangerous condition, use, structure or activity; or
   b. for injury suffered in any case where permission to pursue any of the activities enumerated in this section was granted for a consideration other than the consideration, if any, paid to said landowner by the state or federal government, or permission to train dogs was granted for a consideration other than that provided for in section 11–0925 of the environmental conservation law; or
   c. for injury caused, by acts of persons to whom permission to pursue any of the activities enumerated in this section was granted, to other persons as to whom the person granting permission, or the owner, lessee or occupant of the premises, owed a duty to keep the premises safe or to warn of danger.

3. Nothing in this section creates a duty of care or ground of liability for injury to person or property. (L.1963, c. 576, § 1; amended L.1965, c. 367, § 1; L.1966, c. 886, § 1; L.1968, c. 7, § 1; L.1971, c. 343, § 1; L.1972, c. 106, § 1; L.1977, c.31, § 1; L.1978, c. 147, § 1; L.1978, c. 187, § 1; L.1978, c. 195, § 1; L.1979, c. 336, § 1; L.1979, c. 408, § 1; L.1980, c. 174, § 1; L.1984, c. 141, § 1; L.1984, c. 286, § 5.)
NORTH CAROLINA

Risk Exposure for Landowners in North Carolina

In General. Landowner liability for injuries to recreation users is controlled in part by the state recreation use statute and by common law. Common law rules are derived from appellate court cases. If the recreation use statute is not applicable then the landowner duties, obligations and liabilities are determined according to common law.

The North Carolina recreation use statute has very limited application in that it only applies to landowners who allow hiking on their property. Under the statute, a landowner who gratuitously permits a person to use the property for hiking owes the person the same duty of care as that owed to a trespasser. Since the statute does not contain express provisions regarding landowner obligations to trespassing children, liability is probably determined by the judicial doctrine of attractive nuisance.

Impact of Charging a Fee. By charging a fee for the recreational use of property, landowners lose only their statutory immunity from liability and then common law landowner liability and immunity rules apply.

Accident Rates

Trend Analysis of Fatalities Involving Hunting, Fishing and All-Terrain Vehicles, 1982–1991

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*No State Data Available

Litigated Cases

None
CHAPTER 113. CONSERVATION AND DEVELOPMENT.
SUBCHAPTER III. GAME LAWS.
ARTICLE 10B. LIABILITY OF LANDOWNERS TO AUTHORIZED USERS.

§§ 113–120.5 to 113–120.7. Repealed by Session Laws 1980, c. 830, § 1.

§ 113A–95. Liability to users of Trails System

An owner, lessee, occupant, or other person in control of land who allows without compensation another person to hike or use the land for recreational purposes as established under this article owes the person the same duty of care he owes to a trespasser. 1987, c. 498, § 1.
Risk Exposure for Landowners in North Dakota

In General. Landowner liability for injuries to recreation users is controlled in part by the state recreation use statute and by common law. Common law rules are derived from appellate court cases. If the recreation use statute is not applicable then the landowner duties, obligations and liabilities are determined according to common law.

Under the North Dakota recreation use statute a landowner who gratuitously permits a person to use the property for recreation purposes does not have a duty to keep the premises safe; to warn of a dangerous condition, use, structure or activity on the property; nor does the landowner extend an assurance that the property is safe; or confer upon the recreation user the common law status of invitee or licensee. When a landowner leases property to the state for a recreational purpose, the landowner retains the statutory immunity from liability.

Exceptions. Landowners liability is not limited for a willful or malicious failure to guard or warn against a dangerous condition, use, structure or activity on the property. Wilful and malicious conduct is not statutorily defined but is left to judicial interpretation. Since the statute does not contain express provisions regarding landowner obligations to trespassing children, liability is probably determined by the judicial doctrine of attractive nuisance.

Impact of Charging a Fee. By charging a fee for the recreational use of property landowners lose only their statutory immunity from liability and then common law landowner liability and immunity rules apply. If land is leased to the state or its political subdivisions, any consideration the owner receives from the lease is not a fee and the landowner does not lose immunity from liability.

Accident Rates

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*No State Data Available

Litigated Cases

TITLE 53. SPORTS AND AMUSEMENTS
CHAPTER 53-08. LIABILITY LIMITED FOR OWNER OF RECREATION LANDS

§ 53-08-01. Definitions.

In this chapter, unless the context or subject matter otherwise requires:

1. “Charge” means the amount of money asked in return for an invitation to enter or go upon the land.
2. “Land” includes roads, water, watercourses, private ways and buildings, structures and machinery or equipment thereon when attached to the realty.
3. “Owner” includes tenant, lessee, occupant, or person in control of the premises.
4. “Recreational purposes” includes, but is not limited to, any one or any combination of the following: hunting, fishing, swimming, boating, camping, picnicking, hiking, pleasure driving, nature study, water skiing, winter sports, and visiting, viewing, or enjoying historical, archaeological, geological, scenic, or scientific sites, or otherwise using land for purposes of the user. [Source: S.L. 1965, ch. 337, § 1].

§ 53-08-02. Duty of care of landowner.

Subject to the provisions of section 53-08-05, an owner of land owes no duty of care to keep the premises safe for entry or use by others for recreational purposes, or to give any warning of a dangerous condition, use, structure, or activity on such premises to persons entering for such purpose. [Source: S.L. 1965, ch. 337, § 2].

§ 53-08-03. Not invitee or licensee of landowner.

Subject to the provisions of section 53-08-05, an owner of land who either directly or indirectly invites or permits without charge any person to use such property for recreational purposes does not thereby:

1. Extend any assurances that the premises are safe for any purpose;
2. Confer upon such persons the legal status of an invitee or licensee to whom a duty of care is owed; or
3. Assume responsibility for or incur liability for any injury to person or property caused by an act or omission of such persons. [Source: S.L. 1965, ch. 337, § 3].

§ 53-08-04. Leased land to state or political subdivisions.

Unless otherwise agreed in writing, an owner of land leased to the state or its political subdivisions for recreational purposes owes no duty of care to keep that land safe for entry or use by others or to give warning to persons entering or going upon such land of any hazardous conditions, uses, structures or activities thereon. An owner who leases land to the state or its political subdivisions for recreational purposes does not by giving such lease:

1. Extend any assurances to any person using the land that the premises are safe for any purpose;
2. Confer upon such persons the legal status of an invitee or licensee to whom a duty of care is owed; or
3. Assume responsibility for or incur liability for any injury to person or property caused by an act or omission of a person who enters upon the leased land. The provisions of this section apply whether the person entering upon the leased land is an invitee, licensee, trespasser, or otherwise. [Source: S.L. 1965, ch. 337, § 4].

§ 53-08-05. Willful or malicious failure to warn against dangerous conditions—Charge to enter.

Nothing in this chapter limits in any way any liability which otherwise exists for:

1. Willful or malicious failure to guard or warn against a dangerous condition, use, structure or activity; or
2. Injury suffered in any case where the owner of land charges the person or persons who enter or go on the land other than the amount, if any, paid to the owner of the land by the state. [Source: S.L. 1965, ch. 337, § 5].

§ 53-08-06. Duty of care or liability for injury.

Nothing in this chapter may be construed as creating a duty of care or grounds of liability for injury to person or property. Nothing herein limits in any way the obligation of a person entering upon or using the land of another for recreational purposes to exercise due care in his use of such land and in his activities thereon. [Source: S.L. 1965, ch. 337, § 6].

NORTH DAKOTA-2
Risk Exposure for Landowners in Ohio

*In General.* Landowner liability for injuries to recreation users is controlled in part by the state recreation use statute and by common law. Common law rules are derived from appellate court cases. If the recreation use statute is not applicable then the landowner duties, obligations and liabilities are determined according to common law.

Under the Ohio recreation use statute a landowner who gratuitously permits a person to use the property for recreation purposes does not have a duty to keep the premises safe; nor does the landowner extend an assurance that the property is safe; or incur liability for any injury to person or property caused by any act of the recreational user.

*Exceptions.* Since the statute does not contain express provisions regarding landowner liability for willful or malicious acts malicious nor does it deal with obligations to trespassing children, landowner liability is probably determined by common law and the judicial doctrine of attractive nuisance.

*Impact of Charging a Fee.* By charging a fee for the recreational use of property landowners lose only their statutory immunity from liability and then common law landowner liability and immunity rules apply. If land is leased to the state or its political subdivisions, any consideration the owner receives from the lease is not a fee and the landowner does not lose immunity from liability.

**Accident Rates**

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**Litigated Cases**

*Florek v. Norwood,* 495 NE2d 585.  
*Loyer v. Buchholz,* 526 NE2d 300.  
*LiCausse v. Canton,* 537 NE2d 1298.  
*Fryberger v. Lake Cable Recreation Assn., Inc.,* 533 NE2d 738.  
*Sorrell v. Ohio Dept. of Natural Resources,* 532 NE2d 722.  
*Look v. Cleveland Metroparks System,* 548 NE2d 966.  
*Marrek v. Cleveland Metroparks Bd. of Commrs.,* 459 NE2d 873.  
*Moss v. Dept. of Natural Resources,* 161, 404 NE2d 742.  
*McCord v. Ohio Division of Parks and Recreation,* 375 NE2d 50.  
*Fetherolf v. State,* 454 NE2d 564.  
*Crabtree v. Shultz,* 384 NE2d 1294.  
*Wills v. Frank Hoover Supply,* 497 NE2d 1118.  
*Phillips v. Ohio Dept. of Natural Resources,* 498 NE2d 230.  
*Light v. Ohio University,* 502 NE2d 611.  
*Hager v. Griessle,* 505 NE2d 982.  
*Haviland v. Ohio Dept. of Natural Resources,* 522 NE2d 58 (CIC).  
*Miller v. Dayton,* 537 NE2d 1294.  
*Hath v. State,* 413 NE2d 1201.
§ 1533.18 Definitions.
As used in sections 1533.18 and 1533.181 [1533.18.1] of the Revised Code:

(A) "Premises" means all privately-owned lands, ways, waters, and any buildings and structures thereon, and all state-owned lands, ways, and waters leased to a private person, firm, organization, or corporation, including any buildings and structures thereon.

(B) "Recreational user" means a person to whom permission has been granted, without the payment of a fee or consideration to the owner, lessee, or occupant of premises, other than a fee or consideration paid to the state or any agency thereof, to enter upon premises to hunt, fish, trap, camp, hike, swim, or engage in other recreational pursuits. [HISTORY: 130 v H 179, § 1 (Eff 9–24–63); 131 v 521. Eff 10–30–65.]

§ 1533.181 Exemption from liability to recreational users.

(A) No owner, lessee, or occupant of premises:

(1) Owes any duty to a recreational user to keep the premises safe for entry or use;

(2) Extends any assurance to a recreational user, through the act of giving permission, that the premises are safe for entry or use;

(3) Assumes responsibility for or incurs liability for any injury to person or property caused by any act of a recreational user. [HISTORY: 130 v H 179, § 1. Eff 9–24–63.]
Risk Exposure for Landowners in Oklahoma

In General. Landowner liability for injuries to recreation users is controlled in part by the state recreation use statute and by common law. Common law rules are derived from appellate court cases. If the recreation use statute is not applicable then the landowner duties, obligations and liabilities are determined according to common law.

Under the Oklahoma recreation use statute an owner of land, which is used primarily for farming or ranching, who gratuitous permits a person to use the property for recreation purposes does not have a duty to keep the premises safe; to warn of a dangerous condition, use, structure or activity on the property; nor does the landowner extend an assurance that the property is safe; confer upon the recreation user the common law status of invitee or licensee; or incur any liability for any injury to persons or property caused by an act of the recreation user. When a landowner leases property to the state for a recreational purpose, the landowner retains the statutory immunity from liability.

Exceptions. Landowners liability is not limited for a willful or malicious failure to guard or warn against a dangerous condition, use, structure or activity on the property. Willful and malicious conduct is not statutorily defined but is left to judicial interpretation. Since the statute does not contain express provisions regarding landowner obligations to trespassing children, liability is determined by the judicial doctrine of attractive nuisance.

Impact of Charging a Fee. By charging a fee for the recreational use of property, landowners lose only their statutory immunity from liability and then common law landowner liability and immunity rules apply. If land is leased to the state or its political subdivisions, any consideration the owner receives from the lease is not a fee and the landowner does not lose immunity from liability.

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*No State Data Available

Litigated Cases

_ Sutherland v. Saint Francis Hospital, Inc., Okl., 595 P.2d 780 (1979)._
TITLE 76. TORTS

An Act relating to torts; exempting owners and lessees of real property from liability from injuries sustained by persons entering upon property for recreational purposes; defining terms; providing for exceptions; and declaring an emergency.

§ 10. Definitions

As used in this act:

(a) "Land" means land which is used primarily for farming or ranching activities, roads, water, watercourses, private ways and buildings, structures, and machinery or equipment when attached to land which is used primarily for farming or ranching activities.

(b) "Owner" means the possessor of a fee interest, a tenant, lessee, occupant or person in control of the premises.

(c) "Recreational purpose" includes, but is not limited to, any of the following, or any combination thereof: hunting, fishing, swimming, boating, camping, picnicking, hiking, pleasure driving, nature study, water skiing, winter sports, and viewing or enjoying historical, archaeological, scenic, or scientific sites.

(d) "Charge" means the admission price or fee asked in return for invitation or permission to enter or go upon the land. [Laws 1965, c. 384, § 1, eff. June 30, 1965.]

§ 11. Entry upon farm or ranch lands for recreational purposes—Duty of owner

Except as specifically recognized by or provided in Section 5 of this act, an owner of land which is used primarily for farming or ranching activities owes no duty of care to keep the premises safe for entry or use by others for recreational purposes, or to give any warning of a dangerous condition, use, structure, or activity on such premises to persons entering for such purposes.

§ 12. Use of property without charge—Liability of owner

Except as specifically recognized by or provided in Section 5 of this act, an owner of land which is used primarily for farming or ranching activities, who either directly or indirectly invites or permits without charge any person to use such property for recreational purposes, does not thereby:

(a) Extend any assurance that the premises are safe for any purpose.

(b) Confer upon such person the legal status of an invitee or licensee.

(c) Assume responsibility for or incur liability for any injury to person or property caused by an act or omission of such persons. [Laws 1965, c. 384, § 3, eff. June 30, 1965. Laws 1967, c. 368, § 1, eff. May]

§ 13. Lands leased to state

Unless otherwise agreed in writing, the provisions of Sections 2 and 3 of this act shall be deemed applicable to the duties and liability of an owner of land leased to the state or any subdivision thereof for recreational purposes. [Laws 1965, c. 384, § 4, eff. June 30, 1965.]

§ 14. Willful or malicious failure to warn—Charges to enter land

Nothing in this act limits in any way any liability which otherwise exists:

(a) For willful or malicious failure to guard or warn against a dangerous condition, use, structure or activity.

(b) For injury suffered in any case where the owner of land charges the person or persons who enter or go on the land for the recreational use thereof, except that in the case of land leased to the state or a subdivision thereof, any consideration received by the owner for such lease shall not be deemed a charge within the meaning of this section.

§ 15. Duty of care or ground of liability not created—Persons using lands not relieved

Nothing in this act shall be construed to:

(a) Create a duty of care or ground of liability for injury to persons or property.

(b) Relieve any person using the land of another for recreational purposes from any obligation which he may have in the absence of this act to exercise care in his use of such land and in his activities thereon, or from the legal consequences of failure to employ such care.
Risk Exposure for Landowners in Oregon

_in General._ Landowner liability for injuries to recreation users is controlled in part by the state recreation use statute and by common law. Common law rules are derived from appellate court cases. If the recreation use statute is not applicable then the landowner duties, obligations and liabilities are determined according to common law.

Under the Oregon recreation use statute a landowner who gratuitously invites or permits a person to use the property for recreation purposes does not have a duty to keep the premises safe, to warn of a dangerous condition, use, structure or activity on the property, nor does the landowner extend an assurance that the property is safe, confer upon the recreation user the common law status of invitee or licensee or incur any liability for any injury to persons or property caused by an act of the recreation user. When a landowner leases property to the state for a recreational purpose, the landowner retains the statutory immunity from liability.

Exceptions. Landowners liability is not limited for a willful, wanton or reckless failure to guard or warn against a known dangerous condition, use, structure or activity on the property. Willful, wanton and reckless conduct is not statutorily defined but is left to judicial interpretation. Since the statute does not contain express provisions regarding landowner obligations to trespassing children, liability is determined by the judicial doctrine of attractive nuisance.

Impact of Charging a Fee. By charging a fee for the recreational use of property, landowners lose only their statutory immunity from liability and then common law landowner liability and immunity rules apply. If land is leased to the state or its political subdivisions, any consideration the owner receives from the lease is not a fee and the landowner does not lose immunity from liability.

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Litigated Cases

_Hogg v. Clatsop County, 46 Or App 129, 610 P2d 1248 (1980)_
_Van Gordon v. PGE, 294 Or 761, 662 P2d 714 (1983); 298 Or 497, 693 P2d 1285 (1985)_
_Ellis v. Municipal Reserve & Bond Co., 60 Or App 567, 655 P2d 204 (1982)_
_O'Neal v. United States, 814 F2d 1285 (1987)_
TITLE 10. PROPERTY RIGHTS AND TRANSACTIONS
CHAPTER 105. PROPERTY RIGHTS
PUBLIC RECREATIONAL USE OF PRIVATE LANDS

§ 105.655. Definitions for ORS 105.655 to 105.680.
As used in ORS 105.655 to 105.680:

(1) "Charge" means the admission price or fee asked by any owner in return for invitation or permission to enter or go upon the owner's land.

(2) "Land" means agricultural land, rangeland, forestland, and lands adjacent or contiguous to any bodies of water, watercourses or the ocean shore as defined by ORS 390.605, including roads, bodies of water, watercourses, private ways, private buildings and structures on such lands and machinery or equipment on the land when attached to the realty, but shall not include lands described in ORS 390.605 to 390.770. "Land" also includes abandoned borrow pits, gravel or rock quarries not currently being used for commercial or industrial purposes, whether or not such pits or quarries are situated on agricultural land, rangeland, forestland or lands adjacent or contiguous to the ocean shore as defined in ORS 390.605.

(3) "Owner" means the possessor of a fee title interest in any land, a tenant, lessee, occupant or other person in possession of the land.

(4) "Recreational purpose" includes, but is not limited to, hunting, fishing, swimming, boating, camping, picnicking, hiking, nature study, water skiing, winter sports, viewing or enjoying historical, archaeological, scenic or scientific sites and participating in a salmon and trout enhancement project under ORS 496.430 to 496.455.

(1971 c.780 § 1; 1973 c.732 § 4; 1979 c.258 § 1; 1983 c.775 § 1; 1991 c.968 § 6)

§ 105.660. Policy.
The Legislative Assembly hereby declares it is the public policy of the State of Oregon to encourage owners of land to make their land available to the public for recreational purposes by limiting their liability toward persons entering thereon for such purposes and, in the case of permissive use, by protecting their interests in their land from the extinguishment of any such interest or the acquisition by the public of any right to use or continue the use of such land for recreational purposes. (1971 c.780 § 2; 1973 c.732 § 3)

§ 105.665. Duties and liabilities of owner of land used by public for recreation.
Except as otherwise provided in ORS 105.675:

(1) An owner of land owes no duty of care to keep the land safe for entry or use by others for any recreational purpose or to give any warning of a dangerous condition, use, structure or activity on the land to persons entering thereon for any such purpose.

(2) An owner of land who either directly or indirectly invites or permits any person to use the land for any recreational purpose without charge does not thereby:
   (a) Extend any assurance that the land is safe for any purpose;
   (b) Confer upon such person the legal status of an invitee or licensee to whom a duty of care is owed; or
   (c) Assume responsibility for or incur liability for any injury, death or loss to any person or property caused by an act or omission of that person. (1971 c.780 § 3)

§ 105.670. ORS 105.665 applies to duties and liability of owner of land leased to public body or public corporation.
Unless otherwise agreed in writing, ORS 105.665 shall be deemed applicable to the duties and liability of an owner of land leased to the state or any political subdivision thereof or to any public corporation for recreational purposes. (1971 c.780 § 4)

§ 105.675. Liabilities of landowner unaffected in certain cases.
Nothing in ORS 105.655 to 105.680 limits in any way any liability of an owner of land:

(1) For the willful, wanton and reckless failure of an owner of land to guard or warn against a known dangerous structure or other improvement or a known dangerous activity on the land; or
(2) For any injury suffered where the owner of land charges any person who enters or goes upon the land for any recreational purpose, except that where land is leased by the owner to the state or a political subdivision thereof or to any public corporation, any consideration received by the owner for such lease shall not be deemed a charge within the meaning of this subsection.

§ 105.675. Liabilities of landowner unaffected in certain cases.

Nothing in ORS 105.655 to 105.680 limits in any way any liability of an owner of land:

(1) For the willful, wanton and reckless failure of an owner of land to guard or warn against a known dangerous structure or other improvement or a known dangerous activity on the land; or

(2) For any injury suffered where the owner of land charges any person who enters or goes upon the land for any recreational purpose, except that where land is leased by the owner to the state or a political subdivision thereof or to any public corporation, any consideration received by the owner for such lease shall not be deemed a charge within the meaning of this subsection. (1971 c.780 § 5; 1987 c.708 § 4)

§ 105.677. Permissive recreational use of land does not create easement; preservation of preexisting public rights.

(1) An owner of land who either directly or indirectly invites or permits any person to use the land for any recreational purpose without charge shall not thereby give to such person or to other persons any right to continued use of the land for any recreational purpose without the consent of the owner.

(2) The fact that an owner of land allows the public to recreationally use the land without posting or fencing or otherwise restricting use of the land shall not raise a presumption that the landowner intended to dedicate or otherwise give over to said public the right to continued use of said land.

(3) Nothing in this section shall be construed to diminish or divert any public right acquired by dedication, prescription, grant, custom or otherwise existing before October 5, 1973. (1973 c.732 § 2)

§ 105.680. Construction.

Nothing in ORS 105.655 to 105.680 shall be construed:

(1) To create a duty of care or basis for liability upon any owner of land for injury to persons or property resulting from the use of such land for recreational purposes.

(2) To relieve any person using the land of another for recreational purposes from any obligation which the person may otherwise have, to exercise care in use of the land in the activities of the person thereon or from the legal consequences of failure of the person to employ such care. (1971 c.780 § 6)
RISK EXPOSURE FOR LANDOWNERS IN PENNSYLVANIA

In General. Landowner liability for injuries to recreation users is controlled in part by the state recreation use statute and by common law. Common law rules are derived from appellate court cases. If the recreation use statute is not applicable then the landowner duties, obligations and liabilities are determined according to common law.

Under the Pennsylvania recreation use statute a landowner who gratuitously invites or permits a person to use the property for recreation purposes does not have a duty to keep the premises safe, to warn of a dangerous condition, use, structure or activity on the property, nor does the landowner extend an assurance that the property is safe, confer upon the recreation user the common law status of invitee or licensee or incur any liability for any injury to persons or property caused by an act of the recreation user. When a landowner leases property to the state for a recreational purpose, the landowner retains the statutory immunity from liability.

Exceptions. Landowners liability is not limited for a willful or malicious failure to guard or warn against a known dangerous condition, use, structure or activity on the property. Willful, wanton and reckless conduct is not statutorily defined but is left to judicial interpretation. Since the statute does not contain express provisions regarding landowner obligations to trespassing children, liability is determined by the judicial doctrine of attractive nuisance.

Impact of Charging a Fee. By charging a fee for the recreational use of property, landowners lose only their statutory immunity from liability and then common law landowner liability and immunity rules apply. If land is leased to the state or its political subdivisions, any consideration the owner receives from the lease is not a fee and the landowner does not lose immunity from liability.

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LITIGATED CASES


Corn, Dept. of Environmental Resources v. Auresta, 511 A.2d 815, 511 Pa. 73, (1986).
TITLE 68. REAL AND PERSONAL PROPERTY
CHAPTER 11. USES OF PROPERTY
RECREATION USE OF LAND AND WATER

§ 477-1. Purpose; liability
The purpose of this act is to encourage owners of land to make land and water areas available to the public for recreational purposes by limiting their liability toward persons entering thereon for such purposes. [1966, Feb. 2, P.L.(1965) 1860, § 1.]

§ 477-2. Definitions
As used in this act:
(1) "Land" means land, roads, water, watercourses, private ways and buildings, structures and machinery or equipment when attached to the land.
(2) "Owner" means the possessor of a fee interest, a tenant, lessee, occupant or person in control of the premises.
(3) "Recreational purpose" includes, but is not limited to, any of the following, or any combination thereof: hunting, fishing, swimming, boating, camping, picnicking, hiking, pleasure driving, nature study, water skiing, water sports, cave exploration and viewing or enjoying historical, archaeological, scenic, or scientific sites.
(4) "Charge" means the admission price or fee asked in return for invitation or permission to enter or go upon the land.

§ 477-3. Duty to keep premises safe; warning
Except as specifically recognized or provided in section 6 of this act, an owner of land owes no duty of care to keep the premises safe for entry or use by others for recreational purposes, or to give any warning of a dangerous condition, use, structure, or activity on such premises to persons entering for such purposes.

§ 477-4. Assurance of safe premises; duty of care; responsibility, liability
Except as specifically recognized or provided in section 6 of this act, an owner of land who either directly or indirectly invites or permits without charge any person to use such property for recreational purposes does not thereby:
(1) Extend any assurance that the premises are safe for any purpose.
(2) Confer upon such person the legal status of an invitee or licensee to whom a duty of care is owed.
(3) Assume responsibility for or incur liability for any injury to persons or property caused by an act of omission of such persons.

§ 477-5. Land leased to State or subdivision
Unless otherwise agreed in writing, the provisions of sections 3 and 4 of this act [FN1PP] shall be deemed applicable to the duties and liability of an owner of land leased to the State or any subdivision thereof for recreational purposes.

§ 477-6. Liability not limited
Nothing in this act limits in any way any liability which otherwise exists:
(1) For wilful or malicious failure to guard or warn against a dangerous condition, use, structure, or activity.
(2) For injury suffered in any case where the owner of land charges the person or persons who enter or go on the land for the recreational use thereof, except that in the case of land leased to the State or a subdivision thereof, any consideration received by the owner for such lease shall not be deemed a charge within the meaning of this section.

§ 477-7. Construction of act
Nothing in this act shall be construed to:
(1) Create a duty of care or ground of liability for injury to persons or property.
(2) Relieve any person using the land of another for recreational purposes from any obligation which he may have in the absence of this act to exercise care in his use of such land and in his activities thereon, or from the legal consequences of failure to employ such care.
Risk Exposure for Landowners in Rhode Island

In General. Landowner liability for injuries to recreation users is controlled in part by the state recreation use statute and by common law. Common law rules are derived from appellate court cases. If the recreation use statute is not applicable then the landowner duties, obligations and liabilities are determined according to common law.

Under the Rhode Island recreation use statute, a landowner who gratuitously invites or permits a person to use the property for recreation purposes does not extend an assurance that the property is safe, confer upon the recreation user the common law status of invitee or licensee, or incur any liability for injury to persons or property caused by an act of the recreation user. When a landowner leases property to the state for a recreational purpose, the landowner retains the statutory immunity from liability.

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*No State Data Available

Litigated Cases

None
TITLE 32. PARKS AND RECREATIONAL AREAS
CHAPTER 6. PUBLIC USE OF PRIVATE LANDS—LIABILITY LIMITATIONS

§ 32–6–1. Purpose.
The purpose of this chapter is to encourage owners of land to make land and water areas available to the public for recreational purposes by limiting their liability to persons entering thereon for such purposes. [As enacted by P.L. 1978, ch. 375, § 1. Gen. Laws, 1956, § 32–6–1].

§ 32–6–2. Definitions.
As used in this chapter:

(a) "Land" means land, roads, water, watercourses, private ways and buildings, structures, and machinery or equipment when attached to the realty.

(b) "Owner" means the possessor of a fee interest, a tenant, lessee, occupant or person in control of the premises.

(c) "Recreational purposes" includes, but is not limited to, any of the following, or any combination thereof: hunting, fishing, swimming, boating, camping, picnicking, hiking, horseback riding, bicycling, pleasure driving, nature study, water skiing, water sports, and viewing or enjoying historical, archaeological, scenic or scientific sites.

(d) "Charge" means the admission price or fee asked in return for invitation or permission to enter or go upon the land.


§ 32–6–3. Liability of landowner.
Except as specifically recognized by or provided in § 32–6–5, an owner of land who either directly or indirectly invites or permits without charge any person to use such property for recreational purposes does not thereby:

(a) Extend any assurance that the premises are safe for any purpose.

(b) Confer upon such person the legal status of an invitee or licensee to whom a duty of care is owed.

(c) Assume responsibility for or incur liability for any injury to person or property caused by an act of omission of such persons. [As enacted by P.L. 1978, ch. 375, § 1].

§ 32–6–4. Application to land leased to state.
Unless otherwise agreed in writing, the provisions of § 32–6–3 and this section shall be deemed applicable to the duties and liability of an owner of land leased to the state or any subdivision or agency thereof for recreational purposes. [As enacted by P.L. 1978, ch. 375, § 1].

§ 32–6–5. Limitation on chapter.
Nothing in this chapter limits in any way any liability which, but for this chapter, otherwise exists:

(a) For willful or malicious failure to guard or warn against a dangerous condition, use, structure, or activity after discovering the user’s peril.

(b) For injury suffered in any case where the owner of land charges the person or persons who enter or go on the land for the recreational use thereof, except that in the case of land leased to the state or a subdivision thereof, any consideration received by the owner for such lease shall not be deemed a charge within the meaning of this section. [As enacted by P.L. 1978, ch. 375, § 1].

§ 32–6–6. Construction.
Nothing in this chapter shall be construed to:

(a) Create a duty of care or ground of liability for injury to persons or property.

(b) Relieve any person using the land of another for recreational purposes from any obligation which he may have in the absence of this chapter to exercise care in his use of such land and in his activities thereon, or from the legal consequences of failure to employ such care.

(c) Create a public or prescriptive right or easement running with the land.

RHODE ISLAND–2
32-6-7. Permission by owner.

An owner desiring to make his property available for recreational purposes under this chapter, must first offer such permission to the public for all or specified recreational purposes by letter, sent by registered or certified mail, addressed to the director of the department of environmental management.

Such letter of permission shall contain:

(1) A statement of the owner's interest in the land;
(2) A description of the land subject to such permitted recreational use;
(3) A statement of the specific recreational purposes for which such permission is granted or that such permission extends to all recreational purposes contemplated by this chapter;
(4) The signature of the owner;
(5) Said offer by the owner pursuant to this chapter must be accepted or rejected by the director of the department of environmental management or his designee within sixty (60) days of the sending of the letter from the landowner and during said sixty (60) day period the department shall inspect said property for dangerous and/or perilous condition. [As enacted by P.L. 1978, ch. 375, § 1].
Risk Exposure for Landowners in South Carolina

*In General.* Landowner liability for injuries to recreation users is controlled in part by the state recreation use statute and by common law. Common law rules are derived from appellate court cases. If the recreation use statute is not applicable then the landowner duties, obligations and liabilities are determined according to common law.

Under the South Carolina recreation use statute a landowner who gratuitously invites or permits a person to use the property for recreation purposes does not have a duty to keep the premises safe, to warn of a dangerous condition, use, structure or activity on the property, nor does the landowner extend an assurance that the property is safe, confer upon the recreation user the common law status of invitee or licensee, or incur any liability for injury to persons or property caused by an act of the recreation user. When a landowner leases property to the state for a recreational purpose, the landowner retains the statutory immunity from liability.

*Exceptions.* Landowners liability is not limited for a grossly negligent, willful or malicious failure to guard or warn against a known dangerous condition, use, structure or activity on the property. This type of conduct is not statutorily defined but is left to judicial interpretation. Since the statute does not contain express provisions regarding landowner obligations to trespassing children, liability is determined by the judicial doctrine of attractive nuisance.

*Impact of Charging a Fee.* By charging a fee for the recreational use of property, landowners lose only their statutory immunity from liability and then common law landowner liability and immunity rules apply. If land is leased to the state or its political subdivisions, any consideration the owner receives from the lease is not a fee and the landowner does not lose immunity from liability.

**Accident Rates**

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*No State Data Available*

**Litigated Cases**

TITLE 27. PROPERTY AND CONVEYANCES
CHAPTER 3. LIMITATION ON LIABILITY OF LANDOWNERS

The purpose of this chapter is to encourage owners of land to make land and water areas available to the public for recreational purposes by limiting their liability toward persons entering thereon for such purposes. [1962 Code § 51–81; 1968 (55) 3047].

As used in this chapter:
(a) “Land” means land, roads, water, watercourses, private ways and buildings, structures, and machinery or equipment when attached to the realty.
(b) “Owner” means the possessor of a fee interest, a tenant, lessee, occupant or person in control of the premises.
(c) “Recreational purpose” includes, but is not limited to, any of the following, or any combination thereof: hunting, fishing, swimming, boating, camping, picnicking, hiking, pleasure driving, nature study, water skiing, summer and winter sports and viewing or enjoying historical, archaeological, scenic, or scientific sites.
(d) “Charge” means the admission price or fee asked in return for invitation or permission to enter or go upon the land.
(e) “Persons” means individuals regardless of age.

Except as specifically recognized by or provided in § 27–3–60, an owner of land owes no duty of care to keep the premises safe for entry or use by persons who have sought and obtained his permission to use it for recreational purposes or to give any warning of a dangerous condition, use, structure, or activity on such premises to such persons entering for such purposes.

§ 27–3–40. Effect of permission to use property for recreational purposes.
Except as specifically recognized by or provided in § 27–3–60, an owner of land who permits without charge any person having sought such permission to use such property for recreational purposes does not thereby:
(a) Extend any assurance that the premises are safe for any purpose.
(b) Confer upon such person the legal status of an invitee or licensee to whom a duty of care is owed.
(c) Assume responsibility for or incur liability for any injury to person or property caused by an act of omission of such persons.

Unless otherwise agreed in writing, the provisions of §§ 27–3–30 and 27–3–40 shall be deemed applicable to the duties and liability of an owner of land leased to the State or any subdivision thereof for recreational purposes.

§ 27–3–60. Certain liability not limited.
Nothing in this chapter limits in any way any liability which otherwise exists:
(a) For grossly negligent, willful or malicious failure to guard or warn against a dangerous condition, use, structure, or activity.
(b) For injury suffered in any case where the owner of land charges persons who enter or go on the land for the recreational use thereof, except that in the case of land leased to the State or a subdivision thereof, any consideration received by the owner for such lease shall not be deemed a charge within the meaning of this section.

§ 27–3–70. Construction.
Nothing in this chapter shall be construed to:
(a) Create a duty of care or ground of liability for injury to persons or property.
(b) Relieve any person using the land of another for recreational purposes from any obligation which he may have in the absence of this chapter to exercise care in his use of such land and in his activities thereon, or from the legal consequences of failure to employ such care.
Risk Exposure for Landowners in South Dakota

In General. Landowner liability for injuries to recreation users is controlled in part by the state recreation use statute and by common law. Common law rules are derived from appellate court cases. If the recreation use statute is not applicable then the landowner duties, obligations and liabilities are determined according to common law.

Under the South Dakota recreation use statute a landowner who gratuitously invites or permits a person to use the property for recreation purposes does not have a duty to keep the premises safe; to warn of a dangerous condition, use, structure or activity on the property, nor does the landowner extend an assurance that the property is safe, confer upon the recreation user the common law status of invitee or licensee, or incur any liability for injury to persons or property caused by an act of the recreation user. When a landowner leases property to the state for a recreational purpose, the landowner retains the statutory immunity from liability.

Exceptions. Liability is not limited for a landowners gross negligence or willful or misconduct, nor is liability limited in any case where the owners violation a state law, county or municipal ordinance causes the injury to the recreation user. Under the statute, a landowner obligations to trespassing children is determined by the judicial doctrine of attractive nuisance.

Impact of Charging a Fee. By charging a fee for the recreational use of property, landowners lose only their statutory immunity from liability and then common law landowner liability and immunity rules apply. If land is leased to the state or its political subdivisions, any consideration the owner receives from the lease is not a fee and the landowner does not lose immunity from liability.

Accident Rates

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*No State Data Available*

Litigated Cases

None
TITLE 20. PERSONAL RIGHTS AND OBLIGATIONS
CHAPTER 20-9. LIABILITY FOR TORTS

§ 20-9-12. Definition of terms.
Terms used in §§ 20-9-12 to 20-9-18, inclusive mean:
(1) “Land,” land, trails, water, watercourses, private ways and agricultural structures and machinery or equipment if attached to the realty;
(2) “Owner,” the possessor of a fee interest, a tenant, lessee, occupant or person in control of the premises;
(3) “Outdoor recreational purpose,” includes, but is not limited to, any of the following activities, or a combination thereof: hunting, fishing, swimming other than in a swimming pool, boating, canoeing, camping, picnicking, hiking, biking, off road driving, nature study, water skiing, winter sports, snowmobiling, viewing or enjoying historical, archaeological scenic or scientific sites;
(4) “Charge,” the admission price or fee asked in return for invitation or permission to enter or go upon the land. Any nonmonetary gift to an owner that is less than one hundred dollars in value may not be construed to be a charge. [SL 1987, ch 158, §1].

§ 20-9-13. Landowner not obligated to keep land safe for use by others for outdoor recreational purposes or to give warning—Exception.
Except as provided in 20-9-16, an owner of land owes no duty of care to keep the land safe for entry or use by others for outdoor recreational purposes, or to give any warning of a dangerous condition, use structure, or activity on his land to persons entering for outdoor recreational purposes.

§ 20-9-14. Liability of landowner for invitation to use property for outdoor recreational purposes—Exception.
Except as provided in § 20-9-16, an owner of land who either directly or indirectly invites or permits without charge any person to use his property for outdoor recreational purposes, including any person who is on the property pursuant to § 41-9-8, does not thereby:
(1) Extend any assurances that the land is safe for any propose;
(2) Confer upon any person the legal status of an invitee or licensee to whom a duty of care is owed; or
(3) Assume responsibility for, or incur liability for, any injury to persons or property caused by an act or omission of the owner as to maintenance of the land.

§ 20-9-15. Liability of owner of land leased to state for outdoor recreational purposes.
Unless otherwise agreed in writing, the provisions of §§ 20-9-13 and 20-9-14 apply to the duties and liability of an owner of land leased to the state or any political subdivision thereof for outdoor recreational purposes.

§ 20-9-16. Liability of landowner for gross negligence or injury suffered where consideration charged or law violated.
Nothing in §§20-9-12 to 20-9-18, inclusive, limits in any way any liability which otherwise exists:
(1) For gross negligence or willful or wanton misconduct of the owner;
(2) For injury suffered in any case where the owner of land charges any person who enters or goes on the land for the outdoor recreation use thereof, except that in the case of land leased to the state or a political subdivision thereof, any consideration received by the owner for such lease may not be deemed a charge within the meaning of this section nor may any incentive payment paid to the owner by the state or federal government to promote public access for outdoor recreational purposes be considered a charge; or
(3) For injury suffered in any case where the owner has violated a county or municipal ordinance or state law which violation is a proximate cause of the injury.

§ 20-9-17. Liability for injury to persons or property or failure to exercise care in use of land for outdoor recreational purposes.
Sections 20-9-12 to 20-9-18, inclusive may not be construed to create a duty of care or ground of liability for injury to persons or property, or relieve any person using the land of another for outdoor recreational purposes from any obligation which he may have in the absence of §§20-9-12 to 20-9-18, inclusive, to exercise care in his use of such land and in his activities thereon, or from the legal consequences of failure to employ such care.

Sections 20-9-12 to 20-9-18, inclusive, does not affect the doctrine of attractive nuisance or other legal doctrines relating to liability arising from artificial conditions highly dangerous to children.

SOUTH DAKOTA-2
Risk Exposure for Landowners in Tennessee

*In General.* Landowner liability for injuries to recreation users is controlled in part by the state recreation use statute and by common law. Common law rules are derived from appellate court cases. If the recreation use statute is not applicable then the landowner duties, obligations and liabilities are determined according to common law.

Under the Tennessee recreation use statute a landowner who gratuitously invites or permits a person to use the property for recreation purposes does not have a duty to keep the premises safe, to warn of a dangerous condition, use, structure or activity on the property, nor does the landowner extend an assurance that the property is safe, confer upon the recreation user the common law status of invitee, or incur any liability for injury to persons or property caused by an act of the recreation user. When a landowner leases property to the state for a recreational purpose, the landowner retains the statutory immunity from liability.

*Exceptions.* Landowners liability is not limited for gross negligence, willful or wanton conduct which results in a failure to guard or warn against a known dangerous condition, use, structure or activity on the property. Since the statute does not contain express provisions regarding landowner obligations to trespassing children, liability is determined by the judicial doctrine of attractive nuisance.

*Impact of Charging a Fee.* By charging a fee for the recreational use of property, landowners lose only their statutory immunity from liability and then common law landowner liability and immunity rules apply. If land is leased to the state or its political subdivisions, any consideration the owner receives from the lease is not a fee and the landowner does not lose immunity from liability.

**Accident Rates**

| Trend Analysis of Fatalities Involving Hunting, Fishing and All-Terrain Vehicles, 1982–1991 |
|----------------------------------|----------------|----------------|----------------|----------------|----------------|----------------|----------------|----------------|----------------|
| All-Terrain Vehicles             | 0    | 2    | 11   | 5    | 10   | 7    | 9    | 5    | 8    | 4    |
| Fishing                          | 0    | 0    | 0    | 0    | 6    | 5    | 0    | 1    | 1    | 1    |
| Hunting                         | *    | *    | *    | *    | *    | 9    | 8    | 3    | 1    | 2    |

*No State Data Available*

**Litigated Cases**

*Shaver v. TVA, 565 F. Supp. 12 (1982).*
TITLE 70. WILDLIFE RESOURCES
CHAPTER 7. LIABILITY OF LANDOWNER TO PERSONS USING LAND

§ 70-7-101. Definitions.

For the purpose of this chapter the words:

(1)(A) "Land" or "premises" are defined and shall include all real property, waters, private ways, trees and any building or structure which might be located on real property, waters and private ways;

(B) "Land" or "premises" includes real property, waters, private ways, trees and any building or structure located thereon owned by any governmental entity, including, but not limited to, the Tennessee valley authority; and

(C) "Land" or "premises" shall not include the landowner's principal place of residence and any improvements erected for recreational purposes that immediately surround such residence, including but not limited to, swimming pools, tennis or badminton courts, barbecue or horse shoe pits, jacuzzis, hot tubs or saunas;

(2)(A) "Landowner" means the legal title holder or owner of such land or premises, or the person entitled to immediate possession thereof, and includes any lessee, occupant or any other person in control of the land or premises; and

(B) "Landowner" includes any governmental entity. [Acts 1963, ch. 177, §§ 1, 2; T.C.A., §§ 51-801, 51-802; Acts 1987, ch. 448, §§ 1, 6-8.]

§ 70-7-102. Landowner's duty of care.

The landowner, lessee, occupant, or any person in control of such land or premises shall owe no duty of care to keep such land or premises safe for entry or use by others for such recreational activities as hunting, fishing, trapping, camping, water sports, white water rafting, canoeing, hiking, sightseeing, animal riding, bird watching, dog training, boating, caving, fruit and vegetable picking for the participant's own use, nature and historical studies and research, rock climbing, skeet and trap shooting, skiing, off-road vehicle riding, and cutting or removing wood for the participant's own use, nor shall such landowner be required to give any warning of hazardous conditions, uses of, structures, or activities on such land or premises to any person entering on such land or premises for such purposes, except as provided in § 70-7-104.

§ 70-7-103. Effect of landowner's permission.

Any landowner, lessee, occupant, or any person in control of the land or premises or his or her agent who gives permission to another person to hunt, fish, trap, camp, engage in water sports, participate in white water rafting or canoeing, hike, sightsee, ride animals, bird watch, train dogs, boat, cave, pick fruit and vegetables for the participant's own benefit, to engage in nature and historical studies and research, climb rocks, shoot skeet and trap, ski, ride off-road vehicles, and cut and remove wood for the participant's own use upon such land or premises does not thereby:

(1) Extend any assurance that the premises are safe for such purpose;

(2) Constitute the person to whom permission has been granted to legal status of an invitee to whom a duty of care is owed; or

(3) Assume responsibility for or incur liability for any injury to such person or purposely caused by any act of such person to whom permission has been granted except as provided in § 70-7-104.

§ 70-7-104. Conditions under which liability unaffected.

This chapter does not limit the liability which otherwise exists:

(1) For gross negligence, willful or wanton conduct which results in a failure to guard or warn against a dangerous condition, use, structure or activity;

(2) For injuries suffered in any case where permission to hunt, fish, trap, camp, hike, sightsee, cave, or any other legal purpose was granted for a consideration other than the consideration, if any, paid to the landowner by the state of Tennessee, the federal government, or any other governmental agency; or

(3) For injury caused by acts of persons to whom permission to hunt, fish, trap, camp, hike, sightsee, cave, or any other legal purpose was granted; to third persons or to persons to whom the person granting permission, or the landowner, lessee, occupant, or any person in control of the land or premises, owed a duty to keep the land or premises safe or to warn of danger.
TITLE 11. NATURAL RESOURCES AND RECREATION
CHAPTER 10. LEASE OF RECREATIONAL LANDS TO STATE—LIABILITY OF LESSOR


For the purposes of this chapter:

(1) "Charge" means the amount of money asked in return for an invitation to enter or go upon the land;
(2) "Conservation easement" means a conservation easement as defined in § 66-9-303(1);
(3) "Land" includes, but is not limited to, roads, water, watercourses, private ways and buildings, structures and machinery or equipment thereon when attached to the realty;
(4) "Owner" includes, but is not limited to, tenant, lessee, occupant or person in control of the premises;
(5) "Public use easement" means a public use easement as defined in § 11-13-102; and
(6) "Recreational purposes" includes, but is not limited to, any one (1) or any combination of the following: hunting, fishing, swimming, boating, camping, picnicking, hiking, pleasure driving, nature study, water skiing, winter sports, and visiting, viewing or enjoying historical, archaeological, scenic or scientific sites, or otherwise using land for purposes of the user. [Acts 1967, ch. 246, § 3; T.C.A., § 11-13-101; Acts 1982, ch. 554, § 1.]

§ 11-10-102. Land leased to political entity for recreational purposes—Duty of care—Warnings.

(a) Unless otherwise agreed in writing, an owner of land leased to the state or any agency thereof, or any county or municipality or agency thereof, for recreational purposes owes no duty of care to keep that land safe for entry or use by others or to give warning to persons entering or going upon such land of any dangerous or hazardous conditions, uses, structures or activities thereon.

(b) An owner who leases land to the state or any agency thereof, or any county or municipality or agency thereof, for recreational purposes shall not by giving such lease:

(1) Extend any assurance to any person using the land that the premises are safe for any purpose;
(2) Confer upon such persons the legal status of an invitee or licensee to whom a duty of care is owed; or
(3) Assume responsibility for or incur liability for any injury to person or property caused by an act or omission of a person who enters upon the leased land.

(c) The provisions of this section apply whether the person entering upon the leased land is an invitee, licensee, trespasser or otherwise.

§ 11-10-103. Land subject to conservation or public use easement—Duty of care—Warnings.

(a) An owner of any land, which is subject to a conservation easement or public use easement, granted to or acquired and held by the state or any agency thereof, owes no duty of care to keep that land safe for entry or use by others or to give warning to any person entering or going upon such land of any dangerous or hazardous conditions, uses, structures or activities thereon.

(b) An owner of land which is subject to an easement granted to or acquired and held by the state or any agency thereof, shall not, by granting such easement:

(1) Warrant by implication that the real property included in the easement is safe for any purpose;
(2) Confer upon any person the legal status of an invitee or licensee to whom a duty of care is owed; or
(3) Assume responsibility for or incur liability for any injury to person or property caused by an act or omission of any person who enters upon the land subject to such easement.

(c) The provisions of this section apply whether the person entering upon the land subject to such easement is an invitee, licensee, trespasser or otherwise.

§ 11-10-104. Certain existing liabilities unaffected.

Nothing in this chapter shall be construed as limiting in any way any liability which otherwise exists:

(1) For willful or malicious failure to guard or warn against a dangerous or hazardous condition, use, structure, or activity; or
(2) For injury suffered in any case where the owner of land charges the person or persons who enter or go on the land other than the amount, if any, paid to the owner of the land by the state or any agency thereof, or any county or municipality or agency thereof;

Provided that nothing herein shall be deemed to create a duty of care or ground of liability for injury to person or property, and that nothing herein shall limit in any way the obligation of a person entering upon or using the land of another for recreational purposes to exercise due care in his use of such land and in his activities thereon.

TENNESSEE-3
Risk Exposure for Landowners in Texas

In General. Landowner liability for injuries to recreation users is controlled in part by the state recreation use statute and by common law. Common law rules are derived from appellate court cases. If the recreation use statute is not applicable then the landowner duties, obligations and liabilities are determined according to common law.

The Texas recreation use statutes makes a distinction between agricultural land and other land and grants nearly absolute liability immunity to the agricultural landowner. This immunity is retained even when the agricultural landowner charges a fee for the use of the property. Agricultural land means land that is suitable for use in the production of food, forage and fiber crops, forestry products, or domestic animals kept for profit.

Agricultural Landowner. An owner of agricultural land who invites and charges a person to use the property for recreation purposes does not extend an assurance that the property is safe, owe the person a greater duty of care than is owed to a trespasser, or incur any liability for injury to persons or property caused by an act of the recreation user. Liability is not limited when a agricultural landowners gross negligence, willful and wanton misconduct or bad faith injures the recreation user.

Other Property Owners. A owner of "non-agricultural" land who invites, permits, or charges a person to use the property for recreation purposes does not extend an assurance that the property is safe, owe the person a greater duty of care than is owed to a trespasser, or incur any liability for injury to persons or property caused by an act of the recreation user. Liability is not limited for a landowners gross negligence, deliberate, willful or malicious misconduct, that causes the injury to the recreation user. Under the statute, a landowner obligations to trespassing children is determined by the judicial doctrine of attractive nuisance.

Impact of Charging a Fee. By charging a fee for the recreational use of property, a "non-agricultural" landowner does not lose their statutory immunity from liability unless the total of all charges collected in the previous calendar year are more than twice the amount of ad valorem taxes. An owner of "agricultural land" can charge the recreation user whatever amount the market will bear and not lose statutory immunity.

Accident Rates

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*No State Data Available

Litigated Cases

Trinity River Authority v. Williams 659 S.W.2d 714 (1983).
Tarrant County Water Control and Imp. Dist. No. 1 v. Crossland 781 S.W.2d 427, error denied (1989).
TITLE 4. LIABILITY IN TORT
CHAPTER 75. LIMITATION OF LANDOWNERS’ LIABILITY

§ 75.001. Definitions
In this chapter:

(1) “Agricultural land” means land that is located in this state and that is suitable for:
   (A) use in production of plants and fruits grown for human or animal consumption, or plants grown for the
       production of fibers, floriculture, viticulture, horticulture, or planting seed;
   (B) forestry and the growing of trees for the purpose of rendering those trees into lumber, fiber, or other items
       used for industrial, commercial, or personal consumption; or
   (C) domestic or native farm or ranch animals kept for use or profit.

(2) “Premises” includes land, roads, water, watercourse, private ways, and buildings, structures, machinery, and
    equipment attached to or located on the land, road, water, watercourse, or private way.

(3) “Recreation” means an activity such as hunting, fishing, swimming, boating, camping, picnicking, hiking, pleasure
    driving, nature study, cave exploration, and waterskiing and other water sports. [Amended by Acts 1989,
    71st Leg., ch. 62, § 1, eff. Sept. 1, 1989; Acts 1989, 71st Leg., ch. 736, § 1, eff. Sept. 1, 1989].

§ 75.002. Liability Limited
(a) An owner, lessee, or occupant of agricultural land:
   (1) does not owe a duty of care to a trespasser on the land; and
   (2) is not liable for any injury to a trespasser on the land, except for willful or wanton acts or gross negligence by
       the owner, lessee, or other occupant of agricultural land.

(b) If an owner, lessee, or occupant of agricultural land gives permission to another to enter the premises for recreation,
    the owner, lessee, or occupant, by giving the permission, does not:
    (1) assure that the premises are safe for that purpose;
    (2) owe to the person to whom per mission is granted a greater degree of care than is owed to a trespasser on
        the premises; or
    (3) assume responsibility or incur liability for any injury to any individual or property caused by any act of the
        person to whom permission is granted.

(c) If an owner, lessee, or occupant of real property other than agricultural land gives permission to another to enter
    the premises for recreation, the owner, lessee, or occupant, by giving the permission, does not:
    (1) assure that the premises are safe for that purpose;
    (2) owe to the person to whom per mission is granted a greater degree of care than is owed to a trespasser on
        the premises; or
    (3) assume responsibility or incur liability for any injury to any individual or property caused by any act of the
        person to whom permission is granted.

(d) Subsections (a), (b), and (c) shall not limit the liability of an owner, lessee, or occupant of real property who has
    been grossly negligent or has acted with malicious intent or in bad faith.

§ 75.003. Application and Effect of Chapter
(a) This chapter does not relieve any owner, lessee, or occupant of real property of any liability that would otherwise
    exist for deliberate, willful, or malicious injury to a person or to property.

(b) This chapter does not affect the doctrine of attractive nuisance, except that the doctrine may not be the basis for
    liability of an owner, lessee, or occupant of agricultural land for any injury to a trespasser over the age of 16
    years.

(c) This chapter applies only to an owner, lessee, or occupant of real property who:
    (1) does not charge for entry to the premises; or
    (2) charges for entry to the premises, but whose total charges collected in the previous calendar year for all
        recreational use of the entire premises of the owner, lessee, or occupant are not more than twice the total
        amount of ad valorem taxes imposed on the premises for the previous calendar year.

(d) This chapter does not create any liability. [Acts 1985, 69th Leg., ch. 959, § 1, eff. Sept. 1, 1985. Amended by Acts
    1987, 70th Leg., ch. 832, § 5, eff. Sept. 1, 1987; Acts 1989, 71st Leg., ch. 62, § 3, eff. Sept. 1, 1989].
Risk Exposure for Landowners in Utah

In General. Landowner liability for injuries to recreation users is controlled in part by the state recreation use statute and by common law. Common law rules are derived from appellate court cases. If the recreation use statute is not applicable then the landowner duties, obligations and liabilities are determined according to common law.

Under the Utah recreation use statute a landowner who gratuitously invites or permits a person to use the property for recreation purposes does not have a duty to keep the premises safe, to warn of a dangerous condition, use, structure or activity on the property, nor does the landowner extend an assurance that the property is safe, confer upon the recreation user the common law status of invitee or licensee, or incur any liability for injury to persons or property caused by an act of the recreation user. When a landowner leases property to the state for a recreational purpose, the landowner retains the statutory immunity from liability.

Exceptions. Landowners liability is not limited for a willful or malicious a failure to guard or warn against a known dangerous condition, use, structure or activity on the property. Since the statute does not contain express provisions regarding landowner obligations to trespassing children, liability is determined by the judicial doctrine of attractive nuisance.

Impact of Charging a Fee. By charging a fee for the recreational use of property, landowners lose only their statutory immunity from liability and then common law landowner liability and immunity rules apply. If land is leased to the state or its political subdivisions, any consideration the owner receives from the lease is not a fee and the landowner does not lose immunity from liability.

Accident Rates

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*No State Data Available

Litigated Cases

TITLE 57. REAL ESTATE
CHAPTER 14. LIMITATION OF LANDOWNER LIABILITY — 
PUBLIC RECREATION

§ 57-14-1. Legislative purpose.
The purpose of this act is to encourage public and private owners of land to make land and water areas available to
the public for recreational purposes by limiting their liability toward persons entering thereon for those purposes.
[L. 1979, ch. 129, § 1; 1987, ch. 162, § 43].

§ 57-14-2. Definitions.
As used in this act:
(1) "Land" means any land within the territorial limits of the state of Utah and includes roads, water, water courses,
private ways and buildings, structures, and machinery or equipment when attached to the realty.
(2) "Owner" includes the possessor of any interest in the land, whether public or private land, a tenant, a lessee, and
an occupant or person in control of the premises.
(3) "Recreational purpose" includes, but is not limited to, any of the following or any combination thereof:
hunting, fishing, swimming, skiing, snowshoeing, camping, picnicking, hiking, studying nature, waterskiing, engaging in
water sports, using boats, using off-highway vehicles or recreational vehicles, and viewing or enjoying historical,
archeological, scenic, or scientific sites.
(4) "Charge" means the admission price or fee asked in return for permission to enter or go upon the land.
(5) "Person" includes any person, regardless of age, maturity, or experience, who enters upon or uses land for recrea-
tional purposes.

§ 57-14-3. Owner owes no duty of care or to give warning — Exceptions.
Except as specifically provided in Subsections (1) and (2) of Section 57-14-6, an owner of land owes no duty of care to
keep the premises safe for entry or use by any person using the premises for any recreational purpose, or to give any
warning of a dangerous condition, use, structure, or activity on those premises to those persons.

§ 57-14-4. Owner's permitting another to use land without charge — Effect.
Except as specifically provided in Subsection (1) of Section 57-14-6, an owner of land who either directly or indirectly
invites or permits without charge any person to use the land for any recreational purpose does not thereby:
(1) make any representation or extend any assurance that the premises are safe for any purpose;
(2) confer upon the person the legal status of an invitee or licensee to whom a duty of care is owed;
(3) assume responsibility for or incur liability for any injury to persons or property caused by an act or omission of
the person or any other person who enters upon the land; or
(4) owe any duty to curtail his use of his land during its use for recreational purposes.

§ 57-14-5. Land leased to state or political subdivision for recreational purposes.
Unless otherwise agreed in writing, the provisions of Sections 57-14-3 and 57-14-4 of this act are applicable to the
duties and liability of an owner of land leased to the state or any subdivision thereof for recreational purposes.

§ 57-14-6. Liability not limited where willful or malicious conduct involved or admission fee charged.
(1) Nothing in this act shall limit any liability which otherwise exists for:
   (a) willful or malicious failure to guard or warn against a dangerous condition, use, structure, or activity;
   (b) deliberate, willful, or malicious injury to persons or property; or
   (c) an injury suffered where the owner of land charges a person to enter or go on the land or use the land for
any recreational purpose, except that where land is leased to the state or a subdivision of the state, any
consideration received by the owner for the lease is not a charge within the meaning of this section.
(2) Any person who hunts upon a posted hunting unit, as authorized by Title 23, Chapter 23, is not considered to
have paid a fee within the meaning of this section. [ L. 1979, ch. 129, § 6; 1988, ch. 158, § 15].

§ 57-14-7. Person using land of another not relieved from duty to exercise care.
Nothing in this act shall be construed to relieve any person using the land of another for recreational purposes from
any obligation which he may have in the absence of this act to exercise care in his use of the land and in his activities
thereon, or from the legal consequences of failure to employ such care.
Risk Exposure for Landowners in Vermont

In General. Landowner liability for injuries to recreation users is controlled in part by the state recreation use statute and by common law. Common law rules are derived from appellate court cases. If the recreation use statute is not applicable then the landowner duties, obligations and liabilities are determined according to common law.

The Vermont recreation use statute only applies to unposted land located more than 500 feet from any residential and commercial building and outside of a city limits. A landowner who gratuitously invites or permits a person to use the property for recreation purposes does not owe the person a greater duty of care than is owed to a trespasser.

Exceptions. Landowners liability may not be limited under common law for gross negligence, deliberate, willful, or malicious misconduct that causes the injury to the recreation user. Since the statute does not contain express provisions regarding landowner obligations to trespassing children, liability is probably determined by the judicial doctrine of attractive nuisance.

Impact of Charging a Fee. By charging a fee for the recreational use of property, landowners lose only their statutory immunity from liability and then common law landowner liability and immunity rules apply.

Accident Rates

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*No State Data Available*

Litigated Cases

None
TITLE TEN. CONSERVATION AND DEVELOPMENT
PART 4. FISH AND WILDLIFE CONSERVATION
CHAPTER 119. PRIVATE PRESERVES, PROPAGATION FARMS, PRIVATE PONDS, REFUGES, AND SHOOTING GROUNDS

"The purpose of this act is to encourage landowners not in the recreation business for profit, to make land and water areas available to the public for recreational purposes by limiting the owner's liability to users of his land."

§ 5212. Owner's liability

(a) Definitions
(1) "Land" means areas which are: (A) unposted, and (B) more than 500 feet from any residential or commercial building, and (C) outside of city limits. "Land" includes machinery and equipment attached to the land.
(2) "Owner" means the possessor of a fee in land, or an occupant or person in control of land.
(3) "Recreational purposes" means an individual's noncommercial activities on another person's land for hunting, fishing, trapping, hiking, gathering wildflowers or berries, birdwatching, horseback riding, picnicking, swimming, skiing, snowshoeing and similar activities.

(b) Liability limited
An owner who gratuitously gives another permission, either actual or implied, to enter upon his land or land under his control for recreational purposes, shall owe the invitee no greater duty except as to acts of active negligence than is owed a trespasser.


VERMONT-2
Risk Exposure for Landowners in Virginia

In General. Landowner liability for injuries to recreation users is controlled in part by the state recreation use statute and by common law. Common law rules are derived from appellate court cases. If the recreation use statute is not applicable then the landowner duties, obligations and liabilities are determined according to common law.

Under the Virginia recreation use statute a landowner who gratuitously invites or permits a person to use the property for recreation purposes does not have a duty to keep the premises safe; to warn of a dangerous condition, use, structure or activity on the property; nor does the landowner extend an assurance that the property is safe; confer upon the recreation user the common law status of invitee or licensee; or incur any liability for injury to persons or property caused by an act of the recreation user. When a landowner leases property to the state for a recreational purpose, the landowner retains the statutory immunity from liability.

Exceptions. Landowner liability is not limited for a grossly negligent, or willful or malicious failure to guard or warn against a known dangerous condition, use, structure or activity on the property. This type of conduct is not statutorily defined but is left to judicial interpretation. Since the statute does not contain express provisions regarding landowner obligations to trespassing children, liability is determined by the judicial doctrine of attractive nuisance.

Impact of Charging a Fee. By charging a fee for the recreational use of property, landowners lose only their statutory immunity from liability and then common law landowner liability and immunity rules apply. If land is leased to the state or its political subdivisions, any consideration the owner receives from the lease is not a fee and the landowner does not lose immunity from liability.

Accident Rates

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*No State Data Available

Litigated Cases

§ 29.1-509. Duty of care and liability for damages of landowners to hunters, fishermen, sightseers, etc.

A. For the purpose of this section:

"Fee" means any payment or payments of money to a landowner for use of the premises or in order to engage in any activity described in subsections B and C of this section, but does not include rentals or similar fees received by a landowner from governmental sources or payments received by a landowner from incidental sales of forest products to an individual for his personal use, or any action taken by another to improve the land or access to the land for the purposes set forth in subsections B and C of this section or remedying damage caused by such uses.

"Land" or "premises" means real property, whether rural or urban, waters, boats, private ways, natural growth, trees and any building or structure which might be located on such real property, waters, boats, private ways and natural growth.

"Landowner" means the legal title holder, lessee, occupant or any other person in control of land or premises.

B. A landowner shall owe no duty of care to keep land or premises safe for entry or use by others for hunting, fishing, trapping, camping, participation in water sports, boating, hiking, rock climbing, sightseeing, hang gliding, skydiving, horseback riding, foxhunting, racing, bicycle riding or collecting, gathering, cutting or removing firewood or for any other recreational use. No landowner shall be required to give any warning of hazardous conditions or uses of, structures on, or activities on such land or premises to any person entering on the land or premises for such purposes, except as provided in subsection D.

C. Any landowner who gives permission, express or implied, to another person to hunt, fish, launch and retrieve boats, swim, ride, foxhunt, trap, camp, hike, rock climb, hand glide, skydive, sightsee, engage in races, or to collect, gather, cut or remove forest products upon land or premises for the personal use of such person, does not thereby:
1. Impliedly or expressly represent that the premises are safe for such purposes; or
2. Constitute the person to whom such permission has been granted an invitee to whom a duty of care is owed; or
3. Assume responsibility for or incur liability for any intentional or negligent acts of such person or any other person, except as provided in subsection D.

D. Nothing contained in this section, except as provided in subsection E, shall limit the liability of a landowner which may otherwise arise or exist by reason of his gross negligence or willful or malicious failure to guard or warn against a dangerous condition, use, structure, or activity. The provisions of this section shall not limit the liability of a landowner which may otherwise arise or exist when the landowner receives a fee for use of the premises or to engage in any activity described in subsections B and C of this section. Nothing contained in this section shall relieve any sponsor or operator of any sporting event or competition including but not limited to a race or triathlon of the duty to exercise ordinary care in such events.

E. For purposes of this section, whenever any person enters into an agreement with the Commonwealth or any agency thereof, any county, city, or town, or with any local or regional authority created by law for public park or recreational purposes, concerning the use of his land by the public for any of the purposes enumerated in subsections B and C of this section, the government, agency, county, city, town, or authority with which the agreement is made shall hold a person harmless from all liability and be responsible for providing, or for paying the cost of, all reasonable legal services required by any person entitled to the benefit of this section as the result of a claim or suit attempting to impose liability. Any action against the Commonwealth, or any agency, thereof, for negligence arising out of a use of land covered by this section shall be subject to the provisions of the Virginia Tort Claims Act (§ 8.01-195.1 et seq.). Any provisions in a lease or other agreement which purports to waive the benefits of this section shall be invalid, and any action against any county, city, town, or local or regional authority shall be subject to the provisions of § 15.1-291, where applicable. (Code 1950, §§ 8-654.2, 29-130.2; 1962, c. 545; 1964, c. 435; 1977, c. 624; 1979, c. 276; 1980, c. 560; 1982, c. 29; 1983, c. 283; 1987, c. 488; 1988, c. 191; 1989, c. 26, 500, 505; 1990, cc. 799, 808; 1991, c. 305; 1992, c. 282)
Risk Exposure for Landowners in Washington

In General. Landowner liability for injuries to recreation users is controlled in part by the state recreation use statute and by common law. Common law rules are derived from appellate court cases. If the recreation use statute is not applicable then the landowner duties, obligations and liabilities are determined according to common law.

The Washington recreation use statute recognizes two categories of activities and imposes differential obligations on the landowner based on those categories.

Outdoor Recreation Activities. A landowner who gratuitously invites or permits a person to use the property for outdoor recreation purposes is not liable for unintentional injuries to the recreation user. Landowner liability is not limited for deliberate, or willful or wanton acts by the landowner that causes an injury to the user.

Firewood Gathering Activities. A landowner who invites or permits a person to use the property for the purpose of gathering and removing firewood from the land may charge an administrative fee of up to $25.00 dollars. The landowner is not liable for unintentional injuries to the user, unless the user injury was caused by a hidden dangerous artificial condition, known to the landowner but not the user. In that instance the landowner must post a warning sign.

The statute recognizes landowner obligations to trespassing children and imposes liability based on the judicial doctrine of attractive nuisance.

Impact of Charging a Fee. By charging a fee for the outdoor recreational use of property, landowners lose only their statutory immunity from liability and then common law landowner liability and immunity rules apply.

Accident Rates

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*No State Data Available*

Litigated Cases


§ 4.24.200. Liability of owners or others in possession of land and water areas for injuries to recreation users—Purpose

The purpose of RCW 4.24.200 and 4.24.210 is to encourage owners or others in lawful possession and control of land and water areas or channels to make them available to the public for recreational purposes by limiting their liability toward persons entering thereon to individuals who may be injured or otherwise damaged by the acts or omissions of persons entering thereon. [Enacted by Laws 1967, ch. 216, § 1. Amended by Laws 1969, Ex.Sess., ch. 24, § 1.]

§ 4.24.210. Liability of owners or others in possession of land and water areas for injuries to recreation users—Limitation

(1) Except as otherwise provided in subsection (3) of this section, any public or private landowner or others in lawful possession and control of any lands whether designated resources, rural or urban, or water areas or channels and lands adjacent to such areas or channels, who allow members of the public to use them for the purposes of outdoor recreation, which term includes, but is not limited to, the cutting, gathering, and removing of firewood by private persons for their personal use without purchasing the firewood from the landowner, hunting, fishing, camping, picnicking, swimming, hiking, bicycling, the riding of horses or other animals, clam digging, pleasure driving of off-road vehicles, snowmobiles, and other vehicles, boating, nature study, winter or water sports, viewing or enjoying historical, archaeological, scenic, or scientific sites, without charging a fee of any kind therefor, shall not be liable for unintentional injuries to such users.

(2) Except as otherwise provided in subsection (3) of this section, any public or private landowner or others in lawful possession and control of any lands whether rural or urban, or water areas or channels and lands adjacent to such areas or channels, who offer or allow such land to be used for purposes of a fish or wildlife cooperative project, or allow access to such land for cleanup of litter or other solid waste, shall not be liable for unintentional injuries to any volunteer group or to any other users.

(3) Any public or private landowner, or others in lawful possession and control of the land, may charge an administrative fee of up to twenty-five dollars for the cutting, gathering, and removing of firewood from the land. Nothing in this section shall prevent the liability of such a landowner or others in lawful possession and control for injuries sustained to users by reason of a known dangerous artificial latent condition for which warning signs have not been conspicuously posted. Nothing in RCW 4.24.200 and 4.24.210 limits or expands in any way the doctrine of attractive nuisance. Usage by members of the public, volunteer groups, or other users is permissive and does not support any claim of adverse possession.

(4) For purposes of this section, a license or permit issued for state-wide use under authority of chapter 43.51 RCW, Title 75, or Title 77 RCW is not a fee. [Enacted by Laws 1967, ch. 216, § 2. Amended by Laws 1969, Ex.Sess., ch. 24, § 2; Laws 1972, Ex.Sess., ch. 153, § 17, eff. Feb. 27, 1972; Laws 1979, ch. 53, § 1, eff. June 7, 1979; Laws 1980, ch. 111, § 1. Amended by Laws 1991, ch. 50, § 1; Laws 1991, ch. 69, § 1.]
Risk Exposure for Landowners in West Virginia

In General. Landowner liability for injuries to recreation users is controlled in part by the state recreation use statute and by common law. Common law rules are derived from appellate court cases. If the recreation use statute is not applicable then the landowner duties, obligations and liabilities are determined according to common law.

Under the West Virginia recreation use statute a landowner who gratuitously invites or permits a person to use the property for recreational or wildlife propagation purposes does not have a duty to keep the premises safe; to warn of a dangerous condition, use, structure or activity on the property; nor does the landowner extend an assurance that the property is safe; confer upon the recreation user the common law status of invitee or licensee; or incur any liability for injury to persons or property caused by an act of the recreation user. When a landowner leases property to the state for a recreational purpose, the landowner retains the statutory immunity from liability.

Exceptions. Landowner liability is not limited for a willful or malicious failure to guard or warn against a known dangerous condition, use, structure or activity on the property. This type of conduct is not statutorily defined but is left to judicial interpretation. Since the statute does not contain express provisions regarding landowner obligations to trespassing children, liability is determined by the judicial doctrine of attractive nuisance.

Impact of Charging a Fee. By charging a fee for the recreational use of property, landowners lose only their statutory immunity from liability and then common law landowner liability and immunity rules apply. If land is leased to the state or its political subdivisions, any consideration the owner receives from the lease is not a fee and the landowner does not lose immunity from liability.

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Litigated Cases

CHAPTER 19. AGRICULTURE.
ARTICLE 25. LIMITING LIABILITY OF LANDOWNERS.

§ 19-25-1. Purpose.

The purpose of this article is to encourage owners of land to make available to the public land and water areas for recreational or wildlife propagation purposes by limiting their liability toward persons entering thereon and toward persons who may be injured or otherwise damaged by the acts or omissions of persons entering thereon. (1965, c. 93; 1986, c. 4.)

§ 19-25-2. Limiting duty of landowner generally.

Subject to the provisions of section four [§ 19-25-4] of this article, an owner of land owes no duty of care to keep the premises safe for entry or use by others for recreational or wildlife propagation purposes, or to give any warning of a dangerous or hazardous condition, use, structure or activity on such premises to persons entering for such purposes. Subject to the provisions of section four [§ 19-25-4] of this article, an owner of land who either directly or indirectly invites or permits without charge any person to use such property for recreational or wildlife propagation purposes does not thereby (a) extend any assurance that the premises are safe for any purpose, or (b) confer upon such persons the legal status of an invitee or licensee to whom a duty of care is owed, or (c) assume responsibility for or incur liability for any injury to person or property caused by an act or omission of such persons.

§ 19-25-3. Limiting duty of landowner who leases land to State, counties, municipalities or agencies.

Unless otherwise agreed in writing, an owner of land leased to the state or any agency thereof, or any county or municipality or agency thereof, for recreational or wildlife propagation purposes owes no duty of care to keep that land safe for entry or use by others or to give warning to persons entering or going upon such land of any dangerous or hazardous conditions, uses, structures or activities thereon. An owner who leases land to the state or any agency thereof, or any county or municipality or agency thereof, for recreational or wildlife propagation purposes shall not by giving such lease (a) extend any assurance to any person using the land that the premises are safe for any purpose, or (b) confer upon such persons the legal status of an invitee or licensee to whom a duty of care is owed, or (c) assume responsibility for or incur liability for any injury to person or property caused by an act or omission of a person who enters upon the leased land. The provisions of this section apply whether the person entering upon the leased land is an invitee, licensee, trespasser or otherwise.

§ 19-25-4. Application of article.

Nothing herein limits in any way any liability which otherwise exists (a) for willful or malicious failure to guard or warn against a dangerous or hazardous condition, use, structure or activity, or (b) for injury suffered in any case where the owner of land charges the person or persons who enter or go on the land other than the amount, if any, paid to the owner of the land by the state or any agency thereof, or any county or municipality or agency thereof. Nothing herein creates a duty of care or ground of liability for injury to person or property. Nothing herein limits in any way the obligation of a person entering upon or using the land of another for recreational or wildlife propagation purposes to exercise due care in his use of such land and in his activities thereon.


For purposes of this article:

(a) The term "land" shall include, but not be limited to, roads, water, water-courses, private ways and buildings, structures and machinery or equipment thereon when attached to the realty;

(b) the term "owner" shall include, but not be limited to, tenant, lessee, occupant or person in control of the premises;

(c) the term "recreational purposes" shall include, but not be limited to, any one or any combination of the following: Hunting, fishing, swimming, boating, camping, picnicking, hiking, pleasure driving, nature study, waterskiing, winter sports and visiting, viewing or enjoying historical, archaeological, scenic or scientific sites, or otherwise using land for purposes of the user;

(d) the term "wildlife propagation purposes" shall apply to and include all ponds, sediment control structures, permanent water impoundments, or any other similar or like structure created or constructed as a result of or in connection with surface mining activities, as governed by article six [§ 20-6-1 et seq., repealed], chapter twenty.
of this code, or from the use of surface in the conduct of underground coal mining as governed by articles one and two [§ 22–1–1 et seq., repealed; § 22–2–1 et seq., repealed], chapter twenty-two of this code, and regulations promulgated thereunder, which ponds, structures or impoundments are hereafter designated and certified in writing by the director of the department of natural resources and the owner to be necessary and vital to the growth and propagation of wildlife, animals, birds and fish or other forms of aquatic life, and finds and determines that such premises has the potential of being actually used by such wildlife for such purposes and that such premises are no longer used or necessary for mining reclamation purposes. Such certification shall be in form satisfactory to the director and shall provide that such designated ponds, structures or impoundments shall not be removed without the joint consent of the director and the owner; and (e) the term "charge" shall mean the amount of money asked in return for an invitation to enter or go upon the land.


The provisions of this article are severable. If any section, subsection, sentence, clause or provision of this article is held invalid, the remainder of the article shall not be affected.
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Risk Exposure for Landowners in Wisconsin

In General. Landowner liability for injuries to recreation users is controlled in part by the state recreation use statute and by common law. Common law rules are derived from appellate court cases. If the recreation use statute is not applicable then the landowner duties, obligations and liabilities are determined according to common law.

Under the Wisconsin recreation use statute a landowner who permits a person to use the property for recreational purposes does not have a duty to inspect the premises and keep it safe; to warn of a dangerous condition, use, structure or activity on the property; or incur any liability for injury to persons or property caused by an act of the recreation user.

Exceptions. Landowner liability is not limited for a malicious act or failure to warn against a known dangerous condition, use, structure or activity on the property. A malicious failure is not statutorily defined but is left to judicial interpretation. The statute recognizes landowner obligations to trespassing children and a Wisconsin court has held that liability is determined by the judicial doctrine of attractive nuisance.

Impact of Charging a Fee. By charging a fee for the recreational use of property, landowners do not lose their statutory immunity from liability, unless the aggregate value of all recreational payment received in the year exceeds $2,000 dollars. At that point, common law landowner liability and immunity rules apply. If land is leased to the state or its political subdivisions, any consideration the owner receives from the lease is not a fee and the landowner does not lose immunity from liability.

Accident Rates

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*No State Data Available*

Litigated Cases

Copeland v. Larson (1970) 174 N.W.2d 745, 46 Wis.2d 337.
Goodson v. City of Racine (1973) 213 N.W.2d 16, 61 Wis.2d 534.
Johansen v. Reinemann (App.1984) 352 N.W.2d 677, 120 Wis.2d 100.
Bystery v. Village of Sauk City (App.1988) 430 N.W.2d 611, 146 Wis.2d 247.
Hall v. Turtle Lake Lions Club (App.1988) 431 N.W.2d 696, 146 Wis.2d 486.
Taylor v. City of Appleton (App.1988) 433 N.W.2d 293, 147 Wis.2d 644.

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Kozlowski v. County of Marathon (App.1990) 462 N.W.2d 542, 158 Wis.2d 201.
Silisso v. Village of Mukwonago (App.1990) 458 N.W.2d 379, 156 Wis.2d 536.

Wilson v. Waukesha County (App.1990) 460 N.W.2d 830, 157 Wis.2d 790.
CHAPTER 895. MISCELLANEOUS GENERAL PROVISIONS

§ 895.52. Recreational activities: limitation of property owners' liability

(1) Definitions. In this section:

(a) "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. 144.01(19).

(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, but is not limited to, hunting, fishing, trapping, camping, picnicking, exploring caves, nature study, bicycling, horseback riding, bird-watching, motorcycling, operating an all-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 and any other outdoor sport, game or educational activity, but 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.

(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, employe 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 § 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, employe or agent of an owner is liable for any injury to, or any injury caused by, a person engaging in a recreational activity on the owner's property or for any injury resulting from an attack by a wild animal.

(3) Liability; state property. Subsection (2) does not limit the liability of an officer, employe or agent of this state or of any of its agencies for either of the following:

(a) An 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) An injury caused by a malicious act or by a malicious failure to warn against an unsafe condition of which an officer, employe or agent knew, which occurs on property designated by the department of natural resources under § 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, employe or agent of such a governmental body for either of the following:

(a) An 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) An injury caused by a malicious act or by a malicious failure to warn against an unsafe condition of which an officer, employe 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, employes or agents for an injury caused by a malicious act or a malicious failure to warn against an unsafe condition of which an officer, employe 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 employe 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 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 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 noneconomic 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.

(b) The injury is caused by the malicious failure of the private property owner or an employe 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 injury is caused by a malicious act of the private property owner or of an employe or agent of a private property owner.

(d) The 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 injury occurs, if the 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 mercantile or manufacturing under § 70.32(2)(b) 2 or 3.

(c) The injury is sustained by an employe 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 or § 101.11 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.

Risk Exposure for Landowners in Wyoming

In General. Landowner liability for injuries to recreation users is controlled in part by the state recreation use statute and by common law. Common law rules are derived from appellate court cases. If the recreation use statute is not applicable then the landowner duties, obligations and liabilities are determined according to common law.

Under the Wyoming recreation use statute a landowner who gratuitously invites or permits a person to use the property for recreational or wildlife propagation purposes does not have a duty to keep the premises safe; to warn of a dangerous condition, use, structure or activity on the property; nor does the landowner extend an assurance that the property is safe; confer upon the recreation user the common law status of invitee or licensee; or incur any liability for injury to persons or property caused by an act of the recreation user. When a landowner leases property to the state for a recreational purpose, the landowner retains the statutory immunity from liability.

Exceptions. Landowner liability is not limited for a willful or malicious failure to guard or warn against a known dangerous condition, use, structure or activity on the property. This type of conduct is not statutorily defined but is left to judicial interpretation. Since the statute does not contain express provisions regarding landowner obligations to trespassing children, liability is determined by the judicial doctrine of attractive nuisance.

Impact of Charging a Fee. By charging a fee for the recreational use of property, landowners lose only their statutory immunity from liability and then common law landowner liability and immunity rules apply. If land is leased to the state or its political subdivisions, any consideration the owner receives from the lease is not a fee and the landowner does not lose immunity from liability.

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Litigated Cases

TITLE 34. Property, Conveyances and Security Transactions
CHAPTER 19. Liability of Owners of Land Used for Recreation Purposes

(a) As used in this act: §§ 34-19-101 through 34-19-106.
(i) "Land" means land, including state land, roads, water, watercourses, private ways and buildings, structures, and machinery or equipment when attached to the realty;
(ii) "Owner" means the possessor of a fee interest, a tenant, lessee, including a lessee of state lands, occupant or person in control of the premises;
(iii) "Recreational purpose" includes, but is not limited to, any one (1) or more of the following: hunting, fishing, swimming, boating, camping, picnicking, hiking, pleasure driving, nature study, water skiing, winter sports and viewing or enjoying historical, archaeological, scenic or scientific sites;
(iv) "Charge" means the admission price or fee asked in return for invitation or permission to enter or go upon the land; (Laws 1965, ch. 9, § 1; W.S. 1957, § 34-389.1; Laws 1989, ch. 27, § 2.)

§ 34-19-102. Landowner's duty of care or duty to give warnings.
Except as specifically recognized by or provided in W.S. 34-19-105, an owner of land owes no duty of care to keep the premises safe for entry or use by others for recreational purposes, or to give any warning of a dangerous condition, use, structure or activity on such premises to persons entering for recreational purposes. (Laws 1965, ch. 9, § 2; W.S. 1957, § 34-389.2; Laws 1989, ch. 27, § 2.)

§ 34-19-103. Limitations on landowner's liability.
(a) Except as specifically recognized by or provided in W.S. 34-19-105, an owner of land who either directly or indirectly invites or permits without charge any person to use the land for recreational purposes or a lessee of state lands does not thereby:
(i) Extend any assurance that the premises are safe for any purpose;
(ii) Confer upon the person using the land the legal status of an invitee or licensee to whom a duty of care is owed;
(iii) Assume responsibility for or incur liability for any injury to person or property caused by an act of omission of the person using the land.

§ 34-19-104. Application to land leased to state or political subdivision thereof.
Unless otherwise agreed in writing W.S. 34-19-102 and 34-19-103 shall be deemed applicable to the duties and liability of an owner of land leased to the state or any subdivision of this state for recreational purposes.

§ 34-19-105. When landowner's liability not limited.
(a) Nothing in this act limits in any way any liability which otherwise exists:
(i) For willful or malicious failure to guard or warn against a dangerous condition, use, structure, or activity;
(ii) For injury suffered in any case where the owner of land charges the persons who enter or go on the land for recreational purposes, except that in the case of land leased to the state or a subdivision of this state, any consideration received by the owner for the lease shall not be deemed a charge within the meaning of this section.

(a) Nothing in this act shall be construed to:
(i) Create a duty of care or ground of liability for injury to persons or property;
(ii) Relieve any person using the land of another for recreational purposes from any obligation which he may have in the absence of this act to exercise care in his use of the land and in his activities on the land, or from the legal consequences of failure to employ such care.