

Recreational User Statutes and Landowner Immunity: A Comparison Study of State Legislation

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Each year, millions of people take to the great outdoors to engage in recreational activities for fitness and personal enjoyment. According to the National Sporting Goods Association (NSGA, 2006a), sport participation in the United States in 2006 approached 263.1 million participants, up nearly 5% from 2001. Additionally, Americans spent approximately \$24 billion dollars on sporting goods in 2005 (NSGA, 2006b). Participation in recreational activities continues to grow due to rising incomes, population growth, and an increased awareness of the positive health benefits of regular physical activity (Miceli, Segerson, & Li, 2001). Concurrently, given the obesity epidemic in the United States, a strong public interest exists in encouraging individuals to engage in healthy, recreational activities (Centers for Disease Control and Prevention, 2006; O'Brien, 1994).

Alongside this strong public interest exists the need to accommodate participation in outdoor recreational activities. This need can be met, in part, through the utilization of privately and publicly owned land. Historically, landowners have proceeded cautiously when allowing others to use their land for recreational purposes, since they were responsible for not exposing such persons to an unreasonable risk of harm (O'Brien, 1994; Wright, Kaiser, & Nicholls, 2002). Some recreational activities contain a moderate to high risk of injury and fear of litigation led many private landowners to close their lands to the public (Clark, 1998). At the same time, the demand for recreational lands grew faster than the government's ability to acquire land for such public use (McEowen, 2003; O'Brien).

This article will provide a brief background on the evolution of recreational user statutes and the main momentum behind their development. Additionally, this study will provide a comparative analysis of recreational user statutes in all 50 states. An examination of how courts have interpreted some of these statutes will also be provided. Finally, this article examines a number of limitations found in the application of these statutes and provides suggestions that may improve them.

HISTORICAL BACKGROUND

In 1950, Virginia became the first state to enact a recreational user statute that limited the liability of landowners who allowed others to enter their land for recreational purposes (Va. Code Ann. § 29.1-509, 2005). Following this reasoning, in 1965, the Committee of Officials on Suggested State Legislation set forth a Model Act to encourage private landowners to open their land to the public for recreational purposes (Council of State Governments, 1965). The momentum provided by the 1965 Model Act led to 33 states enacting recreational user statutes in the 1960s (van der Smissen, 1990). Currently, all fifty states have some form of landowner limited liability statutes, commonly referred to as recreational user statutes. Although these statutes differ in several ways, their basic intent remains the same - to limit landowner liability for allowing persons to utilize their land for recreational purposes.

LANDOWNERS

Identifying who exactly is covered by these statutes can be complicated. While these statutes specify their application to owners of land, what is meant by "owner" is not always clear. One important development in the way in which "owner" would be interpreted by the courts occurred in 1979 when the National Association of Conservation Districts concluded a study of landowner liability and trespass laws led by W.L Church, associate dean of the University of Wisconsin Law School (McWherter, 2001, Church, 1979). The study found that liability and trespass laws were such that injured recreational users were able to recover to such a degree that landowners were often discouraged from opening their lands for recreational use. Additionally, the study found that the laws were too complex and confusing to be clearly understood (Becker, 1991). As a result of this study, the U.S. government proposed the 1979 Model Act (Church). One important difference between the 1979 and 1965 Model Acts was that the definition of "owner" included an individual, legal entity, or governmental agency that has ownership or security interest, or lease or right of possession in land (O'Brien, 1994; Church). States

were not forced to adopt this interpretation, but it demonstrated the gradual shift away from the original intent of recreational user statutes - application to private landowners - toward application to governmental entities and municipalities as well.

Another important shift in the applicability of these statutes by the courts can be seen through an examination of the applicable areas covered. While recreational user statutes originally focused on limiting the liability of private landowners of undeveloped land in rural settings, some jurisdictions have been increasingly willing to apply these statutes to developed recreational facilities, such as ball fields, parks, and swimming pools. For example, an Oregon court ruled that a city park was protected under the state recreational user statute when a woman was injured when a swing she had been swinging on broke, causing her to fall (*Waggoner v. City of Woodburn*, 2004). Conversely, in a similar case, a Utah court held that the state recreational user statute did not apply to a city-owned public park in which a child was injured from a fall from a swing (*De Baritault v. Salt Lake City Corp.*, 1996).

LANDOWNER DUTY AND LIABILITY

Generally, laws governing landowner liability focus on the duty owed by the landowner to the person entering the land. The entrant status of such an individual determines the duty of care owed to them by the landowner (Clement, 2004). Entrants can be classified as invitees, licensees, or trespassers. Landowners owe the highest duty of care to invitees, a lesser duty to licensees, and the lowest duty to trespassers (Young, 2007). However, forcing landowners to determine the status of every entrant on their premises would be very burdensome if not impossible (Goldstein, Telfer, & Kennedy, 1989). Recreational user statutes alleviate this burden by creating a new classification, the recreational user. Instead of determining individual status, these statutes limit the duty a landowner owes to all entrants when availing property for recreational use without charging a fee. In this manner, the recreational user statute serves as an affirmative defense to claims of negligence by persons injured while engaging in recreational activities on the landowner's property (Clark, 1998). Most states hold that a person classified as a recreational user by statute is not given invitee or licensee status and is owed a duty comparable to a trespasser. The duty created is outlined in the 1979 Model Act:

SEC. 3. Except as specifically recognized by or provided in Sec. 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 recreational purposes.

SEC. 4. Except as specifically recognized by or provided in Sec. 6 of this Act, an owner of land who either directly or indirectly invites or permits without charge any person to use his or her 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 (Church, 1979).

The statutory language contained in the 1965 Model Act makes clear that the duty owed to the recreational user is much less than that owed to invitees or licensees. Landowners have no duty to keep their land safe or to warn against dangerous conditions on their land and as a result do not incur liability for injuries to those classified as recreational users, barring certain exclusions.

Oftentimes, whether a person is given recreational user status when on the land of another depends on their intent when entering the property. For example, in *Gough v. County of Dutchess* (1996), a young girl was injured when she fell on some rocks while playing on a train trestle behind the defendant's store. The injury occurred after the girl left the store and walked 500 to 600 feet through a field with her brother to play on the trestle. The defendant filed a motion for summary judgment under New York's recreational user statute, claiming the girl was hiking, a recreational activity listed in the statute. The court held that walking 500 to 600 feet through a field to reach a particular destination was not "hiking" within the meaning of the statute and that the girl had entered the property to play with her brother, not to engage in the recreational activity of hiking (*Gough*, 1996, p.571). Therefore, the statute did not apply.

RECREATIONAL USER STATUTES IN THE COURTS

The principal question in tort liability cases in which a landowner attempts to use a recreational user statute as a defense typically focuses on whether the statute applies, given the facts of the case. A two-pronged analysis is often used to determine a statute's applicability (Young, 2007). The first prong analyzes whether the activity is a recreational activity covered under the

statute. For example, in a California case involving a child who was injured when climbing a tree in a vacant lot owned by the defendant, the court ruled that the child was engaged in a recreational activity and the statute applied, even though tree-climbing was not specifically mentioned in the activities listed within the statutory language (*Valladares v. Stone*, 1990). However, a Wisconsin court refused to apply the recreational user statute when the plaintiff was injured at a golf course, ruling that golf was not considered a recreational activity (*Quesenberry v. Milwaukee*, 1982).

The second prong analyzes whether the plaintiff was recreating on land suitable for the activity and covered under the statute. For example, in *Hager v. Griesse* (1985), an Ohio court included residential pools within the statute, in contrast to a Delaware case in which the court ruled the statute did not include residential areas improved with pools (*Gibson v. Keith*, 1985).

Another example of this two-pronged test is seen in a Minnesota case involving the death of an eleven-year-old boy when playing with two other boys among bales of paper at a recycling plant (*Minnesota Fire & Casualty Insurance Co. v. Paper Recycling of La Crosse*, 2001). The court first examined whether the boys were engaged in a recreational activity listed in the statute or whether their actions were substantially similar to the activities listed in the statute. Next, the court examined whether the property on which the recycling plant was located was covered under the statute (*Minnesota Fire & Casualty Insurance Co.*, 2001).

Recreational user statutes across all states read similar to one another, but states can vary widely in terms of how they are applied. Even though most statutes list the recreational activities that are covered, the language is often vague and court interpretation regarding this language can therefore, at times, be unpredictable. For example, in *Rodrique v. Firemen's Fund Ins. Co.* (1984), a Louisiana court held that playground bleachers were included within the statute, while a Connecticut court held that football stadium bleachers were not (*Cimino v. Yale University*, 1986).

A number of exclusions specified in these statutes may prevent a landowner from seeking the immunity afforded by the statutes, and oftentimes a question is raised as to whether one of these exclusions applies. One such exclusion is where the landowner charged a fee to enter and use the property. For example, the Georgia recreational user statute states that charging a fee to a person entering their land for recreational use will not grant the landowner the protections afforded by the statute (Ga. Code Ann. § 51-3-25, 2005). However, a Georgia court ruled that a fee charged for parking was not a fee for admission and thus did not bar protection under the statute (*Quick v. Stone Mountain Memorial Association*, 1992).

Certain exclusions can also serve to bar protections afforded by these statutes, namely the charging of a fee. Recreational user statutes historically afforded protection to landowners only when they provided users access to their property for recreational activities without charging a fee or receiving other compensation (van der Smissen, 1990). A great deal of variation exists as to how states have interpreted the meaning of the word "charge" as it relates to recreational user statutes (Young, 2007). The 1979 Model Act relaxed the definition of "charge" by allowing exceptions to this stringent prohibition traditionally found in recreational user statutes (Church, 1979). Three exceptions that exist where providers of land can qualify for the protection offered by a recreational user statute even when receiving compensation include; (a) benefits related to the recreational use, (b) compensation for land conservation, and (c) governmental and nominal payments (Centner, 2001). The revised 1979 Model Act recognized a public interest in promoting conservation measures for recreational land (Centner). As a result, in kind contributions, donations, services, or money given to help a landowner with conservation measures do not bar the liability protection offered by recreational user statutes. Oftentimes landowners receive compensation when they lease their lands to governments for public recreational use. The revised 1979 Model Act recognized this issue and made an exception for such compensation. These exclusions will be further discussed in the Results section.

METHODOLOGY

The purpose of this study was to provide a comparative analysis of recreational user statutes in all 50 states. A comprehensive literature review was conducted to gather information concerning the formation and application of recreational user statutes, as well as their impact on important legal cases which were derived from the statutory analysis and literature review. A search of state recreational user statutes was conducted by keyword searches utilizing both Lexis/Nexis and Westlaw search engines. Within Lexis/Nexis, a database search of all relevant state codes was conducted. To validate the findings of the Lexis/Nexis search, and to ensure a comprehensive investigation of state codes, the Westlaw database was also searched for relevant state codes. The keywords utilized included recreational, user, statute, landowner, premises, and liability. The results of this search were cross-referenced with previously published work (Centner, 2000; 2001; van der Smissen, 1990; 1997) on recreational user statutes. The statutes were then analyzed and based upon the information contained within, were placed into a descriptive table by

categories. The categories included: state and citation, year, applicable areas, duty and liability of landowner, activities covered, exclusions, and relevant case law. These major categories consistently appeared within the statutes and were also consistent with previously published research in this area (van der Smissen, 1990; 1997). A brief description of these categories follows.

The *State and Citation* category identifies the reference for each state statute. Some states, such as Vermont, have multiple statutes that apply to different areas of land (Vt. Stat. Ann. Tit. 12 § 5792, 2005; Vt. Stat. Ann. Tit. 19 § 2309, 2005; Vt. Stat. Ann. Tit. 10 § 448, 2005). *Year* refers to the year the statute was enacted. The *Applicable Areas* category details the type(s) of land the statute covers. For example, the applicable areas covered by the Florida statute consist of "land, water areas, and park areas used for recreational purposes" (Fla. Stat. Ann. § 375.251, 2005). This category also specifies whether the statute covers public land as well as private land, either through statutory language or an analysis of case law. The *Duty/Liability of Landowner* category lists the duty owed by a landowner to a recreational user and the limit of their liability to the same. Most statutes state that there is no duty of care to keep premises safe or to give warning of a dangerous condition, use, structure, or activity and that landowners are not liable for injury to persons recreating on their land. The *Activities Covered* category lists the recreational activities to which the statute applies. Some statutes, such as Alaska's, do not specify the activities covered and only mention "recreational purposes," while others such as Arkansas', contain an exhaustive list of recreational activities (Alaska Stat. § 09.65.200, 2005; Ark. Code Ann. § 18-11-302, 2005). The *Exclusions* category lists the limitations on the applicability of these statutes in certain instances. The three most common exclusions are (a) when a landowner has acted willfully, maliciously, or grossly negligent, (b) when a fee or some other form of consideration has been required for entry onto the landowner's land, and (c) for liability that otherwise exists for an attractive nuisance (Ariz. Rev. Stat. Ann. § 33-1551, 2005). Finally, the *Relevant Case Law* category provides a sampling of cases in which that state's recreational user statute was at issue.

RESULTS

Currently, all 50 states have recreational user statutes that limit the liability of landowners who open their lands to allow public recreational use for injuries sustained by persons using their land (See Appendix). These statutes can apply to both private and publicly owned lands. Most statutes have followed the language and outline set forth by the 1965 Model Act. There are,

however, some important differences between state statutes including the applicable areas, activities covered, and certain statutory exclusions that can serve to limit or bar defense under the statute. General results of the statutory analysis are found in the following sections by topic, while specific statutory information is found in the Appendix.

Legislative Intent of Recreational User Statutes

The basic intent behind these statutes is to limit liability when landowners allow others to use their land for recreational purposes. Nineteen state statutes contain a purpose statement to that effect. For example, Arkansas' statute states, "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" (Ark. Code Ann. § 18-11-301, 2005). A California court further illustrates this intent, ruling it legislative policy to reduce tort liability of landowners who open their lands to others for recreational purposes in order to reduce the growing tendency to close lands that could be used for recreational access due to a fear of liability (*English v. Marin Municipal Water District*, 1977).

Landowners

This research examined who may be protected by these statutes. Forty-two state statutes follow the 1965 Model Act in interpreting "owner of land" to include not just an owner possessing a fee interest, but also include a combination of tenant, lessee, occupant, or person in control of the premises. Other states, such as Massachusetts, are more vague in their language, defining an owner as "any person having an interest in land" (Mass. Gen. Laws Ann. ch. 21 § 17C, 2005). To determine if the statute applies in cases where an occupier has less than a fee interest, the court will examine the degree to which an occupier has control of the premises. If the occupier has exclusive possession of the property and can restrict access or use of the property by others, and all other statutory conditions are met, the statutory protection usually applies (van der Smissen, 1990).

Fifteen state's recreational user statutes specify within the statutory language that the term "owner" applies to governmental entities. For example, the Massachusetts statute specifically states that "person" refers to "any government body, agency or instrumentality, nonprofit corporation, trust or association, and any director, office, trustee, member, employee or agent thereof" (Mass. Gen. Laws Ann. ch. 21 § 17C, 2005). However, Florida courts have held that Florida's recreational user statute exists to encourage persons to

make land available for public use and that governmental entities are not persons under the statute (Fla. Stat. Ann. § 375.251, 2005; *Pensacola v. Stamm*, 1984).

Applicable Areas

Many state statutes contain a section that includes the applicable areas covered by the statute. The most common language is that which is stated in the Arkansas recreational user statute: "Land means land, roads, water, watercourses, private ways and buildings, structures, and machinery or equipment when attached to the realty" (Ark. Code Ann. § 18-11-302, 2005). Other language dealing with lands used in the state statutes included primarily rural or semi-rural land, land used for agricultural purposes, marshlands, farming or ranching land, railway corridors, bridges and walkways, sediment control structures, permanent water impoundments, or any other similar structure.

When a statute does not specify the applicable areas, an analysis of case law has demonstrated how the courts have interpreted the language and intent of the statute. For example, in the Nevada case of *Boland v. Nevada Rock and Sand Company* (1995), a boy was injured when he went over a drop-off while riding a dirt bike through a 320-acre mining basin. The plaintiff claimed the defendants had a duty to warn of the danger posed by the drop-off. The defendant cited Nev. Rev. Stat. Ann. § 41.510 as a defense to liability. A key issue was the status of the land on which the injury occurred. The court held that although the Nevada recreational user statute did not specify the type of property covered, the intent of the legislature was that the property be rural, semi-rural, or non-residential and that the land in this case was the type of land intended to be covered by the statute (*Boland*, 1995, p. 991).

Use of the recreational user statute as a defense to liability was at issue in a Georgia case involving a woman injured when she fell down a stairway (*Cedeno v. Lockwood*, 1983). The stairway in question was located in an alley adjacent to a building owned by the defendant. The plaintiff claimed that the defendant was negligent in properly maintaining the stairway. The defendants cited Ga. Code Ann. § 51-3-20 as a defense to liability and claimed they had opened their property to the public for recreational activities. The court disagreed, reasoning that the defendants made their property available to attract business and not to give the public a place to recreate (*Cedeno*, 1983, p. 267). The court reasoned that the applicability of the statute does not depend on the size of the land but instead on "the purpose for which the public is

permitted on the property" (p. 267). Therefore, Georgia's recreational user statute did not apply to the stairway.

Thirty-five states allow their recreational user statutes to apply to public land. Although many of these statutes do not expressly mention application to public lands, an analysis of case law demonstrates the willingness to extend protection to public agencies and municipalities. For example, the Idaho Court of Appeals held in *Ambrose ex rel. Ambrose v. Buhl Joint School District* (1994) that the Idaho recreational user statute precluded liability for a child's injuries on a public playground, ruling the public school district was a protected landowner under the statute even though the statute does not specifically mention public entities when defining "owner" (*Ambrose*, 1994, p. 1091). According to Salvo (1996), some courts may take a case-by-case approach, examining whether the legislative purpose of the statute would be furthered by applying the statute in a particular factual setting.

Generally, recreational user statutes do not apply to residential property or land used for commercial enterprise, however, in *Cunningham v. Bakker Produce, Inc.* (1999), an Indiana court held that the state's recreational user statute applied to an injury occurring in a vacant lot. Likewise, in *Lundstrom v. City of Apple Valley* (1998), a Minnesota court found that a city was entitled to immunity for an injury occurring on a tennis court in a multi-purpose sports facility owned by the city and a school district.

Activities Covered

Forty-seven state recreational user statutes identify the types of recreational activities covered, while Alaska, North Dakota, and Massachusetts do not. The Alaska statute merely states immunity to landowners for persons entering their land for the purposes of "recreation" without specifying this term (Ala. Stat. § 09.65.200, 2005). The North Dakota statute does not list specific activities, stating application to "any activity undertaken for exercise, education, relaxation, or pleasure" (N.D. Cent Code § 53-08-01, 2005). The Massachusetts statute makes reference to "recreational, conservation, scientific, educational, environmental, ecological, research, religious, or charitable purposes" but does not define specific activities (Mass. Gen. Laws Ann. ch. 21 § 17C, 2005). Other states often include an exhaustive list of activities covered, and most states include the phrase "including, but not limited to" at the beginning of this list. Twenty-three states list the following ten recreational activities; hunting, fishing, swimming, boating, camping, picnicking, hiking, nature study, water skiing, and viewing or enjoying historical, archeological, scenic, or scientific sites. Additional activities often

found in the statutes include animal riding, off-road and recreational vehicle use, hang gliding, trapping, snowmobiling, biking, spelunking, gleaning, firewood gathering, and water skiing. California (Calif. Civ. Code § 846, 2006) and Wisconsin (Wis. Stat. Ann. § 895.52, 2006) contain the most extensive lists of activities covered by their statutes. In addition to the aforementioned recreational activities, twelve states list "educational activities" within their statutes. While thirty-eight statutes list swimming as an activity, swimming in pools may not be covered.

In a Georgia case involving a diving injury the court found the Georgia recreational user statute was not meant to apply to a neighborhood swimming pool (*Herring v. Hauck*, 1968). Likewise, a Louisiana court ruled that while swimming was listed within the covered activities in the Louisiana recreational user statute, an injury occurring in a swimming pool was not, and the State could not assert immunity as a defense under La. Rev. Stat. Ann. § 9:2791 and § 9:2795 (*Keelen v. State, Dep't of Culture, Recreation & Tourism*, 1985).

While almost all recreational user statutes list the recreational activities covered, interpretation as to the meaning of these activities is sometimes left up to a court. This is important because courts have routinely ruled that persons entering land to engage in activities outside the scope of the activities outlined in the statute are not classified as recreational users, and are thus not owed the same standard of care. For example, in *Cometti v. Hunter Mountain Festivals Ltd.* (1997), a woman was injured when attempting to hike down a mountain after watching a bicycle race. The New York recreational user statute did not specifically define hiking, and the plaintiff argued that she had gone to the defendant's property for a primary purpose other than hiking. The court found that the "plaintiff, who had prior hiking experience, was wearing good, sturdy boots on the day of the incident, and had purchased a one-way ticket up the mountain" (*Cometti*, p. 897-898). She voluntarily chose to descend on an advanced ski trail as opposed to taking an easier trail or riding on the Skyride and made a conscious decision to continue down on foot even when her footing became unstable. Due to these facts, the court reasoned that the plaintiff was on the defendant's premises for pleasure and exercise and she was engaged in the activity of hiking within the meaning of the statute.

Likewise, an Arizona case involved a woman who was injured when she stepped into a gopher hole at a park when walking to a band shell to work as a concessionaire at a music festival (*Herman v. City of Tucson*, 1999). The woman claimed she was not a recreational user under Ariz. Rev. Stat. Ann. § 33-1551 and that the statute did not apply. The court agreed and held that when determining whether a person is a recreational user, the nature and

purpose of the activity should be given primary consideration (*Herman*, 1999, p. 979).

In a Tennessee case involving a bicycle accident, the court reasoned that although bicycling was not listed as a recreational activity within the statute, the language "such recreational activities as" implied that the list of activities within the statute was not meant to be exhaustive or exclusive and that those activities similar to the listed ones fell within the scope of Tenn. Code Ann. § 70-7-102 (*Parent ex rel. Parent v. State*, 1999, p. 243).

One issue with listing recreational activities within the statutory language is that it can serve to eliminate the protections afforded by the statute when a person is injured while on the premises for a legitimate, but non-listed recreational purpose (Endres & Uchtmann, 2005). Recreational activities that were either not popular or not in existence at the time the state's statute was enacted may not be included in the statute's list of recreational activities. According to the National Sporting Goods Association (NSGA, 2006c), participation in the recreational activity of skateboarding has doubled within the last ten years, up from 4.7 million participants in 1996 to 9.7 million participants in 2006. Due to the fact that skateboarding is a relatively new recreational activity, most recreational user statutes do not include it in the list of covered activities. Skateboarding is specifically listed within only four recreational user statutes in their section outlying recreational activities (Idaho Code Ann. § 36-1604, 2005; Tenn. Code Ann. § 70-7-102, 2005; Tex. Civ. Prac. & Rem. Code Ann. 75.002, 2005; Wash. Rev. Code Ann. § 4.24.210, 2006). In those 46 states where skateboarding is not mentioned within the statute, the potential exists for an argument in litigation that skateboarding was intentionally excluded from the list of protected activities.

Whether a landowner can seek protection afforded by a recreational user statute can depend on the circumstances surrounding the injured party's actions when injured. For example, in a California case involving a man injured when a bulldozer fell on top of him, the court ruled that while the plaintiff's original purpose was to go fishing on the defendant's land, the immediate activity in which he was injured was not a recreational activity and therefore the California recreational user statute could not be used as a defense by the defendant (*Smith v. Scrap Disposal Corp.*, 1979). In another California case, a girl was injured when she fell while walking her bicycle across a bridge on the defendant's property (*Gerkin v. Santa Clara Valley Water District et al.*, 1979). The district court granted the defendant's motion for summary judgment, citing immunity from liability under California's recreational user statute, which listed hiking as a recreational activity (*Gerkin*, 1979). The appeals court reversed the decision and ruled that "the word 'hiking' was

intended to denote more than just traveling on foot, and that a triable issue of fact was raised as to whether [the] plaintiff was engaged in 'hiking' within the commonly understood recreational sense of the word" (*Gerkin*, p. 612). While most recreational user statutes include a list of activities covered, court interpretation can play a major role in determining the classification of a person as a recreational user, especially in cases in which a person is engaged in an activity similar to one of the listed activities or in cases where a person is on recreational land for purposes that are not specifically recreational in nature.

Exclusions

Recreational user statutes do not confer absolute immunity to landowners who allow others to use their land for recreational purposes. All statutes, with the exception of Ohio, contain a provision that the statute does not affect liability that otherwise exists for willful or malicious injury, or for the failure to guard or warn against a known dangerous condition, use, structure, or activity likely to cause harm. For example, in a 1999 Utah case, a young girl was killed after being struck by a falling rock that was dislodged by two teenagers climbing on the cliff above her (*Sulzen ex rel. Holton v. United States of America*, 1999). The defendant filed a motion for summary judgment, claiming immunity under the Utah recreational user statute. The court found that the Hanging Rock Picnic Area where the injury occurred qualified for limited immunity under Utah's recreational user statute (*Sulzen ex rel. Holton*, 1999).

The statute, however, did not limit liability in cases of injury resulting from a landowner's deliberate, willful, or malicious failure to guard or warn against a dangerous condition, use, structure or activity. The plaintiff argued that "the 'willful or malicious failure to guard or warn' exception applies in this case because the United States knew of the falling rock hazard at Hanging Rock Picnic Area and failed to take any action despite such knowledge" (*Sulzen*, p. 1217). The court denied the defendant's motion for summary judgment citing that a triable issue of fact existed concerning the United States' knowledge of a dangerous condition likely to cause serious injury.

In a slight variation of statutory language, Massachusetts (Mass. Gen. Laws Ann. ch. 21 § 17C, 2005) and Michigan (Mich. Comp. Laws Ann. § 324.73301, 2005) include exclusions for a landowner's willful or wanton reckless misconduct, and ten states, including Michigan, hold landowners liable for acts of gross negligence. On the other hand, the Ohio statute appears to provide absolute immunity to recreational landowners for injuries that occur

on their lands, something held to be against public policy in other jurisdictions and an exception to the general rule (Ohio Rev. Code Ann. § 1533.18, 2005; van der Smissen, 1990).

Results of this study indicated that seven states specifically establish that attractive nuisance claims are not covered by their statutes. For example, the Arizona recreational user statute does limit liability for an attractive nuisance, liability is only limited with respect to certain areas including dams, channels, canals, and lateral ditches used for flood control, agricultural, industrial, metallurgical or municipal purposes (Ariz. Rev. Stat. Ann. § 33-1551, 2005). Conversely, a Minnesota court ruled that "the recreational immunity statute provides that a possessor of property has no liability under attractive nuisance to a child using the property for a recreational activity" (*Minnesota Fire & Casualty Insurance Co. v. Paper Recycling of La Crosse*, 2001, p. 537).

Another item that can serve to exclude a landowner from the protection afforded by a recreational user statute is the charging of a fee. The Illinois recreational user statute states that the term "charge" 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" (Ill. Comp. Stat. Ann. § 745 ILCS 65/2, 2005). In *Hoye v. Illinois Power Company* (1995), the court examined the meaning of this clause in a case involving a man who was injured when he struck his head on a submerged object while diving into a lake leased by the defendant to the Department of Conservation. The plaintiff claimed the defendant was barred from protection under the Illinois recreational user statute because of fees charged to the users of the lake by the Department of Conservation as well as the presence of a concessionaire. The court ruled that although the defendant received a percentage of concessions and docking fees from a marina, this did not constitute an admission fee and thus did not affect the defendant's ability to seek protection under the statute.

In a similar case, an Ohio court held that fees paid for gas, food, and canoe rental did not constitute a fee for entrance and that the items could have been purchased elsewhere and brought into the park (*Moss v. Department of Natural Resources*, 1980). Therefore, the State was able to seek protection under the recreational user statute (*Moss*, 1980). A Georgia court found that charging a parking fee did not constitute an admission fee and did not bar the landowner from seeking protection under the Georgia recreational user statute (*Quick v. Stone Mountain Memorial Association*, 1992). Other state courts have ruled in a similar fashion, finding that a fee does not affect a landowner's ability to seek protection under a recreational user statute as long as the fee is not paid as consideration for the entrance onto the property (*Garreans by*

Garreans v. Ohaha, 1984; *Jones v. U.S.*, 1982; *Seminara v. Highland Lake Bible Conference*, 1985).

Charging a fee to spectators is unlikely to trigger the fee exception, since their entry onto the land is not predicated upon the payment of a fee for recreational use of the land (Kozlowski, 1998). Some states permit recreational land providers to collect nominal sums while still retaining the protection afforded of a recreational user statute (W. Va. Code Ann. § 19-25-5, 2006). Oklahoma allows landowners to charge up to \$10 per acre per year for farming and ranching land that is used for recreational purposes, while Utah limits landowners to \$1 per person per year (Ok. Stat. Ann. tit. 2 § 16-71.1, 2005; Utah Code Ann. § 57-14-4, 2005). The Wisconsin statute contains the broadest exception, allowing landowners to collect up to \$2,000 annually through money, goods, or services with exceptions for (a) a gift of wild animals or any other product resulting from the recreational activity, (b) donations made for the management and conservation of the property, (c) payments from a governmental body, or (d) payments received from a nonprofit organization for a recreational agreement (Wis. Stat. Ann. § 895.52, 2006). Washington allows a landowner to charge up to \$25 for firewood gathering (Wash. Rev. Code Ann. § 4.24.210, 2006).

Notwithstanding these exceptions, the vast majority of recreational user statutes preclude protection for landowners who charge an admission fee for the recreational use of their property. Forty-two state statutes assert that the provisions within the statute only apply in the absence of a fee charged by the landowner. As previously mentioned, depending on the jurisdiction, a landowner may be able to collect fees on his or her land and still retain the protection afforded by a recreational user statute providing the fee is not charged for entrance onto the recreational lands.

Finally, persons deemed to be social guests may not also be classified as recreational users, triggering the immunity offered by a statute. Hawaii and Wisconsin hold exclusions for persons designated as a house or social guest (Hawaii Rev. Stat. § 520-2, ; Wis. Stat. Ann. § 895.52,). In a Texas case, a woman was injured when she fell out of a tree after entering the defendant's property to view wild boars. The defendant argued that the plaintiff had been engaged in a recreational activity and that as a landowner he was therefore entitled to immunity under Texas' recreational user statute. The court disagreed, finding the recreational user statute to be inapplicable because the woman was deemed a social guest (*McMillan v. Parker*, 1995). Even though Texas statute, Tex. Civ. Prac. & Rem. Code Ann. § 75.001, does not specifically exclude social guests, the court reasoned that social guests were not the intended recipients of the statute and that application of the statute to

them would unfairly lower the standard of care owed to them (*McMillan v. Parker*, 1995).

DISCUSSION

Recreational user statutes often provide important protections for those public and private entities that provide recreational opportunities on their land. These statutes, though available in every state, often have both substantial differences and limitations. Created and continually influenced by public policy, these statutory protections continue to evolve. A synopsis of public policy issues and limitations on the statutory protections offered by this type of legislation follows.

Recreational User Statutes and Public Policy

Recreational user statutes represent two competing public policy arguments. On one hand, the public has a vested interest in the promotion of healthy, recreational activities. Getting people physically active and outside to engage in hiking, swimming, backpacking, and other fitness activities can pay great dividends for public health. Additionally, while the federal government operates national parks for such purposes, they remain strained and crowded. The National Park Service (2006) reported approximately 273.5 million visits to national parks in 2005. Additionally, approximately 826.5 million visits to state parks and recreation areas were reported in 2004 (National Association of State Park Directors, 2006). There is a clear need for landowners to offer use of their land for recreational purposes, and recreational user statutes serve to entice landowners to do so without fear of liability. While a strong case can be made for the need for recreational user statutes and the protections they afford to landowners, the public also has a vested interest in holding landowners accountable for negligent acts that lead to injuries of recreational participants. Courts are charged with the duty to interpret these statutes in a fair manner to provide outcomes that balance these two competing public interests.

Limitations With Recreational User Statutes

A key issue with recreational user statutes rests in the application of the particular statute. Landowners cannot simply proclaim themselves covered by a recreational user statute and expect to be shielded from liability for all injuries occurring on their property. Instead, they must open their land for public recreational use and wait until a person brings about legal action for an injury suffered while recreating on their land. In this manner, landowners open

themselves up to the possibility of immense legal expenses and run the risk that a court will determine the local recreational user statute inapplicable. For many landowners, it remains prudent to simply close off their lands to the outside public, the very thing recreational user statutes aim to discourage.

Many of the limitations found in recreational user statutes result from their vagueness. Courts regularly face the burden of interpreting the language and meaning of various sections within a state's statute. What constitutes a recreational activity in one state can be very different from another state. According to McWherter (2000), it is through court decisions that the ambiguities associated with recreational user statutes are better defined, leading to a clearer understanding by landowners of the protections afforded to them in return for opening their lands to recreational users. The flaw in this process is that landowner knowledge concerning how the language in a recreational user statute will be interpreted by the courts may only come after an injury and subsequent lawsuit.

Courts have also expressed frustration over the vague language in recreational user statutes. For example, in *Minnesota Fire & Casualty Insurance Co. v. Paper Recycling of La Crosse* (2001), three eleven-year-old boys entered a recycling facility leased to the defendant, Paper Recycling of La Crosse. The property was not open to the public and the boys gained access by entering through a hole in the fence surrounding the facility. The boys began to crawl through stacks of baled paper, pretending they were inside a fort. One of the boys brought a box of matches and they started a number of fires inside the stacks. One of the fires got out of control and blocked the approach the boys had used when entering the stacks. Two of the boys were able to escape but the third boy died in the fire. The defendant sought protection under Wisconsin's recreational user statute claiming the boys were engaged in a recreational activity. The court determined that the activity the boys were engaged in was "neither substantially similar to the activities listed in the statute nor undertaken in circumstances substantially similar to the circumstances of a recreational activity" and therefore not a recreational activity as defined by Wis. Stat. Ann. § 895.52 (*Minnesota Fire & Casualty Insurance Co.*, p. 531). The court characterized the boys' activity as "mischievous conduct" that did not fall under the provisions of the recreational user statute (p. 536). One of the factors used in deciding the boys were not engaged in a recreational act was the fact that Paper Recycling had not opened its property to public recreational use and, therefore, activities occurring on their property could not be considered recreational activities.

In a dissent Justice Wilcox criticized the majority for improperly concentrating on the boy's activity of playing with matches, which constituted

a "single momentary diversion" from their primary purpose for being on the property (*Minnesota Fire & Casualty Insurance Co.*, 2001, p. 540). In his opinion, the primary purpose with which the boys entered the premises was to play and this would fall under a recreational activity covered by the statute. After this case, four justices wrote separately to express a desire for the Wisconsin Legislature to revisit and clarify the Wisconsin recreational user statute. Justice Bradley, in a concurring opinion, acknowledged the problematic issues inherent in Wis. Stat. Ann. § 895.52 and stated "the statute as written is difficult to apply" and that "this case illustrates the deficiencies" of interpreting "the amorphous definition" of what was intended to constitute a recreational activity (*Minnesota Fire & Casualty Insurance Co.*, p. 538-539). He further stated,

Given the difficulties inherent in the statute as currently drafted, I believe it is time that the legislature revisit it. A coherent purpose and scheme are needed to provide guidance, consistency, and reason to our application of the statute. I urge the law revision committee and the reviser of statutes to exercise their statutory duties under Wis. Ann. Stat. § 13.83(1) and § 13.93(2)(d) and examine the statute, as it is in need of revision (p. 539).

Vagueness related to the recreational activities actually covered in a statute often makes it difficult for courts to determine whether a specific activity is actually covered. For example, Ohio lists "swimming" as an activity covered by the Ohio recreational user statute. An Ohio court found that sitting on a beach watching others swim was held to be a recreational activity under the statute (*Fetherolf v. State, Dep't of Natural Resources, Div. of Parks & Recreation*, 1982). On the other hand, a California court ruled that although "hiking" and "riding" were listed as recreational activities under the California recreational user statute, "walking" with a bicycle was not and therefore, the landowner was liable for injuries to the participant (*Gerkin v. Santa Clara Valley Water District et al.*, 1979).

Finally, this study showed inconsistency in the manner in which courts have interpreted statutory language regarding the charging of fees. While most states preclude protection for landowners who charge admission fees or receive some other type of monetary consideration, other states allow for certain types of compensation. Landowners who are confused as to the types or amount of compensation allowed under their state statute may simply decide to cease allowing outside participants to recreate on their land. Greater consistency by the courts may help to better delineate permissible compensation and give landowners clearer information.

CONCLUSION

Recreational user statutes exist in every state and serve an important role in providing additional land for recreational opportunities. Due to the government's inability to keep up with the public demand for recreational lands, it is important to encourage private landowners to open their land for public recreational use. In addition to private landowners there has been an increased willingness by the courts to extend the protections afforded by recreational user statutes to public and governmental landowners.

Likewise, jurisdictions are now more likely to apply the benefits of recreational user statutes to developed recreational facilities and lands, a shift away from the undeveloped, rural lands originally intended in the statutes. Although every state has these statutes, different jurisdictions have rendered conflicting court decisions. The vagueness contained in these statutes adds to the frustration for both landowners and the courts. Creating greater uniformity and reducing this vagueness in recreational user statutes could aid the courts in better interpreting the language leading to proper and more uniform application. One possible remedy would be for states to adopt the statutory language contained within the 1979 Model Act. This would help clarify uncertainties including application to governmental landowners. Greater predictability concerning the application of recreational user statutes would aid both landowners and recreational users. Additionally, increasing public awareness of these statutes may result in more land becoming available for public recreational use.

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APPENDIX

State & Citation	Year	Applicable Areas	Duty/Liability of Landowner	Activities Covered	Exclusions	Relevant Case Law
Alabama Ala. Code § 35-15-1-5 & 20-28	1965	Applies to public and private land Land, water, buildings, structures, machinery, and other appurtenances used for or susceptible of recreational use Non-commercial use	No duty of care to keep premises safe for entry and use Not liable for injury to person or property	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, archeological, scenic or scientific sites, and any related activity	Does not limit liability for willful or malicious failure to guard or warn against a dangerous condition, use, structure, or activity that is not apparent to users but that landowner has knowledge of Use cannot be commercial enterprise for a profit Owner must establish public use	Russell v. TVA, 564 F. Supp. 1043 (N.D. Ala. 1983) Poole v. City of Gadsden, 541 So. 2d 510 (Ala. 1989) Driskill v. Alabama Power Co., 374 So. 2d 265 (Ala. 1979)
Alaska Alaska Stat. § 09.65.200	1988	Unimproved land, including trails, an abandoned aircraft landing area, or a road built to provide access to natural resource extraction, but which is no longer maintained or used, natural bodies of water (lakes and rivers)	Not liable for injuries or death for persons entering or remaining on unimproved land	"Recreation", not specified	Does not limit liability for an act or omission that constitutes gross negligence or reckless or intentional misconduct Landowner cannot take compensation for use or occupancy of the land	University of Alaska v. Shanti, 835 P. 2d 1225 (Alaska 1992)
Arizona Ariz. Rev. Stat. Ann. § 33-1551	1983	Applies to public and private land Agricultural land, range, open space, park, flood control, mining, forest or railroad lands, paved or unpaved multi-use trails, and other similar lands Any building, improvement, body of water, channel, canal, or structure on such lands	Not liable for injury to recreational user	Hunting, fishing, trapping, camping, hiking, riding, exercising, swimming, or engaging in similar pursuits Participation in educational programming	Does not limit liability for willful, malicious, or grossly negligent conduct Landowner cannot charge a fee Does not limit liability that exists for proper maintenance of an attractive nuisance, except with respect to dams, channels, canals, and lateral ditches	Newman v. Sun Valley Crushing Co., 844 P.2d 623 (Ariz. Ct. App. 1992) Salt River Valley Water Users Association v. Superior Ct., 870 P.2d 1166 (Ariz. Ct. App. 1993)

State & Citation	Year	Applicable Areas	Duty/Liability of Landowner	Activities Covered	Exclusions	Relevant Case Law
Arkansas Ark. Code Ann. §§ 18 - 11 - 301 - 307	1965	Applies to public and private land (case law) Land, roads, water, watercourses, private ways and buildings, structures, and machinery or equipment attached to the realty	No duty of care to keep the premises safe for entry by others for recreational purposes No duty to give warning of a dangerous condition, use structure, or activity on the premises	Hunting, fishing, swimming, boating, camping, picnicking, hiking, pleasure driving, nature study, water skiing, winter sports, spelunking Viewing or enjoying historical, archeological, scenic, or scientific sites and any other activity undertaken for exercise, education, relaxation, or pleasure on land owned by another	Does not limit liability for malicious, but not mere negligent, failure to warn against an ultra-hazardous condition, structure, personal property, use, or activity known by the owner to be dangerous Does not limit liability for injuries sustained in any case in which the owner charges a fee (exception: land leased to the state)	Mandel v. U.S., 545 F. Supp. 907 (W.D. Ark. 1982) Roten v. U.S., 850 F. Supp. 786 (W.D. Ark. 1994)
California Calif. Civ. Code § 846 Calif. Gov't. Code § 51238.5	1963 1972	Applies to public and private land (case law), but Tort Claims Act takes precedence Resort on a river	No duty of care to keep premises safe or give any warning of hazardous conditions, uses of, structures, or activities Duty to locate and warn swimmers of sunken logs, rocks, and other hazards	Fishing, hunting, camping, water sports, hiking, spelunking, sport parachuting, riding (vehicular and animal), snowmobiling, picnicking, rock collecting, sightseeing, nature study, gardening, gleaming, hang gliding, winter sports, viewing or enjoying historical, archeological, scenic, or scientific sites	Does not limit liability for willful or malicious failure to guard or warn against a dangerous condition, use, structure, or activity. Entry for consideration not covered Those expressly invited and not simply allowed are not covered	English v. Marin Mun. Water Dist., 136 Cal. Rptr. 224 (Cal. Ct. App. 1977) Lostritto v. Southern Pac. Transportation Co., 140 Cal. Rptr. 905 (Cal. Ct. App. 1977) Shipman v. Boething Treeland Farms, Inc., 92 Cal. Rptr. 2d 566 (Cal. Ct. App. 2000)
Calif. Health & Safety Code §§ 24050 et. seq.	1939					

State & Citation	Year	Applicable Areas	Duty/Liability of Landowner	Activities Covered	Exclusions	Relevant Case Law
Colorado Colo. Rev. Stat. §§ 33-41-101 - 106 Colo. Rev. Stat. §§ 29-7.5-101 - 106	1963 1984	Applies to public and private land Land, roads, water, watercourses, private ways, streams, paths, trails, and buildings and structures thereon. Transmission right-of-way National Forest Service Land	No duty to ensure the safety of premises. Not liable for injury to person or property	Hunting, fishing, camping, picnicking, hiking, horseback riding, snowshoeing, skiing, bicycling, riding or driving motorized rec. vehicles, swimming, tubing, diving, spelunking, exploring, hang gliding, rock climbing, kite flying, roller skating, bird watching, ice skating, or engaging in any other form of sports or recreational activity	Does not limit liability for willful or malicious failure to guard or warn against a known dangerous condition, use, structure, or activity likely to cause harm Attractive nuisance not covered Landowner cannot charge a fee Does not limit liability for gross negligence and willful misconduct	Kirkland v. U.S., 930 F. Supp. 1443 (D. Colo. 1996) Smith v. Cutty's Inc., 742 P.2d 347 (Colo. Ct. App. 1987)
Connecticut Conn. Gen. Stat. §§ 52-557E-k	1971	Applies to public and private land (case law) Land, roads, water, watercourses, private ways and buildings, structures, and machinery or equipment when attached to the realty Applies to land leased to the state	No duty of care to keep premises safe or to give warning of a dangerous condition, use, structure, or activity Not liable for injury to person or property	Hunting, fishing, swimming, boating, camping, picnicking, hiking, pleasure driving, nature study, water skiing, snow skiing, sledding, hang gliding, sport parachuting, hot air ballooning, and viewing or enjoying historical, archeological, scenic, or scientific sites	Does not limit liability for willful or malicious failure to warn against a dangerous condition, use, structure, or activity Landowner cannot charge a fee	Manning v. Barenz, 603 A.2d 399 (Conn. 1992) Scranchansky v. Plainfield, 627 A.2d 1329 (Conn. 1993)
Delaware Del. Code Ann. tit. 7, §§ 5901-5907	1953	Undeveloped land and water areas, primarily rural or semi-rural land, water, or marsh (not applicable to urban or residential areas) Applies to land leased to the state	No duty to ensure the safety of premises. Not liable for injury to person or property	Hunting, fishing, swimming, boating, camping, picnicking, hiking, pleasure driving, nature study, water skiing, winter sports, and viewing or enjoying historical, archeological, scenic, or scientific sites	Does not limit liability for willful or malicious failure to warn against a dangerous condition, use, structure, or activity Landowner cannot charge a fee	Gibson v. Keith, 492 A.2d 241 (Del. 1985) Higgins v. Walls, A.2d, 2005 Del Super. LEXIS 285 (Del. Super. Ct. 2005)

State & Citation	Year	Applicable Areas	Duty/Liability of Landowner	Activities Covered	Exclusions	Relevant Case Law
Florida Fla. Stat. Ann. § 375.251	1963	Land, water areas, and park areas used for recreational purposes Not applicable to public lands	No duty of care to keep the area safe for use by others or give warnings of hazards Not liable for injury to person or property	Hunting, fishing, swimming, boating, camping, picnicking, hiking, pleasure driving, nature study, water skiing, motorcycling, and viewing or enjoying historical, archeological, scenic, or scientific sites	Does not limit liability for deliberate, willful, or malicious injury to persons or property Landowner cannot charge a fee	McPhee v. Dade Cty., 362 So. 2d 74 (Fla. Dist. Ct. App. 1978) Metropolitan Dade Cty. v. Yelvington, 392 So. 2d 911 (Fla. Dist. Ct. App. 1980)
Georgia Ga. Code Ann. §§ 51-3-20 to 26	1965	Applies to public and private land (case law) Land, roads, water, watercourses, private ways and buildings, structures, and machinery or equipment when attached to the realty	No duty of care to keep premises safe or give any warning of hazardous conditions, uses of, structures, or activities Not liable for injury to person or property	Hunting, fishing, swimming, boating, camping, picnicking, hiking, pleasure driving, nature study, water skiing, winter sports, and viewing or enjoying historical, archeological, scenic, or scientific sites	Not applicable in areas where use is expressly denied through the use of "keep out" signs Does not limit liability for willful or malicious failure to warn against a dangerous condition, use, structure, or activity Landowner cannot charge a fee	Cedeno v. Lockwood, Inc., 301 S.E.2d 265 (Ga. 1983) Bourm v. Henning, 166 S.E.2d 89 (Ga. 1969) Cooley v. City of Carrollton, 547 S.E.2d 689 (Ga. Ct. App. 2001)
Hawaii Hawaii Rev. Stat. §§ 520-1 - 8	1969	Lands, water, private ways Land, roads, water, watercourses, private ways and buildings, structures, and machinery or equipment when attached to the realty Does not apply to public lands	No duty of care to keep premises safe or give any warning of hazardous conditions, uses of, structures, or activities Not liable for injury to person or property	Hunting, fishing, swimming, boating, camping, picnicking, hiking, pleasure driving, nature study, water skiing, winter sports, and viewing or enjoying historical, archeological, scenic, or scientific sites	Does not limit liability for willful or malicious failure to warn against a dangerous condition, use, structure, or activity which the owner knowingly creates or perpetuates Landowner cannot charge a fee Does not cover injuries suffered by house guests	V'ieess v. Sea Enters Corp., 634 F. Supp. 226 (D. Haw. 1986) Geremia v. State, 573 P.2d 107 (Haw. 1977)

State & Citation	Year	Applicable Areas	Duty/Liability of Landowner	Activities Covered	Exclusions	Relevant Case Law
Idaho Idaho Code Ann. §§ 36-1601 - 1604	1976	Applies to public and private land Land, roads, trails, water, watercourses, irrigation dams, water control structures, head gates, private or public ways and buildings, structures, and machinery or equipment attached to or used on the realty Applies to land leased to the state	No duty of care to keep premises safe or give any warning of hazardous conditions, or uses of, structures, or activities Not liable for injury to person or property	Hunting, fishing, swimming, boating, rafting, tubing, camping, picnicking, hiking, pleasure driving, bicycling, running, playing on playground equipment, skateboarding, athletic competition, nature study, water skiing, animal riding, motorcycling, snowmobiling, rec. vehicles, winter sports, and viewing or enjoying historical, archeological, scenic, or scientific sites	Does not limit liability for willful or wanton conduct that causes injury to a recreational user (case law)	<i>Tomich v. City of Pocatello</i> , 901 P.2d 501 (Idaho 1995) <i>Ambrose ex rel. Ambrose v. Buhl Joint Sch. Dist.</i> , No. 412, 887 P.2d 1088 (Idaho Ct. App. 1994)
Illinois 745 Ill. Comp. Stat. Ann. 65/1 - 65/7	1965	Land, roads, water, watercourses, private ways and buildings, structures, and machinery or equipment when attached to the realty (does not include residential buildings or property) Applies to public and private land and land leased to the state	No duty of care to keep premises safe or give any warning of hazardous conditions, or uses of, structures, or activities Not liable for injury to person or property	Hunting, recreational shooting, or any activity relating to hunting or recreational shooting	Does not limit liability for willful and wanton failure to guard or warn against a dangerous condition, use, structure, or activity Landowner cannot charge a fee	<i>Mitchell v. Waddell</i> , 544 N.E.2d 1261 (Ill. App. Ct. 1989) <i>Phillips v. Community Ctr. Found. & Children's Farm</i> , 238 Ill. App.3d 505 (Ill. App. Ct. 1992)

State & Citation	Year	Applicable Areas	Duty/Liability of Landowner	Activities Covered	Exclusions	Relevant Case Law
<p>Indiana Ind. Code Ann. § 14-1-16-1-28 (proposed)</p> <p>Ind. Code Ann. § 4-20.5-1-1</p> <p>Ind. Code Ann. § 14-22-10-2 to 2.5</p>	<p>1995</p> <p>1993</p> <p>1995</p>	<p>Caves, premises of landowner (not specified)</p> <p>Applies to public and private land</p>	<p>No duty of care to keep premises safe or give any warning of dangerous conditions, uses of, structures, or activities</p> <p>Not liable for injury to person or property</p>	<p>Swimming, camping, hiking, sightseeing, hunting, fishing, trapping</p>	<p>Does not limit liability for an attractive nuisance</p> <p>Does not limit liability for injury to a person due to a malicious or evil act of the owner</p> <p>Does not limit liability for willful or malicious failure to guard or warn against a dangerous condition, use, structure, or activity</p> <p>Landowner cannot charge a fee (exception: rec. vehicle operation)</p>	<p>Kelly v. Ladywood Apts., 622 N.E.2d 1044 (Ind. Ct. App. 1993)</p> <p>Civilis v. Stucker, 705 N.E. 2d 524 (Ind. Ct. App. 1999)</p> <p>Cunningham v. Bakker Produce, Inc., 712 N.E. 2d 1002 (Ind. Ct. App. 1999)</p>
<p>Iowa Iowa Code §§ 461C.1 to .7 (For. Iowa Code §§ 111C.1 to .7)</p>	<p>1967</p>	<p>Abandoned or inactive surface mines, caves, and land used for agricultural purposes, marshlands, timber, grasslands, and privately owned roads, water, water courses, private ways and buildings, structures and machinery or equipment appurtenant thereto</p> <p>Not applicable to public lands</p>	<p>No duty of care to keep premises safe or give any warning of hazardous conditions, uses of, structures, or activities</p> <p>Not liable for injury to person or property</p>	<p>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, archeological, scenic, or scientific sites</p>	<p>Does not limit liability for willful or malicious failure to guard or warn against a dangerous condition, use, structure, or activity</p> <p>Landowner cannot charge a fee</p>	<p>Bird v. Economy Brick Homes, Inc., 498 N.W.2d 408 (Iowa 1993)</p> <p>Scott v. Wright, 486 N.W.2d 40 (Iowa 1992)</p>

State & Citation	Year	Applicable Areas	Duty/Liability of Landowner	Activities Covered	Exclusions	Relevant Case Law
Kansas Kan. Stat. Ann. §§ 58-3201 to 3207	1965	Land, roads, water, water courses, private ways and buildings, structures, and machinery or equipment attached to the realty including agricultural and non-agricultural land Applies to land leased to the state	No duty of care to keep premises safe or give any warning of hazardous conditions, uses of, structures, or activities Not liable for injury to person or property	Hunting, fishing, swimming, boating, camping, picnicking, hiking, pleasure driving, nature study, water skiing, winter sports, and viewing historical, archeological, scenic, or scientific sites	Does not limit liability for willful or malicious failure to guard or warn against a dangerous condition, use, structure, or activity Landowner cannot charge a fee (exception: owner of agricultural lands may charge a fee)	Gonzales v. Board of Shawnee County Comm'rs, 799 P.2d 491 (Kan. 1990) Bingaman v. Kansas City Power & Light Co., 1 F.3d 976 (10th Cir. 1993) Robison v. State of Kansas, 43 P.3d 821 (Kan. Ct. App. 2002)
Kentucky Ky. Rev. Stat. Ann. § 150.645 Ky. Rev. Stat. Ann. § 411.190	1968 1966	Applies to public and private land (case law) Land, roads, water, water courses, private ways and buildings, structures, and machinery or equipment attached to the realty	No duty of care to keep premises safe or give any warning of hazardous conditions, uses of, structures, or activities Not liable for injury to person or property	Hunting, fishing, swimming, boating, camping, picnicking, hiking, bicycling, horseback riding, pleasure driving, nature study, water skiing, winter sports, and viewing or enjoying historical, archeological, scenic, or scientific sites	Does not limit liability for willful or malicious failure to guard or warn against a dangerous condition, use, structure, or activity Landowner cannot charge a fee	Shortridge v. Rice, 929 S.W.2d 194 (Ky. Ct. App. 1996) Midwestern, Inc. v. Northern Ky. Community Ctr., 736 S.W.2d 348 (Ky. Ct. App. 1987)
Louisiana La. Rev. Stat. Ann. § 9:2791 La. Rev. Stat. Ann. § 9:2795	1964 1975	Applies to public and private land (case law) Land, roads, water, water courses, private ways and buildings, structures, and machinery or equipment thereon used for recreational purposes Applies to land leased to the state	No duty of care to keep premises safe or give any warning of hazardous conditions, uses of, structures, or activities Not liable for injury to person or property	Hunting, fishing, trapping, swimming, boating, camping, picnicking, hiking, bicycling, horseback riding, rec. vehicle use, nature study, water skiing, ice and roller skating/blading, skate boarding, summer and winter sports, and viewing or enjoying historical, archeological, scenic, or scientific sites	Does not limit liability for deliberate or willful malicious injury to persons or property or failure to warn against a dangerous condition, use, structure, or activity Not applicable to premises used as a commercial or recreational enterprise for profit	Dear v. Crosby Chems. Inc., 670 So. 2d 775 (La. Ct. App. 1996) Harlan v. Frazier, 635 F. Supp. 718 (W.D. La. 1986) Loforte v. Wayne Estay Shrimp Co., 870 So.2d 1171 (La. Ct. App. 2004)

State & Citation	Year	Applicable Areas	Duty/Liability of Landowner	Activities Covered	Exclusions	Relevant Case Law
Maine Me. Rev. Stat. Ann. tit. 14, § 159-A	1979	Improved and unimproved lands, private ways, roads, and buildings or structures on those lands and waters standing on, flowing through or adjacent to those lands Not applicable to public lands	No duty of care to keep premises safe or give any warning of hazardous conditions, uses of, structures, or activities Not liable for injury to person or property	Hunting, fishing, trapping, swimming, boating, camping, environmental education and research, picnicking, hiking, caving, sight-seeing, rec. vehicle use, hang gliding, skiing, dog sledding, equine activities, sailing, canoeing, rafting, biking, activities involving the harvesting or gathering of forest, field, or marine products (excludes commercial agricultural or timber harvesting)	Does not limit liability for willful or malicious failure to guard or warn against a dangerous condition, use, structure, or activity Entry for consideration not covered	Jordan v. H.C. Haynes, Inc., 504 A.2d 618 (Me. 1986) Robbins v. Great Northern Paper Co., 557 A.2d 614 (Me. 1989) Noel v. Ogunquit, 555 A.2d 1054 (Me. 1989)
Maryland Md. Nat. Res. Code Ann. §§ 5-1101 - 1108	1957	Land, roads, water, water courses, private ways and buildings, structures, and machinery or equipment when attached to realty Applies to land leased to the state	No duty of care to keep premises safe or give any warning of dangerous conditions, uses of, structures, or activities Not liable for injury to person or property	Educational purposes: Nature study, farm visitations, practice judging of livestock and agriculture, visitations for historical reenactments, observation of historical, archeological or scientific sites Recreational purposes: Any recreational pursuit	Does not limit liability for willful or malicious failure to guard or warn against a dangerous condition, use, structure, or activity Landowner cannot charge a fee	Fagerhus v. Host Marriott Corp., 795 A.2d 221 (Md. Ct. Spec. App. 2002) Whalen v. Mayor & City Council of Balt., 883 A.2d 228 (Md. Ct. Spec. App. 2005)

State & Citation	Year	Applicable Areas	Duty/Liability of Landowner	Activities Covered	Exclusions	Relevant Case Law
Massachusetts Mass. Gen. Laws Ann. ch. 21, § 17C	1972	Applies to public and private land Lands, wetlands, rivers, streams, ponds, lakes, and other bodies of water, as well as structures, buildings, and equipment attached to the land Applies to land leased to the state	Not liable for injury to person or property	Recreational, conservation, scientific, educational, environmental, ecological, research, religious, or charitable purposes (activities not specified)	Does not limit liability for willful, wanton, or reckless conduct Landowner cannot charge a fee	<i>Molinaro v. Town of Northbridge</i> , 643 N.E.2d 1043 (Mass. 1995) <i>Sandler v. Commonwealth</i> , 644 N.E.2d 641 (Mass. 1995)
Michigan Mich. Comp. Laws Ann. § 324.73301	1994	Applies to public and private land (case law) Land of any size, including urban, suburban, subdivided, and rural land Michigan railway or other public trail	Not liable for injury to person or property	Fishing, hunting, trapping, camping, hiking, sightseeing, motorcycling, snowmobiling, or any other recreational use or trail use Gleaning agricultural farm products Production of agricultural goods	Does not limit liability for gross negligence or willful and wanton misconduct of the owner Landowner cannot charge a fee	<i>Neal v. Wilkes</i> , 685 N.W.2d 648 (Mich. 2004) <i>Lucchesi v. Kent Cty. Rd. Com.</i> , 312 N.W.2d 86 (Mich. Ct. App. 1981)
Minnesota Minn. Stat. Ann. §§ 604A.20 - 27	1994	Applies to public and private land (case law) Land, easements, right-of-ways, roads, water, water courses, private ways and buildings, structures, and other improvements to land, and machinery or equipment when attached to land Idled or abandoned, water-filled mine pits to which the public has access	No duty of care to keep premises safe or give any warning of dangerous conditions; uses of, structures, or activities Not liable for injury to person or property No duty to curtail use of the land during its use for recreational purpose	Hunting, fishing, trapping, swimming, boating, camping, rock climbing, picnicking, hiking, caving, bicycling, horseback riding, firewood gathering, pleasure driving, snowmobiling, rec. vehicle use, nature study, water skiing, winter sports, using trails, and viewing or enjoying historical, archeological, scenic, or scientific sites	Does not limit liability for an owner willingly taking action to cause another injury Landowner cannot charge a fee	<i>Louis v. Louis</i> , 636 N.W.2d 314 (Minn. 2001) <i>Watters V. Buckbee Mears Co.</i> , 354 N.W.2d 848 (Minn. Ct. App. 1984) <i>Lundstrom v. City of Apple Valley</i> , 587 N.W.2d 517 (Minn. Ct. App. 1998)

State & Citation	Year	Applicable Areas	Duty/Liability of Landowner	Activities Covered	Exclusions	Relevant Case Law
<p>Mississippi Miss. Code Ann. §§ 89-2-1 - 7</p> <p>Miss. Code Ann. §§ 89-2-21 - 27</p>	<p>1978</p> <p>1986</p>	<p>All real property, waters and private ways, and all trees, buildings and structures which are located on such real property, waters, and private ways</p>	<p>No duty of care to keep premises safe or give any warning of dangerous conditions, uses of, structures, or activities</p> <p>Not liable for injury to person or property</p> <p>Landowner must give public notice of the availability of lands for recreational use</p>	<p>Hunting, fishing, swimming, boating, camping, picnicking, hiking, pleasure driving, nature study, water skiing, and visiting historical, archeological, scenic, or scientific sites</p>	<p>Does not limit liability for deliberate, willful, or malicious injury to persons or property or failure to warn against a dangerous condition, use, structure, or activity</p> <p>Landowner cannot charge a fee</p> <p>Does not apply to land on which a concession is operated and selling products</p>	<p>Dumas v. Pike Cty., 642 F. Supp. 131 (S.D. Miss. 1986)</p>
<p>Missouri Mo. Ann. Stat. §§ 537.345 - 347</p>	<p>1983</p>	<p>Applies to public and private land</p> <p>All real property, land and water, and all structures, fixtures, equipment and machinery thereon</p> <p>Does not cover swimming pools or residential areas</p> <p>Does not include land within corporate boundaries of any city, municipality, town, or village in the state</p>	<p>No duty of care to keep premises safe or give any warning of dangerous conditions, uses of, structures, or activities</p> <p>Not liable for injury to person or property</p>	<p>Hunting, fishing, camping, picnicking, biking, nature study, winter sports, and visiting or enjoying archeological or scenic sites, or other similar activities undertaken for recreation, exercise, education, relaxation, or pleasure</p>	<p>Does not limit liability for malicious or grossly negligent failure to guard or warn against a dangerous condition, structure, or personal property</p> <p>Does not limit liability for negligent failure to guard against an ultrahazardous condition</p> <p>Landowner cannot charge a fee</p>	<p>Wilson v. U.S., 989 F.2d 953 (8th Cir. 1993)</p> <p>Loneragan v. May, 53 S.W.3d 122 (Mo. Ct. App. 2001)</p>

State & Citation	Year	Applicable Areas	Duty/Liability of Landowner	Activities Covered	Exclusions	Relevant Case Law
Montana Mont. Code Ann. §§ 70-16-301 - 302	1965	Applies to public and private land Land, roads, water, watercourses, and private ways, including any improvements, buildings, structures, machinery, and equipment on property Surface waters flowing over or through land (prescriptive easement not required for recreational use)	No duty of care to keep premises safe or give any warning of dangerous conditions, uses of structures, or activities Not liable for injury to person or property	Hunting, fishing, swimming, boating, waterskiing, camping, picnicking, pleasure driving, biking, winter sports, hiking, touring or visiting cultural and historical sites and monuments, spelunking, or other pleasure expeditions	Does not limit liability for injuries resulting from owner's willful and wanton misconduct	Fisher v. U.S., 534 F. Supp. 514 (D. Mont. 1982) Limerhand v. Big Ditch Co., 706 P.2d 491 (Mont. 1985)
Mont. Code Ann. §§ 23-2-321 - 322	1985					
Nebraska Neb. Rev. Stat. §§ 37-1001 to 1008	1991	Applies to public and private land (case law) Abandoned railroad rights-of-way	No duty of care to keep premises safe or give any warning of dangerous conditions, uses of structures, or activities Not liable for injury to person or property	Hunting, fishing, swimming, boating, camping, picnicking, hiking, pleasure driving, nature study, water skiing, winter sports, and visiting, viewing, or enjoying historical, archeological, scenic, or scientific sites	Does not limit liability for willful or malicious failure to guard or warn against a dangerous condition, use, structure, or activity	Veskerna v. City of West Point, 578 N.W.2d 25 (Neb. 1998)
Neb. Rev. Stat. §§ 37-729 to 735 * § 37-734 deemed unconstitutional (case law)	1965	Land, roads, water, water courses, private ways and buildings, structures, and machinery or equipment when attached to realty				Dykes v. Scotts Bluff Cty. Ag. Socy., Inc., 617 N.W.2d 817 (Neb. 2000)

State & Citation	Year	Applicable Areas	Duty/Liability of Landowner	Activities Covered	Exclusions	Relevant Case Law
Nevada Nev. Rev. Stat. Ann. § 41.510	1963	Applies to public and private land (case law) Does not include swimming pools Not specified in the statute, but the intent of the legislature is that the property be rural, semi-rural, or non-residential (case law)	No duty of care to keep premises safe or give any warning of dangerous conditions, uses of, structures, or activities Not liable for injury to person or property	Hunting, fishing, trapping, camping, hiking, picnicking, hang gliding or para-gliding, spelunking, collecting rocks, winter and water sports, riding in animals or vehicles, nature study, gleaming, gardening, viewing or enjoying historical, archeological, scenic, natural, or scientific sites Crossing over to public land or land dedicated for public use	Does not limit liability for willful or malicious failure to guard or warn against a dangerous condition, use, structure, or activity Landowner cannot charge a fee	<i>Frasure v. U.S.</i> , 256 F.Supp.2d 1180 (D. Nev. 2003) <i>Neal v. Bently Nevada Corp.</i> , 771 F.Supp. 1068 (D. Nev. 1991)
New Hampshire N.H. Rev. Stat. Ann. § 212:34	1961	Lands not specified	No duty of care to keep premises safe or give any warning of dangerous conditions, uses of, structures, or activities Not liable for injury to person or property	Hunting, fishing, trapping, horseback riding, water sports, winter sports, snowmobiling, hiking, sightseeing, removal of firewood, rec. vehicle use	Does not limit liability for willful or malicious failure to guard or warn against a dangerous condition, use, structure, or activity Entry for consideration not covered	<i>Kannner v. Combustion Engineering</i> , 701 F. Supp. 943 (D. N.H. 1988) <i>Collins v. Martella</i> , 17 F.3d 1 (1st Cir. 1994)
New Jersey N.J. Stat. Ann. §§ 2A:42A-1 to 5 N.J. Stat. Ann. §§ 2A:42A-6, 7	1968 1985	Applies to public and private land (case law) Non-residential, rural, or semi-rural, unimproved lands Agricultural or horticultural lands	No duty of care to keep premises safe or give any warning of dangerous conditions, uses of, structures, or activities Not liable for injury to person or property	Hunting, fishing, trapping, horseback riding, training of dogs, hiking, camping, picnicking, swimming, skating, skiing, studding, tobogganing, snowmobiling, rec. vehicle use, and any other outdoor sport, game, or recreational activity, including instruction in any thereof	Does not limit liability for willful or malicious failure to guard or warn against a dangerous condition, use, structure, or activity Entry for consideration not covered	<i>Harrison v. Middlesex Water Co.</i> , 386 A.2d 405 (N.J. Super. Ct. App. Div. 1978) <i>Labree v. Millville Mfg., Inc.</i> , 481 A.2d 286 (N.J. Super. Ct. App. Div. 1984)

State & Citation	Year	Applicable Areas	Duty/Liability of Landowner	Activities Covered	Exclusions	Relevant Case Law
New Mexico N.M. Stat. Ann. § 17-4-7	1973	Applies to public and private land (case law)	No duty of care to keep premises safe or give any warning of dangerous conditions, uses of structures, or activities	Hunting, fishing, trapping, camping, hiking, sightseeing, or any other recreational use	Entry for consideration not covered, including the payment of a fee	Maldonado v. U.S., 893 F.2d 267 (10th Cir. 1990) Moore v. Burn Const. Co., 646 P.2d 1254 (N.M. Ct. App. 1982) Vandolson v. Constructors, Inc., 678 P.2d 1184 (N.M. Ct. App. 1984)
N.M. Stat. Ann. § 16-3-9	1967		Not liable for injury to person or property	Off-highway motor vehicle use		
N.M. Stat. Ann. § 66-3-1013	1967					
New York N.Y. Gen. Oblig. Law § 9-103	1963	Undeveloped land (case law)	No duty of care to keep premises safe or give any warning of dangerous conditions, uses of structures, or activities	Hunting, fishing, organized gleaning, canoeing, boating, trapping, hiking, skiing, tobogganing, sledding, speleological activities, horseback riding, biking, hang gliding, rec. vehicle use, cutting or gathering of wood for non-commercial purposes, or the training of dogs	Does not limit liability for gross negligence Does not limit liability for willful or malicious failure to guard or warn against a dangerous condition, use, structure, or activity Entry for consideration not covered	Smith v. State, 124 A.D.2d 296 (N.Y. App. Div. 1986) Ferres v New Rochelle, 68 N.Y.2d 446 (N.Y. 1986) Bush v. Saugerties, 114 A.D.2d 176 (N.Y. App. Div. 1986)
North Carolina N.C. Gen. Stat. Ann. §§ 38A-1-4	1995	Real property, land, and water (does not mean include dwellings used as a living space and the property immediately adjacent to and surrounding such dwellings) Not applicable to public lands	Duty of care is the same as for a trespasser Landowner has a duty to inform direct invitees of artificial or unusual hazards of which the owner has actual knowledge	Educational purposes, viewing historical, natural, archeological, or scientific sites Any activity undertaken for recreation, exercise, education, relaxation, refreshment, diversion, or pleasure	Does not apply to an owner who invites a person to use the land for a purpose for which the land is regularly used Landowner cannot charge a fee, even if the fee is not charged in that instance Does not cover land used for commercial enterprise Attractive nuisance not covered	Estate of Ledford ex rel. Jarnigan v. U.S., 299 F. Supp.2d 544 (W.D.N.C. 2004) Estate of Purkey v. U.S., 299 F. Supp.2d 539 (W.D.N.C. 2004)

State & Citation	Year	Applicable Areas	Duty/Liability of Landowner	Activities Covered	Exclusions	Relevant Case Law
North Dakota N.D. Cent. Code §§ 53-08-01 - 06	1965	Applies to public and private land Lands, roads, water, watercourses, and ways and buildings, structures, and machinery or equipment thereon Applies to land leased to the state	No duty of care to keep premises safe or give any warning of dangerous conditions, uses of, structures, or activities Not liable for injury to person or property	Any activity undertaken for exercise, education, relaxation, or pleasure	Does not limit liability for willful or malicious failure to guard or warn against a dangerous condition, use, structure, or activity Landowner cannot charge a fee (charging fees for one year can affect the applicability of this statute in the next year, depending on the total amount of fees collected)	<i>Fastow v. Burleigh Cty. Water Resource Dist.</i> , 415 N.W.2d 505 (N.D. 1987) <i>Hovland v. City of Grand Forks</i> , 563 N.W.2d 384 (N.D. 1997)
Ohio Ohio Rev. Code Ann. §§ 1533.18 & 1533.181	1963	Applies to public and private land (case law) All privately held lands, ways, waters, and any buildings and structures thereon	No duty of care to keep premises safe Not liable for injury to person or property	Hunting, fishing, camping, trapping, hiking, swimming, snowmobiling, rec. vehicle use, and other recreational pursuits	Landowner cannot charge a fee or receive other consideration	<i>Moss v. Dept. of Natural Resources</i> , 404 N.E.2d 742 (Ohio 1980) <i>Fuehrer v. Westerville City Sch. Dist. Bd. Of Educ.</i> , 574 N.E.2d 448 (Ohio 1991)
Oklahoma Ok. Stat. Ann. tit. 76, § 10.1 Ok. Stat. Ann. tit. 2, § 16-71.2 - .6	1965 1965	Applies to public and private land (case law) Real property, roads, water, watercourses, private ways, buildings, structures, and machinery or equipment when attached to realty Land primarily used for farming or ranching activities Applies to land leased to the state	No duty of care to keep premises safe or give any warning of dangerous or hazardous conditions, uses of, structures, or activities Not liable for injury to person or property	Hunting, fishing, swimming, boating, camping, hiking, picnicking, pleasure driving, jogging, cycling, other sporting events and activities, nature study, water skiing, jet skiing, winter sports, and viewing or enjoying historical, archeological, scenic, or scientific sites	Does not limit liability for deliberate, willful or malicious injury or failure to guard or warn against a dangerous condition, use, structure, or activity. Landowner may charge \$10 per acre per year for that land used for farming or ranching land used for recreational purposes	<i>Hughley v. Grand River Dam Authority</i> , Okla., 897 P.2d 1138 (Okla. 1995) <i>Sutherland v. Saint Francis Hospital, Inc.</i> , Okla., 595 P.2d 780 (Okla. 1979)

State & Citation	Year	Applicable Areas	Duty/Liability of Landowner	Activities Covered	Exclusions	Relevant Case Law
<p>Oregon Or. Rev. Stat. Ann. §§ 105.672, 676, 682, 692 & 696</p>	1995	<p>Applies to public and private land (case law)</p> <p>All real property</p> <p>Fish migration dam and waters below it (case law)</p>	<p>Not liable in contract or tort for any personal injury, death, or property damage that arises out of the use of land for recreational purposes, woodcutting, or harvesting forest products</p>	<p>Hunting, fishing, swimming, boating, camping, hiking, picnicking, nature study, outdoor educational activities, water skiing, winter sports, and viewing or enjoying historical, archeological, scenic, or scientific sites or volunteering for any public purpose project</p> <p>Woodcutting and harvesting of forest products</p>	<p>Does not limit liability for intentional injury or damage</p>	<p>Brewer v. Dept. of Fish & Wildlife, 2 P.3d 418 (Or. Ct. App. 2000)</p> <p>Waggoner v. City of Woodburn, 103 P.3d 648 (Or. Ct. App. 2004)</p>
<p>Pennsylvania 68 Pa. Cons. Stat. Ann. §§ 477-1 - 8</p>	1965	<p>Applies to public and private land (case law)</p> <p>Undeveloped lands (case law), roads, water, watercourses, private ways, buildings, structures, and machinery or equipment when attached to realty</p> <p>Not applicable to swimming pools</p>	<p>No duty of care to keep premises safe or give any warning of dangerous or hazardous conditions, uses of, structures, or activities</p> <p>Not liable for injury to person or property</p>	<p>Hunting, fishing, swimming, boating, camping, hiking, picnicking, pleasure driving, nature study, water skiing, water sports, cave exploration, and viewing or enjoying historical, archeological, scenic, or scientific sites</p>	<p>Does not limit liability for willful or malicious injury or failure to guard or warn against a dangerous condition, use, structure, or activity.</p> <p>Landowner cannot charge a fee</p>	<p>Wiegand v. Mars National Bank, 454 A.2d 99 (Pa. Super. Ct. 1982)</p> <p>Flohr v. Pennsylvania Power & Light Co., E.D.Pa., 821 F.Supp. 301 (E.D. Pa. 1993)</p>

State & Citation	Year	Applicable Areas	Duty/Liability of Landowner	Activities Covered	Exclusions	Relevant Case Law
Rhode Island R.I. Gen. Laws §§ 32-6-1 - 6	1978	Applies to public and private land Lands, roads, water, watercourses, private ways, buildings, structures, and machinery or equipment when attached to realty Applies to land leased to the state	No duty of care to keep premises safe Not liable for injury to person or property	Hunting, fishing, swimming, boating, camping, hiking, picnicking, pleasure driving, horseback riding, biking, nature study, water skiing, water sports, and viewing or enjoying historical, archeological, scenic, or scientific sites	Does not limit liability for willful or malicious failure to guard or warn against a dangerous condition, use, structure, or activity. Landowner cannot charge a fee	Hanley v. State, 837 A.2d 707 (R.I. 2003) Cain v. Johnson, 755 A.2d 156 (R.I. 2000)
South Carolina S.C. Code Ann. §§ 27-3-10 - 70	1962	Applies to public and private land (case law) Lands, roads, water, watercourses, private ways, buildings, structures, and machinery or equipment when attached to realty Applies to land leased to the state	No duty of care to keep premises safe or give any warning of dangerous or hazardous conditions, uses of, structures, or activities Not liable for injury to person or property	Hunting, fishing, swimming, boating, camping, hiking, picnicking, pleasure driving, nature study, water sports, summer and winter sports, and viewing or enjoying historical, archeological, scenic, or scientific sites	Does not limit liability for grossly negligent, willful, or malicious failure to guard or warn against a dangerous condition, use, structure, or activity. Landowner cannot charge a fee	Corbett v. City of Myrtle Beach, S.C., 521 S.E.2d 276 (S.C. Ct. App. 1999) Brooks v. Northwood Little League, Inc., 489 S.E.2d 647 (S.C. Ct. App. 1997)

State & Citation	Year	Applicable Areas	Duty/Liability of Landowner	Activities Covered	Exclusions	Relevant Case Law
South Dakota S. D. Codified Laws §§ 20-9-12 - 18	1987	Land, trails, water, watercourses, private ways and agricultural structures, and machinery of equipment if attached to realty Applies to land leased to the state	No duty of care to keep premises safe or give any warning of dangerous or hazardous conditions, uses of, structures, or activities Not liable for injury to person or property	Hunting, fishing, swimming (other than in a swimming pool), boating, canoeing, camping, hiking, picnicking, biking, off- road driving, nature study, water skiing, winter sports, snowmobiling, and viewing or enjoying historical, archeological, scenic, or scientific sites	Does not limit liability for gross negligence, or willful or wanton misconduct of the owner Landowner cannot charge a fee Does not apply to an attractive nuisance Does not limit liability for injury suffered where the owner has violated a county or municipal ordinance or state law	Johnson v. Rapid City Softball Ass'n, 514 N.W.2d 693 (S.D. 1994) Kern v. City of Sioux Falls , 560 N.W.2d 236 (S.D. 1997)
Tennessee Tenn. Code Ann. §§ 70-7-101 - 104	1963	Applies to public and private land Lands, roads, water, watercourses, private ways, buildings, structures, and machinery or equipment when attached to realty (No duty of care to keep premises safe or give any warning of dangerous or hazardous conditions, uses of, structures, or activities Not liable for injury to person or property	Hunting, fishing, swimming, boating, camping, hiking, picnicking, pleasure driving, nature study, water skiing, winter sports, trapping, white water rafting, sightseeing, skateboarding, animal riding, bird watching, and viewing or enjoying historical, archeological, scenic, or scientific sites	Does not limit liability for willful or malicious failure to guard or warn against a dangerous condition, use, structure, or activity. Landowner cannot charge a fee	Rogers v. Donelson-Hermitage Chamber of Commerce, 807 S.W.2d 242 (Ten. Ct. App. 1990) Cagle v. U.S. , 937 F.2d 1073 (6th Cir. 1991)
Tenn. Code Ann. §§ 11-10-101 - 104	1967	does not include landowner's place of residence and any improvements made for recreational purposes immediately surrounding such residence)				

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<p>Texas Tex. Civ. Prac. & Rem. Code Ann. §§ 75.001 - .003</p>	1965	<p>Applies to public and private land</p> <p>Land, roads, water, watercourses, private ways, buildings, structures, and machinery or equipment when attached to realty</p>	<p>No duty of care to keep premises safe or give any warning of dangerous or hazardous conditions, uses of, structures, or activities (same duty owed to a trespasser)</p> <p>Not liable for injury to person or property</p>	<p>Hunting, fishing, swimming, boating, camping, hiking, picnicking, pleasure driving, rec. vehicle use, nature study, water skiing, cave exploration, biking, disc golf, walking of dogs, and any other activity associated with enjoying nature or the outdoors</p>	<p>Does not limit liability for gross negligence, deliberate, willful, or malicious injury to a person or property</p> <p>Does not apply to an attractive nuisance</p> <p>Landowner cannot charge a fee whose total charges collected the previous year for recreational use are more than 20 times the total amount of ad valorem taxes imposed on the premises the previous year</p>	<p>City of Bellmead v. Torres, 89 S.W.3d 611 (Tex. 2002)</p> <p>Kopplin v. City of Garland, 869 S.W.2d 433 (Tex. Ct. App. 5th Dist. 1993)</p>
<p>Utah Utah Code Ann. §§ 57-14-1 - 7</p>	1979	<p>Applies to public and private land but does not include improved public parks</p> <p>Roads, railway corridors, water, watercourses, private ways and buildings, structures, and machinery or equipment when attached to realty</p> <p>Applies to land leased to the state</p>	<p>No duty of care to keep premises safe or give any warning of dangerous or hazardous conditions, uses of, structures, or activities (same duty owed to a trespasser)</p> <p>Not liable for injury to person or property</p>	<p>Hunting, fishing, swimming, boating, skiing, shoe shoeing, camping, hiking, picnicking, nature study, water skiing, water sports, equestrian activities, boating, biking, riding gauge rail cars, rec. vehicle use, and viewing or enjoying historical, archeological, scenic, or scientific sites</p>	<p>Does not limit liability for deliberate, willful, or malicious injury or failure to guard or warn against a dangerous condition, use, structure, or activity.</p> <p>Landowner cannot charge a fee more than \$1 per person per year</p>	<p>Crawford v. Tilley, 780 P.2d 1248 (Utah 1989)</p> <p>Golding v. Ashley Cent. Irr. Co., 902 P.2d 142 (Utah 1995)</p>

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<p>Vermont Vt. Stat. Ann. tit. 12, §§ 5791 - 5795</p> <p>Vt. Stat. Ann. tit. 19, § 2309</p> <p>Vt. Stat. Ann. tit. 10, § 448</p>	<p>1997</p> <p>1985</p> <p>1993</p>	<p>Open and undeveloped land, paths and trails, springs, ponds, rivers, lakes, and other water courses, fences, bridges and walkways</p> <p>Bicycle routes</p> <p>Vermont trails system</p> <p>Does not cover areas developed for commercial rec. use or public lands</p>	<p>No duty of care to keep premises safe or give any warning of dangerous or hazardous conditions, uses of, structures, or activities (same duty owed to a trespasser)</p> <p>Not liable for injury to person or property</p>	<p>Any activity undertaken for recreational, educational, or conservation purposes, including hunting, fishing, trapping, guiding, biking, swimming, boating, skiing, camping, hiking, picnicking, nature study, diving, water sports, biking, rock climbing, skating, hang gliding, caving, riding an animal or vehicle, and viewing or enjoying historical, archeological, scenic, or scientific sites</p>	<p>Does not limit liability for willful or wanton misconduct of the owner</p> <p>Landowner cannot charge a fee</p>	<p>No cases found</p>
<p>Virginia Va. Code Ann. § 29.1-509</p>	<p>1950</p>	<p>Applies to public and private land (case law)</p> <p>Real property, whether rural or urban, waters, boats, private ways, natural growth, trees, any building or structure located on said premises</p> <p>Applies to land leased to the state</p>	<p>No duty of care to keep premises safe or give any warning of dangerous or hazardous conditions, uses of, structures, or activities</p> <p>Not liable for injury to person or property</p>	<p>Hunting, fishing, trapping, camping, hiking, water sports, boating, rock climbing, sight seeing, hang gliding, skydiving, horseback riding, foxhunting, racing, biking, gathering firewood, or any other recreational use</p>	<p>Does not limit liability for gross negligence, or willful or malicious failure to guard or warn against a dangerous condition, use, structure, or activity.</p> <p>Landowner cannot charge a fee</p>	<p>City of Virginia Beach v. Flippen, 467 S.E.2d 471 (Va. 1996)</p> <p>Hamilton v. U.S., 371 F. Supp. 230 (E.D. Va. 1974)</p>

State & Citation	Year	Applicable Areas	Duty/Liability of Landowner	Activities Covered	Exclusions	Relevant Case Law
Washington Wash. Rev. Code Ann. §§ 4.24.200 & 210	1969	Applies to public and private land Rural or urban and water areas, channels, and lands adjacent to such areas or channels	No duty of care to keep premises safe or give any warning of dangerous or hazardous conditions, uses of structures, or activities Not liable for injury to person or property	Hunting, fishing, swimming, camping, hiking, picnicking, biking, skateboarding, collecting firewood, hang gliding, paragliding, rock climbing, animal riding, clam digging, pleasure driving, snowmobiling, boating, nature study, winter or water sports, viewing or enjoying historical, archeological, scenic, or scientific sites	Does not limit liability for injuries suffered by reason of a known dangerous artificial latent condition for which warning signs have not been conspicuously posted Landowner cannot charge a fee (exception: may charge \$25 fee for firewood gathering) Attractive nuisance not covered	Nauroth v. Spokane Cty., 88 P.3d 996 (Wash. Ct. App. 2004) Neilson v. Port of Bellingham, 27 P.3d 1242 (Wash. Ct. App. 2001)
West Virginia W. Va. Code Ann. §§ 19-25-1 - 6	1965	Recreational purposes: Roads, water, watercourses, private ways, buildings, structures, and machinery or equipment when attached to realty Wildlife propagation purposes: Ponds, sediment control structures, permanent water impoundments, or any other similar structure Applies to public and private land (case law)	No duty of care to keep premises safe or give any warning of dangerous or hazardous conditions, uses of structures, or activities Not liable for injury to person or property	Hunting, fishing, swimming, camping, hiking, picnicking, biking, motorcycle and ATV driving, horseback riding, pleasure driving, boating, nature study, water skiing, winter sports, wildlife propagation, and viewing or enjoying historical, archeological, scenic, or scientific sites	Does not limit liability for deliberate, willful, or malicious infliction of injury to persons or property Landowner cannot charge a fee (exception: may charge up to \$50 per year per user for wildlife propagation purposes (does not apply to users utilizing land for military training purposes – may charge any fee and still be covered)	Kesner v. Trenton, 216 S.E.2d 880 (W. Va. 1975) Cole v. Fairchild, 482 S.E.2d 913 (W. Va. 1996)

State & Citation	Year	Applicable Areas	Duty/Liability of Landowner	Activities Covered	Exclusions	Relevant Case Law
Wisconsin Wis. Stat. Ann. § 895.52	1984	Applies to public and private land Real property and buildings, structures and improvements thereon, and the waters of the state (Does not cover platted land, residential property, or property within 300 feet of a building or structure on land classified as commercial or manufacturing) Applies to land leased to the state	No duty of care to keep premises safe or give any warning of unsafe conditions, uses of, or activities No duty of owner to inspect the property	Hunting, fishing, trapping, camping, caving, picnicking, biking, motorcycling, ATV riding, horseback riding, bird watching, ballooning, hang gliding, hiking, tobogganing, sledding, sleigh riding, snowmobiling, skiing, skating, water sports, sight seeing, rock climbing, firewood collecting, sport shooting, nature harvesting, any other outdoor sport, game, or educational activity	Does not limit liability for an injury caused by a malicious act by the owner or agent/employee of the owner or a failure to warn against an unsafe condition on the property, of which the owner had knowledge Landowner cannot collect money, goods, or services in payment for the use of property exceeding \$2,000 (certain donations and payments exempt) Does not cover injury or death to social guest	Bystery v. Village of Sauk City, 430 N.W.2d 611 (Wis. Ct. App. 1988) Shannon v. Shannon, 442 N.W.2d 25 (Wis. 1989) Sauer v. Reliance Insurance Co., 448 N.W.2d 256 (Wis. Ct. App. 1989)
Wyoming Wyom. Stat. §§ 34-19-101 to 106	1965	Applies to public and private land Lands, roads, water, watercourses, private ways, buildings, structures, and machinery or equipment when attached to realty Applies to land leased to the state	No duty of care to keep premises safe or give any warning of any dangerous conditions, uses of, structures, or activities Not liable for injury to person or property	Hunting, fishing, swimming, boating, camping, picnicking, hiking, pleasure driving, nature study, water skiing, winter sports, and viewing or enjoying historical, archeological, scenic, or scientific sites	Does not limit liability for willful or malicious failure to guard or warn against a dangerous condition, use, structure, or activity (exception: land adjacent to a national scenic trail with an easement across land) Landowner cannot charge a fee	Smith v. U.S., 383 F. Supp. 1076 (D. Wyo. 1974) Newberry v. Bd. Of City Comm'rs, 919 P.2d 141 (Wyo. 1996)