

NO. 734491-I

IN THE COURT OF APPEALS  
OF THE STATE OF WASHINGTON  
DIVISION I  
(Snohomish County Superior Court Cause No. 14-2-04738-8)

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JOHN ARCHER as Legal Guardian of  
JOHN B. ARCHER, a minor child,

Appellant,

vs.

MARYSVILLE SCHOOL DISTRICT,  
a local governmental entity,

Respondent.

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BRIEF OF APPELLANT

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FILED  
COURT OF APPEALS DIV I  
STATE OF WASHINGTON  
2015 SEP -8 PM 2:44

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## I. INTRODUCTION

On January 25, 2014, a steel basketball pole on the Sunnyside Elementary School playground in the Marysville School District collapsed, and its backboard and hoop struck 13 year-old plaintiff John B. Archer in the face, fracturing his maxillary bones and sinus cavity, breaking his teeth, and leaving permanent facial scars. CP 107, 316. John's jaw was wired shut for six weeks followed by orthodontic braces, dental implants and plastic surgery. CP 298. He has permanent facial scars. CP 298. John was a graduate of Sunnyside Elementary who attended Marysville Middle School at the time he was injured. CP 298-99.

The District moved for summary judgment, claiming it was not liable under the recreational use immunity statute, RCW 4.24.210 (2012), *App. 1*, because John was playing basketball "for purposes of outdoor recreation" on its playground after school hours. CP 407-413. Snohomish County Superior Court Judge Bruce I. Weiss initially denied the motion because the District's playground equipment policy showed it had assumed a duty of reasonable care to select, install and maintain safe playground athletic equipment. Judge Weiss ruled the playground equipment policy created a fact issue because a jury could find it was contrary to the District's post-accident assertion of recreational use immunity, which disclaims any duty of care:

I'm going to deny the motion for summary judgment. The last argument from Mr. Budlong is persuasive to me in relation to the policy where it references that the [District] want[s] to have safe equipment. That's contrary to the immunity. I determine, based on that, there's a question of fact whether the immunity actually applies. I deny the motion for summary judgment.

RP 35; CP 278-279. But Judge Weiss changed his mind on reconsideration and signed the District's dismissal Order. CP 45-47.

## **II. ASSIGNMENT OF ERROR**

1. The Superior Court erred by granting, on reconsideration, Marysville School District's motion for summary judgment regarding recreational use immunity. CP 45-47.

## **III. ISSUES RELATING TO ASSIGNMENT OF ERROR**

1. Did the legislature, which in 1869 abolished school districts' sovereign immunity and in 1967 repealed school districts' immunity for injuries caused by defective playground athletic equipment, intend for recreational use immunity to bar such claims?

2. Does the legislature's extension of recreational use immunity in 1979 from "agricultural and forest lands" to "any lands whether rural or urban" apply to public landowners or only to private landowners who make their lands available to the public for free outdoor recreation?

3. Does *Camicia v. Howard S. Wright Constr. Co.*, 179 Wn.2d 684, 697, 317 P.3d 997 (2014) require a school district asserting the recreational use immunity defense to prove that its lands “would [not] be held open to the public even in the absence of [recreational] use”, or is the defense self-executing any time a public landowner “allow[s] members of the public to use [public lands] for the purposes of outdoor recreation”?

4. Does recreational use immunity apply to sports activities like playing basketball on a public school playground?

#### **IV. STATEMENT OF THE CASE**

At the time he was injured, John B. Archer was playing basketball as a public invitee of the District, which “leaves the Sunnyside Elementary School playground open after school hours and on weekends for public recreational use free of charge.” CP 357, 409, 415. The District inspected the playground the day before the basketball pole collapsed, but failed to discover the pole was defective. CP358.

The District’s policy is to follow consumer product safety standards and to contribute to child development by selecting and installing safe playground equipment for use during school and non-school hours:

### **C. Playground Equipment**

The board recognizes that playground equipment is an essential part of a complete school facility. All playground equipment, whether purchased by the district or donated by a community or school-related group, should be assessed in terms of suitability and durability and for possible health or safety hazards. Consideration will also be given to potential hazards when the playground is unsupervised during non-school hours.

The superintendent will develop specifications for playground equipment and related play surfaces. These specifications will serve as criteria for the selection of playground equipment. Selection and installation of playground equipment will be based upon safety and contribution of child development. Equipment shall meet consumer product safety standards.

CP 318-320.

In addition to sports like basketball and soccer, the District allows the public to use the Sunset Elementary playground for overflow parking for most annual events, for Sunset Elementary's annual "Field Day" carnival, and for bus transportation at the end of each school day. CP 327. The District did not submit any evidence that its school playgrounds either were "opened for the purpose of recreation" or "would [not] be held open to the public even in the absence of [recreational] use." *Camicia*, 179 Wn.2d at 697, 699.

After John B. Archer was injured, the District invoked recreational use immunity to disclaim any duty of care regarding its playground athletic equipment and escape financial responsibility. CP 407-413.

## V. SUMMARY OF ARGUMENT

*Camicia v. Howard S. Wright Constr. Co.*, 179 Wn.2d 684, 693-94, 317 P.3d 997 (2014) requires a court to look beyond RCW 4.24.210's literal terms to ascertain and carry out the legislature's intent in harmony with its overall purpose. The 1869 and 1967 statutes repealing tort immunity for school districts, when read together with RCW 4.24.210 (1967) and the history of its 1972 and 1979 amendments, show the legislature did not intend for recreational use immunity to apply to torts involving defective public school playground athletic equipment, or to tortious injury on public school lands, or to playing sports on public school playgrounds. Even if RCW 4.24.210 applied, the summary judgment dismissal should be reversed because the District failed to present any evidence to prove that its playgrounds would not be open to the public in the absence of recreational use.

## VI. ARGUMENT

### A. The Standard of Review, Statutory Construction, and the Burden of Proof.

The standard of review, rule of strict construction, and the burden of proving entitlement to recreational use immunity are set forth in *Camicia* and *Matthews v. Elk Pioneer Days*, 64 Wn. App. 433, 824 P.2d 541 (1992):

Summary judgment is appropriate only when there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law. CR 56(c). We review a grant of summary judgment de novo. *Campbell v. Ticor Title Ins. Co.*, 166 Wash.2d 466, 470, 209 P.3d 859 (2009). When the facts are undisputed, immunity is a question of law for the court. [Citations omitted] But where material facts are disputed, a trial is needed to resolve the issue.

*Camicia*, 179 Wn.2d at 693.

RCW 4.24.210 should be strictly construed [because it] is in derogation of the common law rules of liability of landowners and occupiers.... and no intent to change that law will be found unless it appears with clarity.

*Matthews, supra*, at 437. *Accord: Nielsen v. Port of Bellingham*, 107 Wn. App. 662, 666-67, 27 P.2d 1242 (2001).

Because recreational use immunity is an affirmative defense, the landowner asserting it carries the burden of proving entitlement to immunity under the statute.

*Camicia, supra* at 693.

**B. The Legislature Repealed School Districts' Sovereign Immunity for Injuries Caused by Defective Playground Athletic Equipment.**

In 1869, the legislature abolished sovereign immunity for “any county, incorporated town, school district, or other public corporation of like character in this state”:

An action may be maintained against a county, or other of the public corporations mentioned or described in the preceding section [*i.e.* 5673, Ballinger's Ann. Codes & St. (1869) which included any “incorporated town, school district, or other public corporation of like character in this state”]... for an injury to the rights of the plaintiff arising from some act or omission of such county or other public corporation.

Rem. Rev. Stat. §951 (1869); RCW 4.08.120 (1953). *App. 2.*

In *Redfield v. Sch. Dist. No. 3, in Kittitas County*, 48 Wn. 85, 88 (1907), the Supreme Court explained:

With the inapplicable portions of the two sections [5673 and 5674, Ballinger's Ann. Codes & St. (1869)] omitted, the law would read as follows: “An action may be maintained against a school district for any injury to the rights of the plaintiff arising from some act or omission of such district.”

Half a century later in Laws of 1917, chapter 92, §1, the legislature restored limited sovereign immunity to school districts against tort lawsuits involving playground athletic apparatuses and manual training equipment:

No action shall be brought or maintained against any school district or its officers for any non-contractual acts or omission of such district, its agents, officers or employees, relating to any park,

playground, or field house, athletic apparatus or appliance, or manual training equipment, whether situated in or about any school house or elsewhere, owned, operated or maintained by such school district.

Rem. Rev. Stat. 4706 (1917); RCW 28.58.030 (1953). *App. 3.*

In *Stovall v. Toppenish School Dist. No. 49*, 110 Wash. 97, 188 P. 12 (1920), the Supreme Court construed the words “park, playground, or field house” as used in Rem. Rev. Stat. 4706 to be “descriptive adjectives designating the location of the ‘athletic apparatus or appliance.’” *See discussion in Briscoe v. Sch. Dist. No. 123, Grays Harbor Cy.*, 32 Wn.2d 353, 364, 201 P.2d 697 (1949). The basketball pole and hoop that collapsed on John B. Archer was a “playground... athletic apparatus or appliance.” *See Snowden v. Kittitas County Sch. Dist. No. 401*, 38 Wn.2d 691, 697, 231 P.2d 621 (1951), listing “basketball baskets” as a playground “athletic apparatus” for tort immunity purposes under former RCW 28.58.030.

After 1917, school districts had limited immunity for injuries caused by playground athletic apparatuses and manual training equipment but remained liable for other torts under Rem. Rev. Stat. 951:

It is a general common-law rule that a municipal corporation is not liable to answer for the personal torts of its officers, agents or employees, in the absence of a statute expressly declaring it so liable. [Citations omitted]

In this state, the rule was abrogated with respect to school districts and certain other public corporations by the enactment in 1869 of Rem.Rev.Stat. § 951. *Redfield v. School District No. 3*, 48 Wash. 85, 92 P. 770. [Other citations omitted] The effect of Rem.Rev.Stat. § 4706, therefore, is to restore in part the common law immunity from tort liability, enjoyed by public school districts.

*Snowden* 38 Wn.2d at 693-94.

Otherwise, school districts after 1917 continued to have the same tort liability as an individual or a corporation:

The purpose of such statutes is to make the school district liable upon precisely the same basis as an individual or corporation is responsible. Such is the law of this state except as to injuries from athletic apparatus and manual training equipment.

*Sherwood v. Moxee Sch. Dist. No. 90*, 58 Wn.2d 351, 357-58, 363 P.2d 138 (1961).

In *Tardiff v. Shoreline Sch. Dist.*, 68 Wn.2d at 167, 169, 411 P.2d 889 (1966), the Supreme Court held that the legislature's abolition of sovereign immunity in RCW 4.92.090 (1961) for the state and quasi municipal corporations including school districts did not impliedly repeal RCW 28.58.030, under which school districts continued to have tort immunity for defective playground athletic and manual training equipment.

In *Paulson v. Pierce County*, 99 Wn.2d 645, 651, 654 P.2d 1202 (1983), the Supreme Court cited *Tardiff* for the longstanding rule that "implied repeals of statutes are disfavored by Washington courts." But it

explained that in response to *Tardiff* the legislature in Laws of 1967, ch. 164, §16 had expressly repealed RCW 28.58.030: “Sec. 16. Section 1, chapter 92, Laws of 1917 and RCW 28.58.030...are each hereby repealed.” The repeal of RCW 28.58.030 eliminated the “playground athletic apparatus and manual training equipment” vestiges of school district sovereign immunity:

In 1961 common law doctrine of sovereign immunity was abrogated by the Legislature. Laws of 1961, ch. 136, § 1, p. 1680; RCW 4.92.090. In 1964, in *Kelso v. Tacoma, supra*, we held RCW 4.92.090 applies to all political subdivisions of the State. *See Kelso*, 63 Wash.2d at 916–17, 390 P.2d 2. On a subsequent occasion, however, the court ruled RCW 4.92.090 did not impliedly repeal specific statutory limitations on the liability of a subdivision of the State for tortious conduct. *E.g., Tardiff v. Shoreline Sch. Dist.*, 68 Wash.2d 164, 167, 411 P.2d 889 (1966).

As a response, the Legislature in 1967 explicitly abrogated the doctrine of sovereign immunity as it relates to political subdivisions of the State. Laws of 1967, ch. 164, § 1, p. 792, codified in RCW 4.96.010. Moreover, the Legislature repealed former RCW 28.58.030, successfully asserted by defendant in *Tardiff* as the basis for its sovereign immunity. Laws of 1967, ch. 164, § 16, p. 804. *See Tardiff*, 68 Wash.2d at 167, 169, 411 P.2d 889.

99 Wn.2d at 650-51.

By repealing RCW 28.58.030 in response to *Tardiff* and “mak[ing] the school district liable upon precisely the same basis as an individual or corporation is responsible”, *Sherwood*, 58 Wn.2d at 357, the legislature indicated its specific intent to hold school districts liable for, not immune from, injuries caused by defective playground athletic equipment.

C. **The Legislature Did Not Intend for Recreational Use Immunity to Restore Sovereign Immunity to Public School Districts.**

The legislature did not intend for recreational use immunity to reinstate school districts' sovereign immunity against tort claims involving dangerous outdoor premises or defective playground athletic equipment. When enacted in 1967, RCW 4.24.210 provided tort immunity to *private* landowners who opened their agricultural and forest lands to the public free of charge for designated outdoor recreation activities:

Any landowner who allows members of the public to use *his* agricultural or forest land for the purposes of outdoor recreation, which term includes hunting, fishing, camping, picnicking, hiking, pleasure driving, nature study, winter sports, viewing or enjoying historical, archaeological, scenic or scientific sites, without charging a fee of any kind therefor, shall not be liable for unintentional injuries to such users....

Laws of 1967, ch.216, §2 (emphasis added). *App. 4.*

As indicated by the personal pronoun “*his*” and by the fact that “public” landowners were not included in RCW 4.24.210 until 1972, *App. 9*, immunity was limited to private landowners who opened their agricultural or forest land to the public for the free outdoor recreation activities listed in RCW 4.24.210. See Barrett, *Good Sports and Bad Lands: The Application of Washington's Recreational Use Statute Limiting Landowner Liability*, 53 Wash. L.Rev.. 1, 3 (1977) (“The purpose of [recreational use legislation]

changes is to limit the liability of private landowners, thereby encouraging them to make their property available for public recreation.”), and *McCarver v. Manson Park and Irrigation Dist.*, 92 Wn.2d 370, 374, 597 P.2d 1362 (1979) (“The impetus behind the model legislation was “to encourage availability of private lands by limiting the liability of owners.”) RCW 4.24.200 sets forth this legislative purpose:

The purpose of RCW 4.24.200 and 4.24.210 is to encourage owners of land to make available land and water areas to the public for recreational purposes by limiting their liability toward persons entering thereon and toward persons who may be injured or otherwise damaged by the acts or omissions of persons entering thereon.

Laws of 1967, ch.216, §1, RCW 4.24.200. *App. 4.*

The legislature enacted RCW 4.24.200-.210 (1967) in response to *McKinnon v. Wash. Fed. Sav. & Loan Ass'n*, 68 Wn.2d 644, 651, 414 P.2d 773 (1966), which held private landowners owed a duty to public invitees “to exercise reasonable care in making the premises safe for purposes for which they had been held open.” *Camicia*, 179 Wn.2d 694-95. Before *McKinnon*, the “economic benefit” test limited the premises liability of landowners to business invitees. *Id.* at 695. To counterbalance this expansion of landowner liability, the legislature “carved out an exception to the ‘public purpose’ invitee doctrine... by “exempting a particular ‘public purpose’—outdoor recreation.” *Id.* Recreational use immunity was “an exception to

Washington's premises liability law regarding public invitees", *id.* at 694, because it provided tort immunity to private landowners who opened their agricultural and forest lands to the public for free outdoor recreation.

Recreational use immunity did not apply to school districts or other public landowners whose sovereign immunity recently had been abolished. *See* Laws of 1961, ch. 136, §1, RCW 4.92.090 ("The state of Washington, whether acting in its governmental or proprietary capacity, hereby consents to the maintaining of a suit or action against it for damages arising out of its tortious conduct to the same extent as if it were a private person or corporation."), *App. 5*; Laws of 1963, ch. 159, §2, RCW 4.92.090 ("The state of Washington, whether acting in its governmental or proprietary capacity, shall be liable for damages arising out of its tortious conduct to the same extent as if it were a private person or corporation."), *App. 6*; Laws of 1967, ch. 164, §1, RCW 4.96.020 ("All political subdivisions, municipal corporations, and quasi-municipal corporations of the state, whether acting in a governmental or proprietary capacity, shall be liable for damages arising out of their tortious conduct, or the tortious conduct of their officers, agents or employees to the same extent as if they were a private person or corporation."), *App. 7*; and Laws of 1967, ch. 164, §16 ("Section 1, chapter 92, Laws of 1917 and RCW 28.58.030 [which provided school districts with

immunity for torts involving athletic apparatuses and manual training equipment]...are each hereby repealed.”) *App. 7*.

Once sovereign immunity was abolished and the state and its political subdivisions were liable “to the same extent as if they were a private person or corporation”, public landowners also owed a common law duty under *McKinnon* “to exercise reasonable care in making the premises safe for purposes for which they had been held open.” 68 Wn.2d at 651. The duty extended to public transportation routes, parks, zoos, school playgrounds and all other public lands and facilities commonly used for free outdoor recreation. *See e.g. Tincani v. Inland Empire Zoological Soc.*, 124 Wn.2d 121, 131, 875 P.2d 6 (1994):

A public invitee “is ... entitled to expect that the possessor will exercise reasonable care to make the land safe for his [or her] entry”. Restatement (Second) of Torts § 343, comment b. Reasonable care requires the landowner to inspect for dangerous conditions, “followed by such repair, safeguards, or warning as may be reasonably necessary for [the invitee's] protection under the circumstances.” Restatement (Second) of Torts § 343, comment b.

“A public landowner “owes a duty to all persons, whether negligent or fault-free, to build and maintain its roadways in a condition that is reasonably safe for ordinary travel”, *Keller v. City of Spokane*, 146 Wn.2d 237, 249, 44 P.3d 845 (2002), including “a duty to safeguard against... and eliminate an inherently dangerous or misleading condition.” *Owen v.*

*Burlington Northern and Santa Fe R.R. Co.*, 153 Wn.2d 780, 787–88, 108 P.3d 1220 (2005).

In 1969, the legislature amended RCW 4.24.200 and .210 to make “others in lawful possession and control of agricultural or forest lands or water areas or channels and rural lands adjacent to such areas or channels” eligible for immunity. It added “swimming”, “boating”, and “water sports” to the covered outdoor recreation activities in RCW 4.24.210. Laws of 1969, ch. 24, §1, 2. *App. 8*. Since 1969, the legislature has not amended RCW 4.24.200 to expand the purpose of recreational use immunity beyond encouraging private landowners to open their lands and water areas, channels and adjacent rural lands to the public for free outdoor recreation.

In 1972, the legislature enacted Substitute House Bill No. 29 entitled, “Outdoor Recreation–All Terrain Vehicles” to encourage state and local governments to develop and maintain public lands and trails for ATV use:

The purpose of this 1972 amendatory act is to increase the availability of trails and areas for all-terrain vehicles by granting authority to state and local governments to maintain a system of ATV trails and areas, and to fund the program to provide for such development. State lands should be used as fully as possible for all public recreation which is compatible with the income-producing requirements of the various trusts.

Laws of 1972, ch. 153, §1. *App. 9*.

Sec. 17 of the ATV statute amended RCW 4.24.210 by adding “public or private” landowners and “pleasure driving of all-terrain vehicles, snowmobiles, and other vehicles.” (Italics added). *App. 9*. As explained in *McCarver v. Manson Park and Irrigation Dist.*, 92 Wn.2d 370, 375-76, 597 P.2d 1362 (1979), the amendments to RCW 4.24.210 were not included in the original House Bill 29, but were later added by the Senate Committee on Natural Resources and Ecology:

As originally introduced, House Bill 29 included no amendment to RCW 4.24.210. However, when the bill was reported out of the Committee on Natural Resources and Ecology as Substitute House Bill 29, (42nd Legislature, 1972), section 17 contained the amendments to RCW 4.24.210.

The Committee on Natural Resources and Ecology clarified the Sec. 17 amendments only applied to recreational vehicle use: “An act relating to outdoor recreation. ... Clarifies the position of the liability of a landowner who permits the public free use of his land for recreational vehicle use.” *App. 10, p. A-17*. The legislative “Synopsis of S.H.B. 29 relating to All Terrain Vehicles (and Senate Amendments)” also says:

- (10) Section 17 clarifies the position of the liability of a land owner who permits the public free use of his land for recreational vehicle use.”

*App. 10, p. A-7*. The Synopsis further indicates that the addition of “public” landowners to Sec. 17 was not a “substantive change” to the law of

recreational use immunity, such as extending it to public landowners generally, but instead was a technical amendment or was necessary for administrative enforcement:

#### SENATE AMENDMENT

While there are some 20 changes from the bill as it passed the House which have been adopted by the Committee on Parks, Tourism, Capitol Grounds and Veterans Affairs and are contained in the amendment proposal, 16 of these are simply housekeeping changes reflecting problems with grammar, word use, or clarifying the language used by the House. Included in this number are some changes made necessary for administrative enforcement purposes because of the emergency clause which is contained in this bill.<sup>1</sup>

There are four substantive changes effected by this amendment. They are:

- (1) “to reinstate the provisions of the Financial Responsibility Act insofar as these provisions may be applicable to all terrain vehicle use....”
- (2) To reinstate “required reporting of accidents involving death, bodily injury or property damage in an amount of \$200 or more.”
- (3) To “strike... an exemption permitting ATV’s in an organized competitive event to exceed acceptable noise levels.”
- (4) “The most significant change offered here has to do with the method of funding.”....

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<sup>1</sup>For example, Sec. 12 of the 1972 ATV statute provided: “It shall be unlawful for any person to operate any all-terrain vehicle... (10) On any public lands in violation of rules and regulations of the agency administering such lands.” *App. 9.*

*App. 10, p. 7.*

The “Explanation of S.H.B. 29” says: “Section 17 Clarifies that landowner relief from liability from the public when allowing the public free use of land for various recreational use shall apply to public lands as well as private lands and adds ATV and snowmobile use.” *App. 10, pp. 4-5.* It is unclear when the undated Explanation was written. It does not identify the “various recreational use [that] shall apply to public lands as well as private lands” for purposes of landowner liability relief, other than “ATV and snowmobile use.”

The legislative history shows that the 1972 Legislature, by adding the word “public” to Sec. 17 of the 28-section Substitute House Bill on All-Terrain Vehicles, did not intend to reinstate the sovereign immunity of public landowners it had recently abolished in RCW 4.92.090 (1961 and 1963), RCW 4.96.020 (1967), and Laws of 1967, ch. 164, §16, except as to tort claims arising from free recreational vehicle use. *App. 10.*<sup>2</sup> The 1972 amendments did not override the repeal of school districts’ tort immunity for

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<sup>2</sup>Appendices 10 and 12 contain all the documents the Washington Legislative Archives Office has provided regarding the legislative history of the 1972 and the 1979 amendments to RCW 4.24.210.

defective playground athletic equipment or extend recreational use immunity beyond agriculture or forest lands, water areas, and adjacent rural lands.

In 1979, the Legislature in House Bill 50 amended RCW 4.24.210 by deleting “~~agricultural and forest~~” lands and substituting “any lands whether rural or urban.” (Italics added) HB 50 added “bicycling, the riding of horses or other animals, [and] clam digging” to its list of covered outdoor recreation activities and said immunity “is not limited to” the outdoor recreation activities listed in the statute. Laws of 1979, ch. 53, §1. *App. 11*. The HB 50 Bill Report signed by the Majority sponsors Reps. Newhouse and Smith and passed by the House Judiciary Committee on January 15, 1979 specified that the expansion of recreational use immunity from “agricultural and forest lands” to “any lands whether rural or urban” only applied to private landowners:

ISSUE: *Private landowners* should have clear protection from liability when they allow their land to be used for recreational purposes.

SUMMARY OF BILL (with amendments, if any): The bill amends the present landowner’s immunity from liability for unintentional injury to members of the public who are allowed to enter the landowner’s property for outdoor recreation. The bill extends the immunity to urban as well as rural landowners. It also expands the definitions of outdoor recreation to expressly include bicycling and horseback riding as well as language indicating that omission of a specific activity from the list in the bill does not necessarily exempt it from the definition. Finally, the bill provides that such usage by the

public cannot be used to establish a claim of adverse possession against the owner.

*App. 12, pp. 29 107, 114, 117-119. (Emphasis added).*

Senate Majority Leader Walgren's February 26, 1979 letter to Senate Judiciary Committee Chair Marsh confirmed that the 1979 amendment only applied to "private property" of "private landowners":

Dear Senator Marsh,

House Bill 50, relating to limiting liability of landowners who give easements for recreational purposes, is presently before your committee. ...

I support this legislation. *It would limit the liability of persons who give easements for trails and recreational purposes.* It extends a present law to cover most recreational purposes. It will reduce the cost of government acquiring trail facilities by using *private property* through an easement between the agency (providing recreational opportunities) and the *private landowner.* ...

Enactment of this legislation would lessen costs to taxpayers, *allow large landowners, such as timber companies, to open some of their properties for recreation,* and will provide all recreational users with the same opportunity now afforded only to a few group of persons.

*App. 12, p. 124. (Emphasis added).*

The legislature in 1972 and 1979 did not amend RCW 4.24.200 to expand the purpose of recreational use immunity, which remained to encourage private, not public, landowners to open "any lands" for free public outdoor recreation. Nor did the 1972 and 1979 amendments extend immunity

to public school district lands, or restore to school districts the sovereign immunity that was abolished in 1869 or the limited tort immunity regarding defective playground athletic equipment that was repealed in 1967.

The post-1979 amendments to RCW 4.24.210 add various outdoor recreation activities to its coverage and say certain administrative charges do not constitute “fees” that would preclude immunity. *See* Laws of 1980, ch. 111, §1 (public or private landowners who allow firewood cutting and administrative charges up to \$10 not fees), *App. 13*; Laws of 1991, ch. 50, §1 (wildlife, fisheries and parks license or permit issued for statewide use is not a fee), *App. 14*; Laws of 1991, ch. 69, §1 (public or private landowners who allow land to be used for a fish or wildlife cooperative projects and litter and solid waste cleanup), *App. 15*; Laws of 1992, ch. 52, §1, regarding “Forest Land Based Retention Incentives” (adding “designated resource” lands and saying firewood cutting charges up to \$25 not fees), *App. 16*; Laws of 1997, ch. 26, §1 (adding “skateboarding or other nonmotorized wheel-based activities, hanggliding, paragliding”), *App. 17*; Laws of 2003, ch. 16, §1 (adding rock climbing and fixed anchors), *App. 18*; Laws of 2006, ch. 212, §6 (public ORV sports park and other public facility charges for off-road vehicle use not fees), *App. 19*; Laws of 2011, ch. 53, §1 (hydroelectric project owners and kayaking, canoeing and rafting), *App. 20*; Laws of 2012, ch. 15,

§1 (deleting ~~hanggliding and paragliding~~ and adding “aviation activities including but not limited to, the operation of airplanes, ultra-light airplanes, hanggliders, parachutes, and paragliders.” *App. 21*. The post-1979 amendments to RCW 4.24.210 do not say or imply that recreational use immunity bars suits against school districts for injuries caused by defective athletic equipment on school playgrounds.

**D. The Supreme Court in *McCarver* Extended Recreational Use Immunity to Public Landowners for All Outdoor Recreational Activities on Agricultural or Forest Lands and Water Areas.**

The plaintiff in *McCarver v. Manson Park and Irrigation Dist.*, 92 Wn.2d 370, 597 P.2d 1362 (1979) died in 1973 after falling or being pushed from a diving tower onto a dock owned or operated by Manson Park and Irrigation District. Manson Park was a “public landowner”—apparently an unincorporated quasi-municipal corporation—which allowed the public to use the area for free outdoor recreation. 92 Wn.2d at 371, 376. The parties stipulated that the accident occurred in a “water area” or on adjacent rural land and that the tower was not a “known dangerous ... condition”, such that RCW 4.24.210(4)’s exception to recreational use immunity did not apply.<sup>3</sup>

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<sup>3</sup>*Id.* at 373. Under RCW 4.24.210(4), when recreational use immunity applies, landowners can only be liable for “injuries sustained to users by reason of a known dangerous artificial latent condition for which

The Supreme Court ruled the 1972 amendments to Sec. 17 of the ATV statute extended recreational use immunity to public owners and occupiers of agricultural and forest lands and water areas for all of the free outdoor recreation activities listed in the statute, not just recreational vehicle use:

The placement of the 1972 amendatory language (“public or private”) before the term “landowners” [in RCW 4.24.210] encompasses all outdoor recreational activities subsequently delineated. ...

92 Wn.2d at 376.

But the Court acknowledged the legislative history did not support this sweeping conclusion:

The limited legislative history available concerning the addition of the words “public or private” does not greatly assist us in the present inquiry [to what extent RCW 4.24.210 applies to public landowners].

*Id.* at 375.

*McCarver* did not address the “clarifications” of the 1972 amendments by the Committee on Natural Resources and Ecology, or the Synopsis or Explanation of SHB 29, or the legislative history for the 1979 amendments to RCW 4.24.210, which confirmed that the addition of “any lands whether rural or urban” only applied to private landowners. It did not hold that the 1972 amendments to RCW 4.24.210 provide public and private landowners with equivalent immunity. Nor did it rule that public landowners had tort 

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 warning signs have not been conspicuously posted.”

immunity for all outdoor recreation activities that could be conducted on all public lands.

*McCarver's* statement that “[c]learly, the statute, as amended, includes public landowners and occupiers within the recreational use immunity from liability”, 92 Wn.2d at 376, should be clarified because it has fueled the legend that the Washington Legislature in 1972 and 1979 expanded recreational use immunity to cover all recreation activities commonly conducted outdoors on all public lands. *See e.g. Curran v. City of Marysville*, 53 Wn. App. 358, 364, 766 P.2d 358 (1991), citing *McCarver* and concluding that “RCW 4.24.210 encompasses all recreational activities which are commonly conducted outdoors” and extends to publicly owned lands. *Curran* held the addition of the words “public” landowners and “any lands whether rural or urban” in the 1972 and 1979 amendments to RCW 4.24.210 “necessarily includes a municipal park and its play and exercise areas”, citing the following cases:

*Partridge v. Seattle*, 49 Wash. App. 211, 741 P.2d 1039 (1987) (RCW 4.24.210 applied to a diving accident which occurred in water just outside the public swimming area at a Seattle city park); *Preston v. Pierce Cy.*, 48 Wash. App. 887, 741 P.2d 71 (1987) (RCW 4.24.210 applied to an accident which occurred on a merry-go-round located in a Pierce County park); *Riksem v. Seattle*, 47 Wash.App. 506, 736 P.2d 275 (1987) (RCW 4.24.210 applied to a bicyclist-jogger accident on a recreational trail located in part within Seattle city limits).

*Id.* at 362-63.

Neither these cases nor *Van Dinter v. City of Kennewick*, 121 Wn.2d 38, 846 P.2d 522 (1993), which applied RCW 4.24.210 to playground equipment in a city park, examined the legislative history of 1972 and 1979 amendments to RCW 4.24.210. These cases do not discuss that the legislature only extended recreational use immunity for torts occurring on “any lands whether rural or urban” to private landowners. They do not overrule the legislature’s repeal of school districts’ immunity for injuries caused by defective playground athletic equipment.

E. **The Legislature Intended for Recreational Use Immunity to Be a Shield for Private Landowners, Not a Sword for Public Landowners.**

The legislature enacted recreational use immunity to “encourage” private, not public, landowners to open their lands for free outdoor recreation.<sup>4</sup> It had good reason only to include private landowners in the

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<sup>4</sup>*McCarver’s* statement that “[i]n 1972, the Washington legislature made a legislative determination that inclusion of public, as well as private, landowners effectuated the statutory purpose of encouraging the availability of recreational land and water areas”, 92 Wn.2d at 377, is contradicted by the legislative Synopsis, which does not include public landowner liability as one of the “four substantive changes effected by this amendment.” *App. 10, p. 7*. The lone exception was to encourage public landowners to open public lands for all-terrain vehicle use. The legislative history of the 1979 amendments also shows the legislature only encouraged making private lands available for free outdoor recreation.

statute's purpose, incentives and protections. It offered recreational use immunity as a liability shield in exchange for the de facto immunity private landowners otherwise can obtain by posting a "Private Property-No Trespassing" sign that excludes public access and eliminates the common law duty of reasonable care to entrants. *See Van Dinter*, 121 Wn.2d at 41-42, ("A landowner generally owes trespassers and licensees the duty to refrain from wilfully or wantonly injuring them...") It wanted to encourage private landowners to post welcoming signs like the one in *Widman v. Johnson*, 81 Wn. App. 110, 111-12, 912 P.2d 1095 (1996) stating, 'The Forest Land Behind This Sign Is Open For RECREATIONAL USE ONLY'...."

The Washington Legislature never made a policy judgment that recreational use immunity abrogated a public landowner's duty to use reasonable care to build and maintain safe outdoor recreation facilities. To the contrary, the abolition of sovereign immunity indicates it intended for public landowners to be liable, not immune, for tortiously injuring members of the public who were using public lands for free outdoor recreation. The legislature did not enact recreational use immunity to erase public landowners' duty of reasonable care or give public landowners a choice between exercising due care and excluding the public from public lands. It

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did not intend for recreational use immunity to be a sword for public landowners like the Marysville School District to wield against unwitting members of the public like John B. Archer in a game of “gotcha” after a tortious injury occurs.

**F. The Addition of “Public” Landowners and “Any” Lands to RCW 4.24.210 Must Be Construed Together with the Statutes Repealing School Districts’ Sovereign Immunity.**

Other than *Cregan v. Fourth Mem’l Church*, 175 Wn.2d 279, 281, 285 P.3d 860 (2012), which holds that recreational use immunity is not available when land is not open to the general public, *Camicia v. Howard S. Wright Constr. Co.*, 179 Wn.2d 684, 687, 317 P.3d 997 (2014) is the only case since *McCarver* to address the scope of recreational use immunity under RCW 4.24.210(1).<sup>5</sup>

Under *Camicia*, RCW 4.24.210 should be interpreted to ascertain and carry out the legislature’s intent and harmonize its purpose:

In construing a statute, our “fundamental objective ... is to ascertain and carry out the intent of the legislature.” *State v. Morales*, 173 Wash.2d 560, 567, 269 P.3d 263 (2012). “We determine the intent of the legislature primarily from the statutory language.” *Id.* (citing

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<sup>5</sup>The other Supreme Court decisions on recreational use immunity—*Van Dinter v. City of Kennewick*, 121 Wn.2d 38, 846 P.2d 522 (1993), *Ravenscroft v. Washington Water Power Co.*, 136 Wn.2d 911, 969 P.2d 75 (1998), *Davis v. State*, 144 Wn.2d 612, 30 P.3d 460 (2001), and *Jewels v. City of Bellingham*, 183 Wn.2d 388, 353 P.3d 204 (2015)—have addressed the exceptions in RCW 4.24.210(4).

*Lacey Nursing Ctr., Inc. v. Dep't of Revenue*, 128 Wash.2d 40, 53, 905 P.2d 338 (1995)). ... [W]e must interpret the terms of a statute in harmony with its purpose.

179 Wn.2d at 693-94.<sup>6</sup>

*Camicia* recognized that a literal construction of particular terms like “public landowners” and “any lands” could defeat the legislature’s intent for the scope of recreational use immunity and lead to the unjust and absurd result of erasing a public landowner’s duty of reasonable care:

Extending the reach of RCW 4.24.210 to land that is open to the public for purposes other than recreation simply because some recreational use occurs...would also unjustly relieve the government of its common-law duty under *Keller v. City of Spokane*, 146 Wash. 2d 237, 249, 44 P.3d 845 (2002) to maintain roadways in a reasonably safe condition for ordinary travel.... Recreational immunity would conceivably extend to every street and sidewalk in downtown Seattle, as these are open to the public without charge. It would be absurd if Seattle could assert recreational use immunity for injury to a visitor to Pioneer Square simply because tourists are permitted to enter it without charge to view “scenic ... sites.” ... Erasing this long-standing duty was obviously not the purpose of the recreational immunity statute.

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<sup>6</sup>This was the main rule of statutory construction in Washington before *McCarver* was decided in 1979. See e.g. *Murphy v. Campbell Inv. Co.*, 79 Wn.2d 417, 420, 486 P.2d 1080 (1971) (“[T]he underlying purpose inherent in the function of judicial interpretation of statutory enactments is to effectuate the objective—often referred to as the intent—of the legislature.”)

179 Wn.2d at 699. *See also, Dissent* at 712: (“Immunity does not apply to every individual injured on land made available for public recreation.”)

*McCarver* construed the term “public landowners” in Sec. 17 of the 1972 ATV statute literally to erase their duty of reasonable care to build and maintain safe outdoor recreation facilities on agricultural and forest lands and water areas:

Where, as here, the language of the statute is plain and not ambiguous, a departure from its clear meaning is not warranted... [Just] “because public funds are expended, the public has [no] right to safe facilities, which application of the statute would deny.

92 Wn.2d at 378, rejecting plaintiff’s argument to the contrary. *McCarver’s* progeny construed the term “any lands” literally to expand recreational use immunity to encompass all public lands, restoring the sovereign immunity of public landowners that the legislature had abolished. *Curran, et al., supra*.

Construed literally and against the legislature’s intent, the terms “public landowners” and “any lands” in the 1972 and 1979 amendments to RCW 4.24.210 would erase all common law duties of care owed by public landowners “to inspect for dangerous conditions, followed by such repair, safeguards, or warning as may be reasonably necessary for [the public’s] protection under the circumstances”, *Tincani*, 124 Wn.2d 131, in all public transportation facilities, schools, recreation facilities, parks, zoos, docks,

pools, festivals, fairgrounds and other lands and water areas that can be used for free outdoor recreation.

The statutes abolishing the sovereign immunity of quasi-municipal corporations, repealing school district immunity regarding defective playground athletic equipment, and the 1972 amendments adding “public” landowners to Sec. 17 of the ATV statute all relate to the same subject matter of governmental tort liability. *See Paulson v. Pierce County*, 99 Wn.2d at 650-51. These statutes must be construed together as a unified whole to give effect to the legislature’s purpose and to maintain an integrated, harmonious statutory scheme:

The principle of reading statutes in *pari materia* applies where statutes relate to the same subject matter. [Citation omitted] Such statutes “ ‘must be construed together.’ ” [Citation omitted] “In ascertaining legislative purpose, statutes which stand in *pari materia* are to be read together as constituting a unified whole, to the end that a harmonious, total statutory scheme evolves which maintains the integrity of the respective statutes.” [Citation omitted]

*Hallauer v. Spectrum Properties, Inc.*, 143 Wn.2d 126, 146, 18 P.3d 540 (2001).

The 1967 Legislature “used... precise language”, *see McCarver*, 92 Wn. 2d at 376, to abolish the tort immunity of quasi-municipal corporations and to repeal school districts’ immunity regarding defective playground athletic equipment: “All political subdivisions, municipal corporations, and

quasi-municipal corporations of the state... shall be liable for damages arising out of their tortious conduct...to the same extent as if they were a private person or corporation”, RCW 4.96.020 (1967); “RCW 28.58.030...[is]... hereby repealed.” Laws of 1967, ch. 164, §16. *McCarver* did not construe the 1972 amendments to RCW 4.24.210 in pari materia with RCW 4.96.020 to determine the legislature’s intent or to harmonize its general purpose to abolish school districts’ immunity and sovereign immunity, except for recreational vehicle use or other described outdoor recreation activities on public agricultural or forest lands.

“No intent to change [RCW 4.24.210] will be found unless it appears with clarity.” *Matthews v. Elk Pioneer Days*, 64 Wn. App. 433, 437, 824 P.2d 541 (1992); *Nielsen v. Port of Bellingham*, 107 Wn. App. 662, 666-67, 27 P.2d 1242 (2001). The 1972 and 1979 amendments to RCW 4.24.210 did not clearly change recreational use immunity beyond extending it to public landowners who allowed free recreational vehicle use on agricultural and forest lands.

It would be absurd and unjust to conclude that the 1967 Legislature would repeal school districts’ tort immunity for defective playground athletic equipment only to reinstate it via recreational use immunity without saying so, or that the 1972 Legislature intended that result by adding the word

“public” to Sec. 17 of the ATV statute, or that the 1979 Legislature intended to extend public landowner immunity to “any [public school district] lands” when the HB 50 Bill Report and the leadership of both legislative houses confirmed the extension only applied to private landowners. This Court should strictly construe the 1972 and 1979 amendments together with the enactment of RCW 4.96.020 and the repeal of RCW 28.58.030 and hold that RCW 4.24.210 does not apply to school district lands or to claims arising from defective school playground athletic equipment.

**G. The District Did Not Prove It Opened Its School Playgrounds to the Public for Outdoor Recreation.**

For recreational use immunity to apply “[l]and must be opened for the purpose of recreation.” *Camicia*, 179 Wn.2d at 697. “[T]he proper focus is on the landowner’s intent.” *Id.* at 702. “The legislature plainly intended statutory immunity to apply based not on the intent of the public invitee, but on the landowner’s action in opening land to the public for recreation.” *Id.*

When land would be open to the public in the absence of outdoor recreation use, immunity does not apply:

Immunity applies only when a landowner allows the public to use the land “for the purposes of outdoor recreation.” RCW 4.24.210. ... Where land is open to the public for some other public purpose—for example as part of a public transportation corridor—the inducement of recreational use immunity is unnecessary. It would make little sense to provide immunity

essential part of a complete school facility” that was open for overflow parking, school carnivals and bus transportation in the absence of recreational use. CP 318, 320, 327. The District did not meet its burden of proving entitlement to immunity because it did not present any evidence to prove its playground was opened for the purpose of outdoor recreation or would be closed to the public absent outdoor recreation.

“[W]here material facts are disputed, a trial is needed to resolve the issue” of recreational use immunity. *Camicia*, 179 Wn.2d at 693. The trial court initially found a material fact issue on whether the District’s intent was reflected in its written policy of reasonable care in selecting and installing safe playground equipment or in the unofficial policy of immunity it first asserted after John B. Archer was tortiously injured. RP 35. A rational jury also could conclude that recreational use immunity does not apply because the District did not intend to be immune from tort claims for defective athletic equipment when it opened its playgrounds to members of the public for free outdoor recreation under the auspices of safety and care.

**H. Basketball Is Not an Outdoor Recreation Activity to which RCW 4.24.210 Applies.**

In *Matthews v. Elk Pioneer Days*, 64 Wn. App. 433, 438, 824 P.2d 541 (1992), Division 3 held that watching a performance from a stage at a community festival was not an immune activity under RCW 4.24.210

because it was not “similar to the specific examples of outdoor recreation set forth in RCW 4.24.210”, *id.* at 438, and because “the Legislature did not intend ‘outdoor recreation’ to include activities”, which “can be held either indoors or outdoors.” *Id.* at 439.

Neither theatrical performances nor competitive team sports like basketball are similar to the activities listed in RCW 4.24.210, and either can be played or watched indoors as readily as outdoors. Although theater can occur on agricultural or forest lands or water areas to which immunity applied in 1972 when the legislature added “public” landowners to RCW 4.24.210, basketball ordinarily does not. Since playing basketball on a public school playground is not an “outdoor recreation” activity that the legislature intended to immunize, the Court should reverse the summary judgment and dismiss the District’s recreational use immunity defense.

## VII. CONCLUSION

RCW 4.24.210 does not apply to claims involving defective school playground equipment, or to tortious injury occurring on school district lands, or to playing sports like basketball on public school playgrounds. Even if RCW 4.24.210 could apply to these circumstances, the District’s failure to produce any evidence that its playgrounds would not be open to the public in

the absence of outdoor recreation would raise fact questions requiring reversal of the summary judgment.

RESPECTFULLY OFFERED this 8<sup>th</sup> day of September 2015.

THE BUDLONG LAW FIRM

By   
\_\_\_\_\_  
John Budlong, WSBA# 12594  
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Attorneys for Appellant John Archer

## APPENDIX

Appendix 1	RCW 4.24.210 (2012)
Appendix 2	RCW 4.08.120 (1953)
Appendix 3	RCW 28.58.030
Appendix 4	Laws of 1967, ch.216, §1 and 2
Appendix 5	Laws of 1961, ch. 136, §1
Appendix 6	Laws of 1963, ch. 159, §2
Appendix 7	Laws of 1967, ch. 164, §1 and §16
Appendix 8	Laws of 1969, ch. 24, §1, 2
Appendix 9	Laws of 1972, ch. 153, §1
Appendix 10	Senate House Bill 29 Legislative History (1972)
Appendix 11	Laws of 1979, ch. 53, §1
Appendix 12	House Bill 50 Legislative History (1979)
Appendix 13	Laws of 1980, ch. 111, §1
Appendix 14	Laws of 1991, ch. 50, §1
Appendix 15	Laws of 1991, ch. 69, §1
Appendix 16	Laws of 1992, ch. 52, §1
Appendix 17	Laws of 1997, ch. 26, §1
Appendix 18	Laws of 2003, ch. 16, §1
Appendix 19	Laws of 2006, ch. 212, §6
Appendix 20	Laws of 2011, ch. 53, §1
Appendix 21	Laws of 2012, ch. 15, §1

# **App. 1**

WestlawNext

4.24.210. Liability of owners or others in possession of land and water areas for injuries to recreation users--Know...  
 West's Revised Code of Washington Annotated Title 4, Civil Procedure Effective: June 7, 2012 (Approx. 3 pages)

NOTES OF DECISIONS (165)

West's Revised Code of Washington Annotated  
 Title 4, Civil Procedure (Refs & Annos)  
 Chapter 4.24. Special Rights of Action and Special Immunities (Refs & Annos)

Proposed Legislation

Effective: June 7, 2012

West's RCWA 4.24.210

4.24.210. Liability of owners or others in possession of land and water areas for injuries to recreation users--Known dangerous artificial latent conditions--Other limitations

Currentness

(1) Except as otherwise provided in subsection (3) or (4) of this section, any public or private landowners, hydroelectric project owners, or others in lawful possession and control of any lands whether designated resource, rural, or urban, or water areas or channels and lands adjacent to such areas or channels, who allow members of the public to use them for the purposes of outdoor recreation, which term includes, but is not limited to, the cutting, gathering, and removing of firewood by private persons for their personal use without purchasing the firewood from the landowner, hunting, fishing, camping, picnicking, swimming, hiking, bicycling, skateboarding or other nonmotorized wheel-based activities, aviation activities including, but not limited to, the operation of airplanes, ultra-light airplanes, hanggliders, parachutes, and paragliders, rock climbing, the riding of horses or other animals, clam digging, pleasure driving of off-road vehicles, snowmobiles, and other vehicles, boating, kayaking, canoeing, rafting, nature study, winter or water sports, viewing or enjoying historical, archaeological, scenic, or scientific sites, without charging a fee of any kind therefor, shall not be liable for unintentional injuries to such users.

(2) Except as otherwise provided in subsection (3) or (4) of this section, any public or private landowner or others in lawful possession and control of any lands whether rural or urban, or water areas or channels and lands adjacent to such areas or channels, who offer or allow such land to be used for purposes of a fish or wildlife cooperative project, or allow access to such land for cleanup of litter or other solid waste, shall not be liable for unintentional injuries to any volunteer group or to any other users.

(3) Any public or private landowner, or others in lawful possession and control of the land, may charge an administrative fee of up to twenty-five dollars for the cutting, gathering, and removing of firewood from the land.

(4)(a) Nothing in this section shall prevent the liability of a landowner or others in lawful possession and control for injuries sustained to users by reason of a known dangerous artificial latent condition for which warning signs have not been conspicuously posted.

(i) A fixed anchor used in rock climbing and put in place by someone other than a landowner is not a known dangerous artificial latent condition and a landowner under subsection (1) of this section shall not be liable for unintentional injuries resulting from the condition or use of such an anchor.

(ii) Releasing water or flows and making waterways or channels available for kayaking, canoeing, or rafting purposes pursuant to and in substantial compliance with a hydroelectric license issued by the federal energy regulatory commission, and making adjacent lands available for purposes of allowing viewing of such activities, does not create a known dangerous artificial latent condition and hydroelectric project owners under subsection (1) of this section shall not be liable for unintentional injuries to the recreational users and observers resulting from such releases and activities.

(b) Nothing in RCW 4.24.200 and this section limits or expands in any way the doctrine of attractive nuisance.

Abandoned shafts and excavations  
 Attractive nuisance  
 Causation  
 Common law  
 Construction and application  
 Dangerous artificial latent condition  
 Elements of action  
 Evidence  
 Exercise equipment  
 Federal liability  
 Fees  
 Immunity  
 Intent of user  
 Invitees  
 Knowledge of dangerous condition  
 Landowner's duty, generally  
 Latent or patent conditions  
 Logging road  
 Natural or simulated natural conditions  
 Outdoor recreation  
 Possession and control  
 Presumptions and burden of proof  
 Purpose  
 Questions of law and fact  
 Railroad right-of-way  
 Scenic overlook  
 State and political subdivisions  
 Summary judgment  
 Use of land  
 Validity  
 Vehicular injuries  
 Warning signs and barriers

(c) Usage by members of the public, volunteer groups, or other users is permissive and does not support any claim of adverse possession.

(5) For purposes of this section, the following are not fees:

(a) A license or permit issued for statewide use under authority of chapter 79A.05 RCW or Title 77 RCW;

(b) A pass or permit issued under RCW 79A.80.020, 79A.80.030, or 79A.80.040; and

(c) A daily charge not to exceed twenty dollars per person, per day, for access to a publicly owned ORV sports park, as defined in RCW 46.09.310, or other public facility accessed by a highway, street, or nonhighway road for the purposes of off-road vehicle use.

#### Credits

[2012 c 15 § 1, eff. June 7, 2012. Prior: 2011 c 320 § 11, eff. July 1, 2011; 2011 c 171 § 2, eff. July 1, 2011; 2011 c 53 § 1, eff. July 22, 2011; 2006 c 212 § 6, eff. June 7, 2006; prior: 2003 c 39 § 2, eff. July 27, 2003; 2003 c 16 § 2, eff. July 27, 2003; 1997 c 26 § 1, 1992 c 52 § 1; prior: 1991 c 69 § 1; 1991 c 50 § 1; 1980 c 111 § 1; 1979 c 53 § 1; 1972 ex.s. c 153 § 17; 1969 ex.s. c 24 § 2; 1967 c 216 § 2.]

#### Notes of Decisions (165)

West's RCWA 4.24.210, WA ST 4.24.210

Current with all laws from the 2015 Regular and First Special Sessions that are effective on or before July 24, 2015, the general effective date for laws from the Regular Session, and available laws from the 2015 Second and Third Special Sessions

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# **App. 2**

## WestlawNext™

## 4.08.120. Action against public corporations

West's Revised Code of Washington Annotated Title 4. Civil Procedure (Approx. 2 pages)

West's Revised Code of Washington Annotated  
 Title 4. Civil Procedure (Refs & Anns)  
 Chapter 4.08. Parties to Actions

## West's RCWA 4.08.120

## 4.08.120. Action against public corporations

## Currentness

An action may be maintained against a county or other of the public corporations mentioned or described in RCW 4.08.110, either upon a contract made by such county, or other public corporation in its corporate character and within the scope of its authority, or for an injury to the rights of the plaintiff arising from some act or omission of such county or other public corporation.

## Credits

[1953 c 118 § 2. Prior Code 1881 § 662; 1869 p 154 § 602; RRS § 951.]

## Notes of Decisions (152)

West's RCWA 4.08.120, WA ST 4.08.120

Current with all laws from the 2015 Regular and First Special Sessions that are effective on or before July 24, 2015, the general effective date for laws from the Regular Session, and available laws from the 2015 Second and Third Special Sessions

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## NOTES OF DECISIONS (152)

Bridges, counties  
 Bridges, municipalities  
 Carriers, municipalities  
 Civil rights actions  
 Construction and application  
 Construction projects, counties  
 Construction projects, municipalities  
 Construction with federal law  
 Construction with other law  
 Contagious diseases, municipalities  
 Correctional institutions, counties  
 Counties  
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 Estoppel  
 Exhaustion of administrative remedies  
 Extracurricular activities, school districts  
 Ferries, counties  
 Fire departments, municipalities  
 Floods and flood control, counties  
 Floods and flood control, municipalities  
 Garbage disposal, municipalities  
 Governmental functions, municipalities  
 Insurance, school districts  
 Knowledge of defect  
 Limitations of actions  
 Motor vehicles, counties  
 Motor vehicles, municipalities  
 Municipalities  
 Negligence per se, in general  
 Officers and employees, counties  
 Officers and employees, school districts  
 Park districts  
 Parks and recreation, municipalities  
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 Procedure, in general  
 Proprietary functions, counties  
 Proprietary functions, municipalities  
 Public utility districts  
 Public ways, counties  
 Public ways, municipalities  
 Rape, school districts  
 School districts  
 Scope of authority  
 Sports and recreation, school districts  
 Standing  
 Townships  
 Transportation of students, school districts  
 Unjust enrichment, counties  
 Venue  
 Warning signs and devices, municipalities  
 Zoning and planning, municipalities

# App. 3

RCW 28.58.030:

“No action shall be brought or maintained against any school district or its officers for any noncontractual act or omission of the district, its agents, officers, or employees, relating to any park, playground, or field house, athletic apparatus or appliance, or manual training equipment, whether situated in or about any schoolhouse or elsewhere, owned, operated, or maintained by the school district.”

# **App. 4**

CHAPTER 216.

[Engrossed House Bill No. 258.]

LIABILITY OF LANDOWNER PERMITTING PUBLIC USE FOR RECREATIONAL PURPOSES.

AN ACT relating to outdoor recreation; and limiting the liability of owners of land and water areas made available to the public for recreational purposes.

*Be it enacted by the Legislature of the State of Washington:*

Section 1. The purpose of this act is to encourage owners of land to make available land and water areas to the public for recreational purposes by limiting their liability toward persons entering thereon and toward persons who may be injured or otherwise damaged by the acts or omissions of persons entering thereon.

Public recreation—Liability of private landowner to public.

Sec. 2. Any landowner who allows members of the public to use his agricultural or forest land for the purposes of outdoor recreation, which term includes hunting, fishing, camping, picnicking, hiking, pleasure driving, nature study, winter sports, viewing or enjoying historical, archaeological, scenic, or scientific sites, without charging a fee of any kind therefor, shall not be liable for unintentional injuries to such users: *Provided*, That nothing in this section shall prevent the liability of such a landowner for injuries sustained to users by reason of a known dangerous artificial latent condition for which warning signs have not been conspicuously posted: *Provided further*, That nothing in this act limits or expands in any way the doctrine of attractive nuisance.

Tort immunity—Limitation.

Passed the House March 6, 1967.

Passed the Senate March 5, 1967.

Approved by the Governor March 21, 1967.

# **App. 5**

CHAPTER 136.

[ H. B. 338. ]

ACTIONS AGAINST THE STATE.

AN ACT relating to suits against the state of Washington; and adding a new section to chapter 4.92 RCW.

*Be it enacted by the Legislature of the State of Washington:*

New section.

SECTION 1. There is added to chapter 4.92 RCW a new section to read as follows:

Actions for  
tortious con-  
duct against  
state author-  
ized—Venue.

The state of Washington, whether acting in its governmental or proprietary capacity, hereby consents to the maintaining of a suit or action against it for damages arising out of its tortious conduct to the same extent as if it were a private person or corporation. The suit or action shall be maintained in the county in which the cause of action arises: *Provided*, That this section shall not affect any special statute relating to procedure for filing notice of claims against the state or any agency, department or officer of the state.

Passed the House February 8, 1961.

Passed the Senate March 6, 1961.

Approved by the Governor March 16, 1961.

# **App. 6**

Thurston county shall have jurisdiction over such offenses.

Passed the Senate March 3, 1963.

Passed the House March 11, 1963.

Approved by the Governor March 25, 1963.

CHAPTER 159.

[ S. B. 205. ]

CLAIMS AND ACTIONS AGAINST THE STATE.

AN ACT relating to claims against the state and claims against the state arising out of tortious conduct; creating a tort claims account in the general fund; providing for expenditures therefrom and reimbursement thereof; amending section 1, chapter 95, Laws of 1895, as amended by section 1, chapter 216, Laws of 1927, and RCW 4.92.010; amending section 1, chapter 136, Laws of 1961, and RCW 4.92.090; amending section 4, chapter 95, Laws of 1895, and RCW 4.92.040; and adding nine new sections to chapter 4.92 RCW.

*Be it enacted by the Legislature of the State of Washington:*

RCW 4.92.010 amended.

SECTION 1. Section 1, chapter 95, Laws of 1895, as amended by section 1, chapter 216, Laws of 1927, and RCW 4.92.010 are each amended to read as follows:

Actions against state. Where brought —Cost bond.

Any person or corporation having any claim against the state of Washington shall have a right of action against the state in the superior court of Thurston county. The plaintiff in such action shall, at the time of filing his complaint, file a surety bond executed by the plaintiff and a surety company authorized to do business in the state of Washington to the effect that such plaintiff will indemnify the state against all costs that may accrue in such action, and will pay to the clerk of said court all costs in case the plaintiff shall fail to prosecute his action or to obtain a judgment against the state: *Provided,*

Proviso.

That actions for the enforcement or foreclosure of any lien upon, or to determine or quiet title to, any real property in which the state of Washington is a necessary or proper party defendant may be commenced and prosecuted to judgment against the state in the superior court of the county in which real property is situated, and that no surety bond as above provided for shall be required in any such action:

*Provided further*, That actions on a claim arising out of tortious conduct may be commenced against the state in the superior court of Thurston county, the county in which the claim arises, or the county in which the plaintiff resides. Such action shall be subject to a change of venue as provided by law. Proviso.

SEC. 2. Section 1, chapter 136, Laws of 1961, and RCW 4.92.090 are each amended to read as follows: RCW 4.92.090 amended.

The state of Washington, whether acting in its governmental or proprietary capacity, shall be liable for damages arising out of its tortious conduct to the same extent as if it were a private person or corporation. —Tort claims.

SEC. 3. There is added to chapter 4.92 RCW a new section to read as follows: New section.

All claims against the state for damages arising out of tortious conduct shall be presented to and filed with the state auditor within one hundred twenty days from the date that the claim arose. All such claims shall be verified and shall accurately describe the conduct and circumstances which brought about the injury or damage, describe the injury or damage, state the time and place the injury or damage occurred, state the names of all persons involved, if known, and shall contain the amount of damages claimed, together with a statement of the actual residence of the claimant at the time of presenting and filing the claim and for a period of six months immediately prior to the time the claim —Tort claims—Filing time—Contents—Verification.

arose. If the claimant is incapacitated from verifying, presenting, and filing his claim in the time prescribed or if the claimant is a minor, or is a nonresident of the state absent therefrom during the time within which his claim is required to be filed, the claim may be verified, presented, and filed on behalf of the claimant by any relative, attorney, or agent representing him.

New section.

SEC. 4. There is added to chapter 4.92 RCW a new section to read as follows:

Tort claims against state. Claim as requisite to action.

No action shall be commenced against the state for damages arising out of tortious conduct until a claim has first been presented to and filed with the state auditor. The requirements of this section shall not affect the applicable period of limitations within which an action must be commenced, but such period shall begin and shall continue to run as if no claim were required.

New section.

SEC. 5. There is added to chapter 4.92 RCW a new section to read as follows:

—Assignment.

Claims against the state arising out of tortious conduct may be assigned voluntarily, involuntarily, and by operation of law to the same extent as like claims against private persons may be so assigned.

RCW 4.92.040 amended.

SEC. 6. Section 4, chapter 95, Laws of 1895, and RCW 4.92.040 are each amended to read as follows:

Claims against state—Judgment, now satisfied.

No execution shall issue against the state on any judgment. Whenever a final judgment against the state shall have been obtained in an action on a claim arising out of tortious conduct, the clerk shall make and furnish to the budget director a duly certified copy of said judgment. Whenever a final judgment against the state shall have been obtained in any other action, the clerk shall make and furnish to the auditor of state a duly certified copy of such judgment; the auditor of state shall thereupon audit

the amount of damages and costs therein awarded, and the same shall be paid out of the state treasury.

SEC. 7. There is added to chapter 4.92 RCW a new section to read as follows:

A tort claims account in the state general fund is hereby created to be used solely and exclusively for the payment of claims against the state arising out of tortious conduct. No money shall be paid from the tort claims account unless:

(1) The claim shall have been reduced to final judgment in a court of competent jurisdiction; or

(2) The claim has been approved for payment in accordance with section 8 of this 1963 amendatory act.

SEC. 8. There is added to chapter 4.92 RCW a new section to read as follows:

The head or governing body of any agency or department of state government, with the approval of the attorney general, may consider, ascertain, adjust, determine, compromise and settle any claim arising out of tortious conduct for which the state of Washington would be liable in law for money damages of five hundred dollars or less. The acceptance by the claimant of any such award, compromise or settlement shall be final and conclusive on the claimant; and upon the state of Washington, unless procured by fraud, and shall constitute a complete release of any claim against the state of Washington. A request for administrative settlement shall not preclude a claimant from filing a court action pending administrative determination, limit the amount recoverable in such a suit or constitute an admission against interest of either the claimant or the state.

SEC. 9. There is added to chapter 4.92 RCW a new section to read as follows:

After commencement of an action in superior court upon a claim against the state arising out of

tortious conduct, the attorney general, with the approval of the court, following such testimony as the court may require, may compromise and settle the same and stipulate for judgment against the state.

New section.

SEC. 10. There is added to chapter 4.92 RCW a new section to read as follows:

Tort claims  
against state—  
Payment,  
procedure.

Payment of claims and judgments arising out of tortious conduct shall not be made by any agency or department of state government with the exception of the budget director, and he shall authorize and direct the payment of moneys only from the tort claims account whenever:

(1) The head or governing body of any agency or department of state certifies to him that a claim has been settled under authority of section 8 of this 1963 amendatory act; or

(2) The clerk of court has made and forwarded a certified copy of a final judgment in a court of competent jurisdiction and the attorney general certifies that the judgment is final and was entered in an action on a claim arising out of tortious conduct. Payment of a judgment shall be made to the clerk of the court for the benefit of the judgment creditors. Upon receipt of payment, the clerk shall satisfy the judgment against the state.

New section.

SEC. 11. There is added to chapter 4.92 RCW a new section to read as follows:

—Liability of  
state agency—  
Reimburse-  
ment—Legisla-  
tive report.

Liability for and payment of claims arising out of tortious conduct is declared to be a proper charge as part of the normal cost of operating the various agencies and departments of state government whose operations and activities give rise to the liability and a lawful charge against moneys appropriated or available to such agencies and departments.

Within any agency or department the charge shall be apportioned among such appropriated and

other available moneys in the same proportion that the moneys finance the activity causing liability. Whenever the operations and activities of more than one agency or department combine to give rise to a single liability, the budget director shall determine the comparative responsibility of each agency or department for the liability.

State agencies over which the budget director has authority to revise allotments under chapter 43.88 RCW shall make reimbursement to the tort claims account for any payment made from it for the benefit of such agencies. The budget director is authorized and directed to transfer or order the transfer to the account, from moneys available or appropriated to such agencies, that sum of money which is a proper charge against them: *Provided,* Proviso. That in any case where reimbursement would seriously disrupt or prevent substantial performance of the operations or activities of the state agency, the budget director may relieve the agency of all or a portion of the obligation to make reimbursement.

The budget director shall report to the legislature, for any biennial period, on the status of the tort claims account, all payments made therefrom, all reimbursements made thereto, and the identity of agencies and departments of state government whose operations and activities give rise to liability, including those agencies and departments over which he does not have authority to revise allotments under chapter 43.88 RCW.

The budget director shall adopt rules and regulations governing the procedures to be followed in making payment from the tort claims account, in reimbursing the account and in relieving an agency of its obligation to reimburse.

SEC. 12. If any provision of this act, or its application to any persons or circumstances is held invalid, the remainder of the act, or the application Severability.

of the provision to other persons or circumstances is not affected.

Passed the Senate March 5, 1963.

Passed the House March 12, 1963.

Approved by the Governor March 25, 1963.

CHAPTER 160.

[ S. B. 241. ]

TELETYPEWRITER COMMUNICATIONS NETWORK—  
COMMUNICATIONS ADVISORY COMMITTEE.

AN Act relating to state government; establishing a state teletypewriter communications network; authorizing department and agencies of state government and the political subdivisions thereof to participate therein; and creating a state communications advisory board.

*Be it enacted by the Legislature of the State of Washington:*

Teletypewriter  
communications network.  
Authorized—  
General  
provisions.

SECTION 1. The director of budget is hereby authorized to establish a teletypewriter communications network which will inter-connect the law enforcement agencies of the state and its political subdivisions into a unified written communications system. The director of budget is authorized to lease or purchase such facilities and equipment as may be necessary to establish and maintain such teletypewriter communications network.

(1) The communications network shall be used exclusively for the official business of the state, and the official business of any city, county, city and county, or other public agency.

(2) This section does not prohibit the occasional use of the state's communications network by any other state or public agency thereof when the messages transmitted relate to the enforcement of the criminal laws of the state.

(3) The director of budget shall fix the monthly

# **App. 7**

## CHAPTER 164.

[Engrossed House Bill No. 97.]

TORT LIABILITY—POLITICAL  
SUBDIVISIONS—MUNICIPAL CORPORATIONS.

AN ACT relating to state and local government; deleting provisions granting certain political subdivisions immunity from tort liability; removing immunity from tort liability from all political subdivisions, municipal corporations, and quasi municipal corporations of the state; prescribing procedures; amending section 3, chapter 159, Laws of 1963 and RCW 4.92.100; amending section 15, chapter 34, Laws of 1939 and RCW 52.08.010; amending section 11, chapter 6, Laws of 1947 and RCW 68.16.110; amending section 6, chapter 264, Laws of 1945 as last amended by section 2, chapter 157, Laws of 1965 and RCW 70.44.060; amending section 16, chapter 26, Laws of 1965 and RCW 86.05.920; amending section 50, chapter 72, Laws of 1937 and RCW 86.09.148; amending section 41, chapter 254, Laws of 1927 and RCW 89.30.121; amending section 35.31.010, chapter 7, Laws of 1965 and RCW 35.31.010; amending section 35.31.020, chapter 7, Laws of 1965 and RCW 35.31.020; amending section 35.31.040, chapter 7, Laws of 1965 and RCW 35.31.040; amending section 36.45.010, chapter 4, Laws of 1963 and RCW 36.45.010; amending section 47.60.250, chapter 13, Laws of 1961 and RCW 47.60.250; amending section 2, chapter 276, Laws of 1961 and RCW 87.03.440; repealing section 1, chapter 92, Laws of 1917 and RCW 28.58.030; repealing section 35.23.340, chapter 7, Laws of 1965 and RCW 35.23.340; repealing section 10, chapter 224, Laws of 1957 and RCW 53.52.010; and repealing section 11, chapter 224, Laws of 1957 and RCW 53.52.020.

*Be it enacted by the Legislature of the State of Washington:*

Tort liability—  
State, political  
subdivisions—  
Filing.

Section 1. All political subdivisions, municipal corporations, and quasi municipal corporations of the state, whether acting in a governmental or proprietary capacity, shall be liable for damages arising out of their tortious conduct, or the tortious conduct of their officers, agents or employees to the same extent as if they were a private person or corporation: *Provided*, That the filing within the time allowed by law of any claim required shall be a condi-

tion precedent to the maintaining of any action. The laws specifying the content for such claims shall be liberally construed so that substantial compliance therewith will be deemed satisfactory.

Sec. 2. Section 3, chapter 159, Laws of 1963 and RCW 4.92.100 are each amended to read as follows:

RCW 4.92.100  
amended.

All claims against the state for damages arising out of tortious conduct shall be presented to and filed with the state auditor within one hundred twenty days from the date that the claim arose. All such claims shall be verified and shall accurately describe the conduct and circumstances which brought about the injury or damage, describe the injury or damage, state the time and place the injury or damage occurred, state the names of all persons involved, if known, and shall contain the amount of damages claimed, together with a statement of the actual residence of the claimant at the time of presenting and filing the claim and for a period of six months immediately prior to the time the claim arose. If the claimant is incapacitated from verifying, presenting, and filing his claim in the time prescribed or if the claimant is a minor, or is a nonresident of the state absent therefrom during the time within which his claim is required to be filed, the claim may be verified, presented, and filed on behalf of the claimant by any relative, attorney, or agent representing him.

Claims against  
state—Pre-  
sentment and  
filing.

With respect to the content of such claims this section shall be liberally construed so that substantial compliance will be deemed satisfactory.

Sec. 3. Section 47.60.250, chapter 13, Laws of 1961 and RCW 47.60.250 are each amended to read as follows:

RCW 47.60.250  
amended.

As condition to a recovery thereon, a verified claim against the authority growing out of such damages, loss, injuries or death must first be

Puget sound  
ferry and toll  
bridge system  
—Claim for  
damages—Filing—Contents  
—Time limitation.

presented to the authority and filed with its secretary within one hundred twenty days after the time when such claim accrued. If the claimant shall be incapacitated from verifying and filing his claim within said one hundred twenty days, or if the claimant be a minor, then the claim may be verified and presented on behalf of said claimant by his relative, attorney or agent. Each such claim must accurately locate and describe the event or defect that caused the damage, loss, injury or death, reasonably describe the damage, loss or injury, and state the time when the same occurred, give the claimant's residence for six months last past and contain the items of damages claimed. No action shall be maintained against the authority upon such claim until the same has been presented to, and filed with, the authority and sixty days have elapsed after such presentation and filing, nor more than three years after such claim accrued.

With respect to the content of such claims this section shall be liberally construed so that substantial compliance will be deemed satisfactory.

Claims against  
cities and  
towns, counties,  
and other  
political subdivisions,  
etc.

Sec. 4. (1) Chapter 35.31 RCW shall apply to claims against cities and towns, and chapter 36.45 RCW shall apply to claims against counties.

(2) The provisions of this subsection shall not apply to claims against cities and towns or counties but shall apply to claims against all other political subdivisions, municipal corporations, and quasi municipal corporations. Claims against such entities for damages arising out of tortious conduct shall be presented to and filed with the governing body thereof within one hundred twenty days from the date that the claim arose. All such claims shall be verified and shall accurately describe the conduct and circumstances which brought about the injury or damage, describe the injury or damage, state the time and place the injury or damage occurred, state the

names of all persons involved, if known, and shall contain the amount of damages claimed, together with a statement of the actual residence of the claimant at the time of presenting and filing the claim and for a period of six months immediately prior to the time the claim arose. If the claimant is incapacitated from verifying, presenting, and filing his claim in the time prescribed or if the claimant is a minor, or is a nonresident of the state absent therefrom during the time within which his claim is required to be filed, the claim may be verified, presented, and filed on behalf of the claimant by any relative, attorney, or agent representing him. No action shall be commenced against any such entity for damages arising out of tortious conduct until a claim has first been presented to and filed with the governing body thereof. The requirements of this subsection shall not affect the applicable period of limitations within which an action must be commenced, but such period shall begin and shall continue to run as if no claim were required.

Sec. 5. Section 15, chapter 34, Laws of 1939 and RCW 52.08.010 are each amended to read as follows:

RCW 52.08.010  
amended.

Fire protection districts created under this act shall be political subdivisions of the state and shall be held and construed to be municipal corporations within the provisions of the laws and Constitution of the state of Washington. Such a district shall constitute a body corporate and shall possess all the usual powers of a corporation for public purposes as well as all other powers that may now or hereafter be specifically conferred by law.

Fire protection  
districts.

Sec. 6. Section 11, chapter 6, Laws of 1947 and RCW 68.16.110 are each amended to read as follows:

RCW 68.16.110  
amended.

Cemetery districts created under this chapter shall be deemed to be municipal corporations within the purview of the Constitution and laws of the

Cemetery  
districts.

Tort claims—  
Cemetery dis-  
tricts.

state of Washington. They shall constitute bodies corporate and possess all the usual powers of corporations for public purposes. They shall have full authority to carry out the objects of their creation, and to that end are empowered to acquire, hold, lease, manage, occupy and sell real and personal property or any interest therein; to enter into and perform any and all necessary contracts; to appoint and employ necessary officers, agents and employees; to contract indebtedness; to borrow money; to levy and enforce the collection of taxes against the lands within the district, and to do any and all lawful acts to effectuate the purposes of this chapter.

RCW 70.44.060  
amended.

Sec. 7. Section 6, chapter 264, Laws of 1945 as last amended by section 2, chapter 157, Laws of 1965 and RCW 70.44.060 are each amended to read as follows:

Tort claims—  
Public hospital  
districts.

All public hospital districts organized under the provisions of this chapter shall have power:

(1) To make a survey of existing hospital facilities within and without such district.

(2) To construct, condemn and purchase, purchase, acquire, lease, add to, maintain, operate, develop and regulate, sell and convey all lands, property, property rights, equipment, hospital facilities and systems for the maintenance of hospitals, buildings, structures and any and all other facilities, and to exercise the right of eminent domain to effectuate the foregoing purposes or for the acquisition and damaging of the same or property of any kind appurtenant thereto, and such right of eminent domain shall be exercised and instituted pursuant to a resolution of the commission and conducted in the same manner and by the same procedure as in or may be provided by law for the exercise of the power of eminent domain by incorporated cities and towns of the state of Washington in the acquisition of property rights: *Provided*, That no public hospi-

tal district shall have the right of eminent domain and the power of condemnation against any hospital clinic or sanatorium operated as a charitable, non-profit establishment or against a hospital clinic or sanatorium operated by a religious group or organization: *And provided, further,* That no hospital district organized and existing in districts having more than twenty-five thousand population have any of the rights herein enumerated without the prior written consent of all existing hospital facilities within the boundaries of such hospital district.

(3) To lease existing hospital and equipment and/or other property used in connection therewith, and to pay such rental therefor as the commissioners shall deem proper; to provide hospital service for residents of said district in hospitals located outside the boundaries of said district, by contract or in any other manner said commissioners may deem expedient or necessary under the existing conditions; and said hospital district shall have the power to contract with other communities, corporations or individuals for the services provided by said hospital district; and they may further receive in said hospital and furnish proper and adequate services to all persons not residents of said district at such reasonable and fair compensation as may be considered proper: *Provided,* That it must at all times make adequate provision for the needs of the district and residents of said district shall have prior rights to the available facilities of said hospitals, at rates set by the district commissioners.

(4) For the purpose aforesaid, it shall be lawful for any district so organized to take, condemn and purchase, lease, or acquire, any and all property, and property rights, including state and county lands, for any of the purposes aforesaid, and any and all other facilities necessary or convenient, and

Tort claims—  
Public hospital  
districts.

in connection with the construction, maintenance, and operation of any such hospital.

(5) To contract indebtedness or borrow money for corporate purposes on the credit of the corporation or the revenues of the hospitals thereof, and to issue bonds therefor, bearing interest at a rate not exceeding six percent per annum, payable semiannually, said bonds not to be sold for less than par and accrued interest; and to assign or sell hospital accounts receivable for collection with or without recourse.

(6) To raise revenue by the levy of an annual tax on all taxable property within such public hospital district not to exceed three mills or such further amount as has been or shall be authorized by a vote of the people: *Provided further*, That the public hospital districts are hereby authorized to levy such a general tax in excess of said three mills when authorized so to do at a special election conducted in accordance with and subject to all of the requirements of the Constitution and laws of the state of Washington now in force or hereafter enacted governing the limitation of tax levies commonly known as the forty mill tax limitation. The said board of district commissioners is hereby authorized and empowered to call a special election for the purpose of submitting to the qualified voters of the hospital district a proposition to levy a tax in excess of the three mills herein specifically authorized. The commissioner shall prepare a proposed budget of the contemplated financial transactions for the ensuing year and file the same in the records of the commission on or before the first Monday in September. Notice of the filing of said proposed budget and the date and place of hearing on the same shall be published for at least two consecutive weeks in a newspaper printed and of general circulation in said county. On the first Monday in Octo-

ber the commission shall hold a public hearing on said proposed budget at which any taxpayer may appear and be heard against the whole or any part of the proposed budget. Upon the conclusion of said hearing, the commission shall, by resolution, adopt the budget as finally determined and fix the final amount of expenditures for the ensuing year. Taxes levied by the commission shall be certified to and collected by the proper county officer of the county in which such public hospital district is located in the same manner as is or may be provided by law for the certification and collection of port district taxes. The commission is authorized, prior to the receipt of taxes raised by levy, to borrow money or issue warrants of the district in anticipation of the revenue to be derived by such district from the levy of taxes for the purpose of such district, and such warrants shall be redeemed from the first money available from such taxes when collected, and such warrants shall not exceed the anticipated revenues of one year, and shall bear interest at a rate of not to exceed six percent per annum.

(7) To enter into any contract with the United States government or any state, municipality or other hospital district, or any department of those governing bodies, for carrying out any of the powers authorized by this chapter.

(8) To sue and be sued in any court of competent jurisdiction: *Provided*, That all suits against the public hospital district shall be brought in the county in which the public hospital district is located.

(9) To make contracts, employ superintendents, attorneys, and other technical or professional assistants and all other employees; to make contracts with private or public institutions for employee retirement programs; to print and publish information or

literature and to do all other things necessary to carry out the provisions of this chapter.

RCW 86.05.920  
amended.

Tort claims—  
Flood control  
districts.

Sec. 8. Section 16, chapter 26, Laws of 1965 and RCW 86.05.920 are each amended to read as follows:

Sections 1 through 79, chapter 160, Laws of 1935, section 1, chapter 82, Laws of 1949, section 1, chapter 20, Laws of 1953 and RCW 86.05.010 through 86.05.910 are each repealed: *Provided*, That districts heretofore established pursuant to said laws may continue to be operated and maintained as provided therein (except that the tort liability immunity provided for in section 32, chapter 160, Laws of 1935 and RCW 86.05.320 shall no longer apply); or may take such action as may be required to conform to the provisions of chapter 72, Laws of 1937 and chapter 86.09 RCW regulating the maintenance and operation of flood control districts to the same extent and to the same effect as if originally organized under said act: *Provided further*, That the organization of such districts and the validation of indebtedness heretofore incurred shall be governed as follows:

(1) Each and all of the flood control districts heretofore organized and established under sections 1 through 79, chapter 160, Laws of 1935, section 1, chapter 82, Laws of 1949, section 1, chapter 20, Laws of 1953 and RCW 86.05.010 through 86.05.910 are hereby validated and declared to be duly existing flood control districts having their respective boundaries as set forth in their organization proceedings as shown by the files in the offices of the auditors of each of the counties affected;

(2) All debts, contracts, and obligations heretofore made by or in favor of, and all bonds or other obligations heretofore executed in connection with or in pursuance of attempted organization, and all other things and proceedings heretofore done or taken by any flood control district heretofore es-

established, operated and maintained under sections 1 through 79, chapter 160, Laws of 1935, section 1, chapter 82, Laws of 1949, section 1, chapter 20, Laws of 1953 and RCW 86.05.010 through 86.05.910 are hereby declared legal and valid and of full force and effect until such are fully satisfied and/or discharged.

Sec. 9. Section 50, chapter 72, Laws of 1937 and RCW 86.09.148 are each amended to read as follows:

RCW 86.09.148 amended.

A flood control district created under this chapter shall constitute a body corporate and shall possess all the usual powers of a corporation for public purposes as well as all powers that may now or hereafter be conferred by law.

Flood control districts.

Sec. 10. Section 41, chapter 254, Laws of 1927 and RCW 89.30.121 are each amended to read as follows:

RCW 89.30.121 amended.

Reclamation districts created under this chapter shall be political subdivisions of the state and shall be held and construed to be municipal corporations within the provisions of the state Constitution relating to exemptions from taxation and within the provisions relating to the debt limits of municipal corporations: *Provided*, That nothing herein contained shall be construed as a limitation on general improvement and divisional districts, authorized herein, to contract obligations.

Reclamation districts.

Sec. 11. Section 35.31.010, chapter 7, Laws of 1965 and RCW 35.31.010 are each amended to read as follows:

RCW 35.31.010 amended.

Whenever a claim for damages sounding in tort against any city permitted by law to have a charter is presented to and filed with the city clerk or other proper officer of the city, in compliance with valid charter provisions thereof, not inconsistent with the provisions of chapter 35.31 RCW, such claim must contain in addition to the valid requirements of the

Charter cities  
—Filing  
claims—  
Contents.

Tort claims.

city charter relating thereto, a statement of the actual residence of the claimant, by street and number, at the date of presenting and filing such claim; an also a statement of the actual residence of the claimant for six months immediately prior to the time the claim for damages accrued.

RCW 35.31.020 amended.

Sec. 12. Section 35.31.020, chapter 7, Laws of 1965 and RCW 35.31.020 are each amended to read as follows:

Charter cities  
—Procedure—  
Time limita-  
tion.

The provisions of chapter 35.31 RCW shall be applied notwithstanding any provisions to the contrary in any charter of any city permitted by law to have a charter; however, charter provisions not inconsistent herewith shall continue to apply. All claims for damages against a charter city shall be filed within one hundred and twenty days from the date that the damage occurred or the injury was sustained: *Provided*, That if the claimant is incapacitated from verifying and filing his claim for damages within the time prescribed, or if the claimant is a minor, or in case the claim is for damages to real or personal property, and if the owner of such property is a nonresident of such city or is absent therefrom during the time within which a claim for damages to said property is required to be filed, then the claim may be verified and presented on behalf of the claimant by any relative or attorney or agency representing the injured person, or in case of damages to property, representing the owner thereof.

RCW 35.31.040 amended.

Sec. 13. Section 35.31.040, chapter 7, Laws of 1965 and RCW 35.31.040 are each amended to read as follows:

Non-charter  
cities and  
towns—Filing  
claims—Time  
limitation.

All claims for damages against noncharter cities and towns must be presented to the city or town council and filed with the city or town clerk within one hundred and twenty days from the date that the damage occurred or the injury was sustained: *Pro-*

*vided*, That if the claimant is incapacitated from verifying and filing his claim for damages within said time limitation, or if the claimant is a minor, then the claim may be verified and presented on behalf of the claimant by any relative or attorney or agent representing the injured person.

No ordinance or resolution shall be passed allowing such claim or any part thereof, or appropriating any money or other property to pay or satisfy the same or any part thereof, until the claim has first been referred to the proper department or committee, nor until such department or committee has made its report to the council thereon pursuant to such reference.

All such claims for damages must accurately locate and describe the defect that caused the injury, reasonably describe the injury and state the time when it occurred, give the residence for six months last past of claimant, contain the item of damages claimed and be sworn to by the claimant or a relative, attorney or agent of the claimant.

No action shall be maintained against any such city or town for any claim for damages until the same has been presented to the council and sixty days have elapsed after such presentation.

Sec. 14. Section 36.45.010, chapter 4, Laws of 1963 and RCW 36.45.010 are each amended to read as follows:

RCW 36.45.010 amended.

All claims for damages against any county must be presented before the board of county commissioners and filed with the clerk thereof within one hundred and twenty days from the date that the damage occurred or the injury was sustained.

Counties—Filing claims—Time limitation.

Sec. 15. Section 2, chapter 276, Laws of 1961 and RCW 87.03.440 are each amended to read as follows:

RCW 87.03.440 amended.

The treasurer of the county in which is located the office of the district shall be ex officio treasurer

Irrigation districts—Claims against.

Tort claims—  
Irrigation  
districts.

of the district, and any county treasurer handling district funds shall be liable upon his official bond and to criminal prosecution for malfeasance and misfeasance, or failure to perform any duty as county or district treasurer. The treasurer of each county in which lands of the district are located shall collect and receipt for all assessments levied on lands within his county. There shall be deposited with the district treasurer all funds of the district. He shall pay out such funds upon warrants issued by the county auditor against the proper funds of the district, except the sums to be paid out of the bond fund upon coupons or bonds presented to the treasurer. All warrants shall be paid in the order of their issuance. The district treasurer shall report, in writing, on the first Monday in each month to the directors, the amount in each fund, the receipts for the month preceding in each fund, and file the report with the secretary of the board. The secretary shall report to the board, in writing, at the regular meeting in each month, the amount of receipts and expenditures during the preceding month, and file the report in the office of the board.

Any claim against the district for which it is liable under existing laws shall be presented to the board as provided in section 4 of this 1967 amendatory act and upon allowance it shall be attached to a voucher verified by the claimant and approved by the chairman and signed by the secretary and directed to the auditor for payment.

Repeal.

Sec. 16. Section 1, chapter 92, Laws of 1917 and RCW 28.58.030; section 10, chapter 224, Laws of 1957 and RCW 53.52.010; section 35.23.340, chapter 7, Laws of 1965 and RCW 35.23.340; and section 11, chapter 224, Laws of 1957 and RCW 53.52.020 are each hereby repealed.

Sec. 17. It is the purpose of this act to extend the doctrine established in chapter 136, Laws of 1961, as amended, to all political subdivisions, municipal corporations and quasi municipal corporations of the state. Purpose.

Sec. 18. If any provision of this act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected. Severability.

Passed the House March 2, 1967.

Passed the Senate March 6, 1967.

Approved by the Governor March 21, 1967.

CHAPTER 165.

[Substitute House Bill No. 533.]

STATE BOARD FOR VOCATIONAL EDUCATION—AUTHORITY.

AN ACT relating to the authority of the state board for vocational education.

Be it enacted by the Legislature of the State of Washington:

Section 1. The state board for vocational education shall have authority to:

State board for vocational education— Authority.

(1) Administer any legislation enacted by the legislature in pursuance of the aims and purposes of any acts of congress insofar as the provisions thereof may apply to the administration of fire service training;

(2) Establish and conduct fire service training courses;

(3) Construct, equip, maintain and operate necessary fire service training facilities: Provided, That the board's authority to construct, equip and main-

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any instrument or instruments necessary in effecting the sale or trade of and conveying the title to such real property shall be executed by the governor on behalf of the state of Washington in form approved by the attorney general.

NEW SECTION. Sec. 3. The state military department is further authorized to negotiate with the federal government for the purpose of arriving at a mutually agreed price for the federal investment in the building presently existing on the Kirkland armory site. Following the sale or trade of the site, the state military department shall pay over to the federal government, from the funds received, if any, an amount equal to the mutually agreed price.

Passed the House March 14, 1969  
Passed the Senate March 24, 1969  
Approved by the Governor April 2, 1969  
Filed in office of Secretary of State April 2, 1969

CHAPTER 23  
[Engrossed House Bill No. 125]  
COMMERCIAL SALMON FISHING--  
PROHIBITED GEAR

AN ACT Relating to food fish and shellfish; adding new section to chapter 12, Laws of 1955 and to chapter 75.12; and providing an effective date.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

NEW SECTION. Section 1. There is added to chapter 12, Laws of 1955 and to chapter 75.12 RCW a new section to read as follows:

"Angling" or "personal use" gear, in accordance with the provisions of RCW 75.04.070, RCW 75.04.080, RCW 75.04.100 and under the authority set forth in RCW 75.08.080, is prohibited for commercial salmon fishing.

NEW SECTION. Sec. 2. The provisions of this act shall become effective January 1, 1970.

Passed the House March 14, 1969  
Passed the Senate March 26, 1969  
Approved by the Governor April 2, 1969  
Filed in office of Secretary of State April 2, 1969

CHAPTER 24  
[Engrossed House Bill No. 128]  
LANDS, WATERS--  
RECREATIONAL USE--  
OWNER IMMUNITY

AN ACT Relating to outdoor recreation; limiting the liability of

owners and others in lawful possession and control of land and water areas or channels made available to the public for recreational purposes; amending section 1, chapter 216, Laws of 1967 and RCW 4.24.200; and amending section 2, chapter 216, Laws of 1967 and RCW 4.24.210.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

Section 1. Section 1, chapter 216, Laws of 1967 and RCW 4.24-.200 are each amended to read as follows:

The purpose of RCW 4.24.200 and 4.24.210 is to encourage owners ~~((of-land))~~ or others in lawful possession and control of land and water areas or channels to make them available ~~((land-and-water areas))~~ to the public for recreational purposes by limiting their liability toward persons entering thereon and toward persons who may be injured or otherwise damaged by the acts or omissions of persons entering thereon.

Sec. 2. Section 2, chapter 216, Laws of 1967 and RCW 4.24.210 are each amended to read as follows:

Any landowners or others in lawful possession and control of agricultural or forest lands or water areas or channels and rural lands adjacent to such areas or channels who allow~~((e))~~ members of the public to use ~~((his-agricultural-or-forest-land))~~ them for the purposes of outdoor recreation, which term includes hunting, fishing, camping, picnicking, swimming, hiking, pleasure driving, boating, nature study, winter or water sports, viewing or enjoying historical, archaeological, scenic, or scientific sites, without charging a fee of any kind therefor, shall not be liable for unintentional injuries to such users: PROVIDED, That nothing in this section shall prevent the liability of such a landowner or others in lawful possession and control for injuries sustained to users by reason of a known dangerous artificial latent condition for which warning signs have not been conspicuously posted: PROVIDED FURTHER, That nothing in RCW 4.24.200 and 4.24.210 limits or expands in any way the doctrine of attractive

nuisance.

Passed the House March 14, 1969  
 Passed the Senate March 26, 1969  
 Approved by the Governor April 2, 1969  
 Filed in office of Secretary of State April 2, 1969

CHAPTER 25  
 [House Bill No. 332]  
 PUBLIC HEALTH--FEDERAL FUNDS

AN ACT Relating to public health; and amending section 12, chapter 102, Laws of 1967 ex.sess. and RCW 70.01.010.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

Section 1. Section 12, chapter 102, Laws of 1967 ex.sess. and RCW 70.01.010 are each amended to read as follows:

In furtherance of the policy of this state to cooperate with the federal government in the public health programs (~~included in Title 70-RCW~~), the state board of health shall adopt such rules and regulations as may become necessary to entitle this state to participate in federal (~~matching~~) funds unless the same be expressly prohibited by (~~such title~~) law. Any section or provision of (~~Title 70-RCW~~) the public health laws of this state which may be susceptible to more than one construction shall be interpreted in favor of the construction most likely to satisfy federal laws entitling this state to receive federal (~~matching~~) funds for the various programs of public health.

Passed the House March 14, 1969  
 Passed the Senate March 26, 1969  
 Approved by the Governor April 2, 1969  
 Filed in office of Secretary of State April 2, 1969

CHAPTER 26  
 [House Bill No. 444]  
 SCHOOL OFFICIALS--EXPENSES

AN ACT Relating to education; amending section 15, chapter 268, Laws of 1961 and RCW 28.58.310; amending section 28A.58.310, chapter ..., Laws of 1969 (HB 58) and RCW 28A.58.310; providing sections to effect the correlative and pari materia construction of this act with the provisions of Title 28 RCW, or of Titles 28A and 28B RCW if such titles shall be enacted; and declaring

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Department of Social and Health Services or his designee. The nine persons appointed by the Governor are defined by quite precise categories in the bill. While membership reflecting the interests described in section 19 is generally desirable, it is excessively restrictive to mandate in every instance the categories of persons who must be included on the Council. Accordingly, I have vetoed that item from section 19 which requires that specific categories of persons be appointed to the Advisory Council.

Veto  
Message

With the exception of this one item in section 19, I have approved the remainder of the bill."

CHAPTER 153

[Substitute House Bill No. 29]

OUTDOOR RECREATION--ALL-TERRAIN VEHICLES

AN ACT Relating to outdoor recreation; amending section 2, chapter 216, Laws of 1967 as amended by section 2, chapter 24, Laws of 1969 ex. sess. and RCW 4.24.210; amending section 8, chapter 76, Laws of 1970 ex. sess. as amended by section 2, chapter 47, Laws of 1971 ex. sess. and RCW 67.32.080; amending section 6, chapter 47, Laws of 1971 ex. sess. and RCW 46.09.010; amending section 7, chapter 47, Laws of 1971 ex. sess. and RCW 46.09.020; amending section 8, chapter 47, Laws of 1971 ex. sess. and RCW 46.09.030; amending section 9, chapter 47, Laws of 1971 ex. sess. and RCW 46.09.040; amending section 10, chapter 47, Laws of 1971 ex. sess. and RCW 46.09.050; amending section 11, chapter 47, Laws of 1971 ex. sess. and RCW 46.09.060; amending section 12, chapter 47, Laws of 1971 ex. sess. and RCW 46.09.070; amending section 13, chapter 47, Laws of 1971 ex. sess. and RCW 46.09.080; amending section 14, chapter 47, Laws of 1971 ex. sess. and RCW 46.09.090; amending section 16, chapter 47, Laws of 1971 ex. sess. and RCW 46.09.110; amending section 17, chapter 47, Laws of 1971 ex. sess. and RCW 46.09.120; amending section 20, chapter 47, Laws of 1971 ex. sess. and RCW 46.09.150; amending section 21, chapter 47, Laws of 1971 ex. sess. and RCW 46.09.160; amending section 22, chapter 47, Laws of 1971 ex. sess. and RCW 46.09.170; amending section 24, chapter 47, Laws of 1971 ex. sess. and RCW 46.09.190; amending section 4, chapter 29, Laws of 1971 ex. sess. and RCW 46.10.040; amending section 7, chapter 29, Laws of 1971 ex. sess. and RCW 46.10.070; amending section 8, chapter 29, Laws of 1971 ex. sess. and RCW

46.10.080; amending section 11, chapter 29, Laws of 1971 ex. sess. and RCW 46.10.110; amending section 12, chapter 29, Laws of 1971 ex. sess. and RCW 46.10.120; amending section 27, chapter 47, Laws of 1971 ex. sess.; adding new sections to chapter 46.09 RCW; adding a new section to chapter 29, Laws of 1971 ex. sess. and to chapter 46.10 RCW; repealing section 15, chapter 47, Laws of 1971 ex. sess. and RCW 46.09.100; making appropriations; and declaring an emergency.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

Section 1. Section 8, chapter 76, Laws of 1970 ex. sess. as amended by section 2, chapter 47, Laws of 1971 ex. sess. and RCW 67.32.080 are each amended to read as follows:

The following ~~((five))~~ seven categories of trails or areas are hereby established for purposes of this chapter:

(1) Cross-state trails which connect scenic, historical, geological, geographical, or other significant features which are characteristic of the state;

(2) Water-oriented trails which provide a designated path to, on, or along fresh and/or salt water in which the water is the primary point of interest;

(3) Scenic-access trails which give access to quality recreation, scenic, historic or cultural areas of state-wide or national significance;

(4) Urban trails which provide opportunities within an urban setting for walking, bicycling, horseback riding, or other compatible activities. Where appropriate, they will connect parks, scenic areas, historical points, and neighboring communities;

(5) Historical trails which identify and interpret routes which were significant in the historical settlement and development of the state~~((r))~~;

(6) All-terrain vehicle trails which are suitable for use by both four-wheel drive vehicles and two-wheel vehicles. Such trails may be included as a part of the trail systems enumerated in subsections (1) through (5) of this section or may be separately designated;

(7) Off-road and off-trail areas which are suitable for use by both four-wheel drive vehicles and two-wheel vehicles. IAC shall coordinate an inventory and classification of such areas giving consideration to the type of use such areas will receive from persons operating four-wheel drive vehicles and two-wheel vehicles.

The planning and designation of trails shall take into account and give due regard to the interest of federal agencies, state agencies and bodies, counties, municipalities, private landowners and individuals, and interested recreation organizations. It is not required that the above categories be used to designate specific

trails, but the IAC will assure that full consideration is given to including trails from all categories within the system. As it relates to all classes of trails and to all types of trail users, it is herein declared as state policy to increase recreational trail access to and within state and federally owned lands (under the jurisdiction of the department of natural resources, the department of game, and the state parks and recreation commission) and private lands where access may be obtained. It is the intent of the legislature that public recreation facilities be developed as fully as possible to provide greater recreation opportunities for the citizens of the state. The purpose of this 1972 amendatory act is to increase the availability of trails and areas for all-terrain vehicles by granting authority to state and local governments to maintain a system of ATV trails and areas, and to fund the program to provide for such development. State lands should be used as fully as possible for all public recreation which is compatible with the income-producing requirements of the various trusts.

Sec. 2. Section 6, chapter 47, Laws of 1971 ex. sess. and RCW 46.09.010 are each amended to read as follows:

The provisions of this chapter shall apply to all lands in this state. Nothing in ((this 1974 amendatory act)) chapter 43.09 RCW, RCW 67.32.050, 67.32.080, 67.32.100, 67.32.130 or 67.32.140 shall be deemed to grant to any person the right or authority to enter upon private property without permission of the property owner.

Sec. 3. Section 7, chapter 47, Laws of 1971 ex. sess. and RCW 46.09.020 are each amended to read as follows:

As used in this chapter the following words and phrases shall have the designated meanings unless a different meaning is expressly provided or the context otherwise clearly indicates:

"Person" shall mean any individual, firm, partnership, association or corporation.

"All-terrain vehicle" shall mean any self-propelled vehicle ((capable of)) when used for cross-country travel on trails and nonhighway roads or ((immediately over)) any one of the following or a combination thereof: Land, water, snow, ice, marsh, swampland, and other natural terrain. Such vehicles shall include but are not limited to, four-((wheeled)) wheel drive vehicles, motorcycles, amphibious vehicles, ground effects or air cushion vehicles, and any other means of land transportation deriving motive power from any source other than muscle or wind; except any vehicle designed primarily for travel on, over, or in the water, farm vehicles, logging and private forestry vehicles, snowmobiles or any military or law enforcement vehicles.

"ATV ((registration)) use permit" means the ((registration of)) permit system established for an all-terrain vehicle, in this

state, pursuant to this chapter.

"Trail" for the purpose of this chapter, shall mean a corridor designated and maintained for recreational travel; by whatever mode of transportation (foot, animal, or vehicular) authorized by the managing authority of the property that the trail traverses.

"Owner" shall mean the person other than the lienholder, having an interest in or title to an all-terrain vehicle, and entitled to the use or possession thereof.

"Operator" means each person who operates, or is in physical control of, any all-terrain vehicle.

"Dealer" means a person, partnership, association, or corporation engaged in the business of selling all-terrain vehicles at wholesale or retail in this state.

"Department" shall mean the department of motor vehicles.

"Director" shall mean the director of the department of motor vehicles.

"Committee" shall mean the interagency committee for outdoor recreation.

"Hunt" shall mean any effort to kill, injure, capture, or purposely disturb a wild animal or wild bird.

("Roadway" for purposes of this chapter, shall mean any roads generally capable of being traveled on by conventional two-wheel drive passenger automobiles. It shall not include, private roads, abandoned railway grades, skids, and similar routes generally incapable of being traveled by conventional two-wheel drive vehicles.))

"Nonhighway road" shall mean any road other than a highway generally capable of travel by a conventional two-wheel drive passenger automobile during most of the year and in use by such vehicles and which are private roads or controlled and maintained by the department of natural resources, the state parks and recreation commission and the state game department: PROVIDED, That such roads are not built or maintained by appropriations from the motor vehicle fund.

"Highway" for the purpose of this chapter only shall mean the entire width between the boundary lines of every way publicly maintained by the state department of highways or any county or city when any part thereof is generally open to the use of the public for purposes of vehicular travel as a matter of right.

"Organized competitive event" shall mean any competition, advertised in advance, sponsored by recognized clubs, and conducted at a predetermined time and place.

Sec. 4. Section 3, chapter 47, Laws of 1971 ex. sess. and RCW 46.09.030 are each amended to read as follows:

(A certificate of title shall be issued by the department for

any all-terrain vehicle in a similar manner as provided for motor vehicles in chapter 46.42 RCW and such rules and regulations as the department may adopt.) The department shall provide for the issuance of use permits for all-terrain vehicles and may appoint agents for collecting fees and issuing permits. The provisions of RCW 46.01.130 and 46.01.140 shall apply to the issuance of use permits for all-terrain vehicles as they do to the issuance of vehicle licenses, the appointment of agents and the collection of application fees; PROVIDED, That filing fees for ATV use permits collected by the director shall be certified to the state treasurer and deposited to the credit of the outdoor recreation account.

Sec. 5. Section 9, chapter 47, Laws of 1971 ex. sess. and RCW 46.09.040 are each amended to read as follows:

Except as provided in this chapter, no person shall operate any all-terrain vehicle within this state after ((August 9, 1974)) the effective date of sections 2 through 21 of this 1972 amendatory act unless such all-terrain vehicle has been ((registered)) assigned an ATV use permit and displays an ATV tag in accordance with the provisions of this chapter; PROVIDED, That the 1972 registration, licensing, and display thereof shall be deemed to have complied with this section for the 1972 registration period.

Sec. 6. Section 10, chapter 47, Laws of 1971 ex. sess. and RCW 46.09.050 are each amended to read as follows:

ATV ((registration)) use permits and ATV tags shall be required under the provisions of this chapter except for the following:

- (1) All-terrain vehicles owned and operated by the United States, another state, or a political subdivision thereof.
- (2) All-terrain vehicles owned and operated by this state, or by any municipality or political subdivision thereof.
- (3) An all-terrain vehicle ((owned and/or kept outside of this state, when)) operating in an organized competitive event on privately owned or leased land: PROVIDED, That if such leased land is owned by the state of Washington this exemption shall not apply unless the state agency exercising jurisdiction over the land in question specifically authorizes said competitive event: PROVIDED FURTHER, That such exemption shall be strictly construed.
- (4) All-terrain vehicles operated on lands owned or leased by the ATV owner or operator or lands on which the operator has permission to operate without an ATV ((registration)) use permit.
- (5) All-terrain vehicles which are ((operated exclusively on roadways)) validly licensed to operate over a highway of this state or if owned by nonresidents of this state, all-terrain vehicles which are validly licensed for operation over public highways in the state of the owner's residence.

(6) Those two-wheeled vehicles with engines of fifty cubic centimeters or less displacement or those two-wheeled vehicles with engines which develop five or less horsepower, ((or)) or those two-wheeled vehicles with a wheelbase of forty-two inches or less, or those two-wheeled vehicles which are equipped with wheels of fourteen inches or less rim diameter.

(7) All-terrain vehicles while being used for search and rescue purposes under the authority or direction of an appropriate search and rescue or law enforcement agency.

(8) Vehicles used primarily for construction or inspection purposes during the course of a commercial operation.

Sec. 7. Section 11, chapter 47, Laws of 1971 ex. sess. and RCW 46.09.060 are each amended to read as follows:

The ATV ((registration)) use permit period established by the department shall be concurrent with the registration period established by the department for motor vehicles pursuant to chapter 46.16 RCW.

Sec. 8. Section 12, chapter 47, Laws of 1971 ex. sess. and RCW 46.09.070 are each amended to read as follows:

Application for an ATV ((registration)) use permit shall be made to the department or its authorized agent in such manner and upon such forms as the department shall prescribe, and shall state the name and address of each owner of the all-terrain vehicle ((to be registered)), and shall be signed by at least one such owner, and shall be accompanied by a ((registration)) use permit fee of five dollars. Upon receipt of the application and the application fee, such all-terrain vehicle shall be ((registered and an ATV registration number)) assigned a use permit number tag or decal, which shall be affixed to the all-terrain vehicle in a manner prescribed by the department. The department may utilize applications, registration and license forms and registration numbering provided for use prior to the effective date of this 1972 amendatory act for the balance of 1972 and such shall constitute use permits, tags or decals for 1972.

The ATV ((registration)) use permit provided in this section shall be valid for a period of one year. ((At the end of such period of ATV registration; every owner of an all-terrain vehicle in this state shall renew his ATV registration)) Use permits shall be renewable each year in such manner as the department may prescribe, for an additional period of one year, upon payment of a renewal fee of five dollars.

Any person acquiring an all-terrain vehicle ((already validly registered)) for which a use permit has been issued under the provisions of this chapter must, within ((ten)) fifteen days of the acquisition or purchase of such all-terrain vehicle make application

to the department or its authorized agent for transfer of such ATV ((registration)) use permit, and such application shall be accompanied by a transfer fee of one dollar.

Any out-of-state owner of an all-terrain vehicle ((not registered in this state;)) shall, when operating in this state, comply with the provisions of this chapter and if an ATV ((registration)) use permit is required under this chapter, he shall obtain a nonresident ATV ((registration)) use permit number and tag, valid for not more than sixty days or an annual permit and tag. Application for such a permit shall state name and address of each owner of the all-terrain vehicle ((to be registered)) and shall be signed by at least one such owner and shall be accompanied by a ((registration)) fee of two dollars. The ((registration)) permit shall be carried on the vehicle at all times during its operation in this state.

Sec. 9. Section 13, chapter 47, Laws of 1971 ex. sess. and RCW 46.09.080 are each amended to read as follows:

((Six months after August 9, 1974, it shall be unlawful for any dealer to test or demonstrate or rent any all-terrain vehicle, within the state, without an ATV registration when the same is required by the provisions of this chapter.))

(1) Each dealer of all-terrain vehicles in this state who does not have a current "dealer's plate" for vehicle use pursuant to chapter 46.70 RCW, shall obtain a dealer ATV permit from the department in such manner and upon such forms as the department shall prescribe. Upon receipt of a dealer's application for a dealer ATV permit and the fee provided for in subsection (2) of this section, such dealer shall be registered and an ATV dealer permit number assigned.

(2) The ATV fee for dealers shall be twenty-five dollars per year, which shall be deposited in the outdoor recreation account, and such fee shall cover all of the all-terrain vehicles owned by a dealer and not rented: PROVIDED, That all-terrain vehicles rented on a regular, commercial basis by a dealer shall have separate use permits under the provisions of this 1972 amendatory act.

(3) Upon the issuance of an ATV dealer permit each dealer shall purchase, at a cost to be determined by the department, ATV dealer number plates of a size and color to be determined by the department, which shall contain the dealer ATV permit number assigned to the dealer. Each all-terrain vehicle operated by a dealer for the purposes of testing or demonstration shall display such number plates assigned pursuant to the dealer permit provisions as provided for in chapter 46.70 RCW or this section, in a clearly visible manner.

(4) No person other than a dealer or a representative thereof shall display number plates as prescribed in subsection (3) of this

section, and no dealer or representative thereof shall use such number plates for any purpose other than the purpose prescribed in subsection (3) of this section.

(5) ATV dealer permit numbers shall be nontransferable.

(6) On and after January 1, 1973, it shall be unlawful for any dealer to sell any all-terrain vehicle at wholesale or retail, or to test or demonstrate any all-terrain vehicle within the state, unless he has a motor vehicle dealers' license pursuant to chapter 46.70 RCW or an ATV dealer permit number in accordance with the provisions of this section.

Sec. 10. Section 14, chapter 47, Laws of 1971 ex. sess. and RCW 46.09.090 are each amended to read as follows:

((An ATV registration number shall be assigned to an all-terrain vehicle in this state at the time of its original ATV registration by the department in a similar manner as provided in RCW 46.04.430 and 46.04.440 and such rules and regulations as the department may adopt. The department shall, upon assignment of such ATV registration number, issue and deliver to the owner a certificate of ATV registration, in such form as the department shall prescribe. The certificate of ATV registration shall not be valid unless signed by the person who signed the application for ATV registration.

At the time of the original ATV registration, and at the time of each subsequent renewal thereof, the department shall issue to the ATV registrant a date tag or tags indicating the validity of the current ATV registration and the expiration date thereof, which validating date tag, or tags, shall be affixed to the all-terrain vehicle in such manner as the department may prescribe. Notwithstanding the fact that an all-terrain vehicle has been assigned an ATV registration number, it shall not be considered as validly registered within the meaning of this section unless a validating date tag and current ATV registration certificate have been issued and are in the possession of the operator.))

All ATV use permit tags and ATV dealer tags shall be displayed in a manner prescribed by the department on all-terrain vehicles when required by this 1972 amendatory act except as provided in section 6 of this 1972 amendatory act.

Sec. 11. Section 16, chapter 47, Laws of 1971 ex. sess. and RCW 46.09.110 are each amended to read as follows:

The moneys collected by the department as ATV ((registration)) use permit fees shall be distributed from time to time but at least once a year in the following manner:

(1) ((Twenty-five percent each year for the first two years after August 27, 1971, and twenty percent each year for each year thereafter shall be retained by the department.)) The department shall retain enough money to cover expenses incurred in the administration

of this chapter; PROVIDED, That such retention shall never exceed eighteen percent of fees collected.

(2) ((Twenty percent each year for the first two years after August 9, 1974, and twenty-five percent each year for each year thereafter shall be distributed to the treasurers of those counties of this state having significant all-terrain vehicle use in such sums or upon such a formula as shall be determined by the director after consulting with and obtaining the advice of the Washington state association of counties, and shall be deposited in the county general fund and expended to defray the cost of their enforcing this chapter.

{3} Fifty-five percent each year shall be remitted to the state treasurer for deposit into the outdoor recreation account of the general fund to be administered by the interagency committee for outdoor recreation, and such amount shall be distributed to the department of natural resources, department of game, and to the parks and recreation commission on a pro rata basis determined by the number of miles of agency designated and maintained ATV trails. Such agency designation shall be reviewed and revised by the committee at least once each biennium and the pro rata distribution made current with the number of miles of agency designated and maintained ATV trails. These moneys shall be expended by each agency only for all-terrain vehicle trail-related expenses.)) The remaining funds shall be deposited in the outdoor recreation account of the general fund to be distributed by the interagency committee to departments of state government, to counties, and to municipalities on a basis determined by the amount of present or proposed ATV trails or areas on which they permit ATV use. The interagency committee shall prescribe methods, rules, and standards by which such departments, counties or municipalities may apply for and obtain moneys from the outdoor recreation account for defraying expenses and costs for planning, development, acquisition, and management of ATV recreational areas and trails and the committee shall also apply for applicable federal matching funds: PROVIDED, That agencies constructing all-terrain vehicle trails, campgrounds, and recreational areas and facilities, shall consider the possibility of contracting with the state parks and recreation commission, the department of natural resources or other agencies to employ the youth development and conservation corps or other youth crews to construct or assist in construction of such all-terrain vehicle trails, campgrounds and recreational areas and facilities.

The department of natural resources may use up to five percent of the use permit fees for administration cost and for implementing this chapter.

Sec. 12. Section 17, chapter 47, Laws of 1971 ex. sess. and RCW 46.09.120 are each amended to read as follows:

It shall be unlawful for any person to operate any all-terrain vehicle:

(1) While under the influence of intoxicating liquor or (narcotics or other drugs) a controlled substance;

(2) In such a manner as to endanger the property of another;

(3) On lands not owned by the operator or owner of the all-terrain vehicle without a lighted headlight and taillight between the hours of dusk and dawn, or when otherwise required for the safety of others regardless of ownership;

(4) On lands not owned by the operator or owner of the all-terrain vehicle without an adequate braking device or when otherwise required for the safety of others regardless of ownership;

(5) Without a spark arrestor approved by the department of natural resources;

(6) Without an adequate, and operating, muffling device which shall effectively blend the exhaust and motor noise in such a manner so as to preclude excessive or unusual noise. All-terrain vehicles manufactured after January 4, 1973, shall effectively maintain such noise at a level of eighty-two decibels or below on the "A" scale at one hundred feet under testing procedures as established by the Washington state patrol ((= PROVIDED HOWEVER, That all-terrain vehicles used in organized competition may use a bypass, expansion chamber, or cutout device if the area has been designated as fire safe by the appropriate agency));

(7) On lands not owned by the operator or owner of the all-terrain vehicle upon the shoulder or inside bank or slope of any (roadway) nonhighway road or highway, or upon the median of any divided highway;

(8) On lands not owned by the operator or owner of the all-terrain vehicle in any area or in such a manner so as to unreasonably expose the underlying soil, or to create an erosion condition, or to injure, damage, or destroy trees, growing crops, or other vegetation;

(9) On lands not owned by the operator or owner of the all-terrain vehicle or on any nonhighway road or trail which is restricted to pedestrian or animal travel;

(10) On any public lands in violation of rules and regulations of the agency administering such lands.

Sec. 13. Section 20, chapter 47, Laws of 1971 ex. sess. and RCW 46.09.150 are each amended to read as follows:

Motor vehicle fuel used and purchased for providing the motive power for all-terrain vehicles ((~~on other than public highways;~~)) shall be considered a nonhighway use of fuel, and for purposes of this chapter shall be known as ATV fuel. Persons purchasing and using ATV fuel shall not be entitled to a refund of the motor vehicle

fuel excise tax paid in accordance with the provisions of RCW 82.36.280 as it now exists or is hereafter amended.

Sec. 14. Section 21, chapter 47, Laws of 1971 ex. sess. and RCW 46.09.160 are each amended to read as follows:

From time to time, but at least once each four years the department shall determine the amount or proportion of moneys paid to it as motor vehicle fuel tax which is taxed on ((nonhighway use of)) all-terrain vehicle fuel. Such determination may be made in any manner which is, in the judgment of the director, reasonable, but the manner used to make such determination shall be reported at the end of each four-year period to the legislature. To offset the cost of making such determination the treasurer shall retain in, and the department is authorized to expend from, the motor vehicle fund, the sum of twenty thousand dollars in the first biennium after August 9, 1971, and ten thousand dollars in each succeeding biennium in which such a determination is to be made.

Sec. 15. Section 22, chapter 47, Laws of 1971 ex. sess. and RCW 46.09.170 are each amended to read as follows:

From time to time, but at least once each biennium, the director of the department of motor vehicles shall request the state treasurer to refund from the motor vehicle fund amounts which have been determined to be a tax on all-terrain vehicle fuel in an amount not to exceed one million dollars for the 1971-73 biennium, and the treasurer shall refund such amounts and place them in the outdoor recreation account of the general fund to be administered by the interagency committee for outdoor recreation, and such amounts shall be distributed to ((the department of natural resources, the department of game, and the parks and recreation commission)) departments of state government, to counties, and to municipalities on a ((pro rata)) basis determined by the ((number of miles of agency designated and maintained)) amount of present or proposed ATV trails or areas on which they permit ATV use. Such ((agency designation)) distribution shall be reviewed and may be revised by the committee at least once each biennium ((and the pro rata distribution made current with the number of miles of agency designated and maintained ATV trails)). These moneys shall be expended by each agency only for all-terrain vehicle ((trail-)) trail and area related expenses.

Sec. 16. Section 24, chapter 47, Laws of 1971 ex. sess. and RCW 46.09.190 are each amended to read as follows:

(1) Except as provided in RCW 46.09.130, any person violating the provisions of this chapter shall be guilty of a misdemeanor and subject to a fine of not less than twenty-five dollars.

(2) In addition to the penalties provided in subsection (1) of this section, the owner and/or the operator of any all-terrain vehicle shall be liable for any damage to property including damage

to trees, shrubs, growing crops injured as the result of travel by such all-terrain vehicle. The owner of such property may recover from the person responsible ~~((nominal damages of not less than one hundred dollars or))~~ three times the amount of damage ~~((whichever is greater))~~.

Sec. 17. Section 2, chapter 216, Laws of 1967 as amended by section 2, chapter 24, Laws of 1969 ex. sess. and RCW 4.24.210 are each amended to read as follows:

Any public or private landowners or others in lawful possession and control of agricultural or forest lands or water areas or channels and rural lands adjacent to such areas or channels who allow members of the public to use them for the purposes of outdoor recreation, which term includes hunting, fishing, camping, picnicking, swimming, hiking, pleasure driving, the pleasure driving of all-terrain vehicles, snowmobiles, and other vehicles, boating, nature study, winter or water sports, viewing or enjoying historical, archaeological, scenic, or scientific sites, without charging a fee of any kind therefor, shall not be liable for unintentional injuries to such users: PROVIDED, That nothing in this section shall prevent the liability of such a landowner or others in lawful possession and control for injuries sustained to users by reason of a known dangerous artificial latent condition for which warning signs have not been conspicuously posted: PROVIDED FURTHER, That nothing in RCW 4.24.200 and 4.24.210 limits or expands in any way the doctrine of attractive nuisance.

NEW SECTION. Sec. 18. There is added to chapter 46.09 RCW a new section to read as follows:

The department of natural resources shall coordinate the implementation and administration of this chapter.

NEW SECTION. Sec. 19. There is added to chapter 46.09 RCW a new section to read as follows:

All 1971 registration fees collected pursuant to chapter 47, Laws of 1971 ex. sess. and chapter 46.09 RCW by the department of motor vehicles from August 9, 1971, through the effective date of this 1972 amendatory act shall be credited to the 1972 or 1973 permit fee.

Sec. 20. Section 4, chapter 29, Laws of 1971 ex. sess. and RCW 46.10.040 are each amended to read as follows:

Application for registration shall be made to the department in such manner and upon such forms as the department shall prescribe, and shall state the name and address of each owner of the snowmobile to be registered, and shall be signed by at least one such owner, and shall be accompanied by a registration fee of ~~((fifteen))~~ five dollars. Upon receipt of the application and the application fee, such snowmobile shall be registered and a registration number

assigned, which shall be affixed to the snowmobile in a manner provided in RCW 46.10.070.

The registration provided in this section shall be valid for a period of ~~((three))~~ one year~~((s))~~. At the end of such period of registration, every owner of a snowmobile in this state shall renew his registration in such manner as the department shall prescribe, for an additional period of ~~((three))~~ one year~~((s))~~, upon payment of a renewal fee of ~~((fifteen))~~ five dollars.

Any person acquiring a snowmobile already validly registered under the provisions of this chapter must, within ten days of the acquisition or purchase of such snowmobile, make application to the department for transfer of such registration, and such application shall be accompanied by a transfer fee of one dollar.

A snowmobile owned by a resident of another state where registration is not required by law may be issued a nonresident registration permit valid for not more than sixty days. Application for such a permit shall state name and address of each owner of the snowmobile to be registered and shall be signed by at least one such owner and shall be accompanied by a registration fee of two dollars. The registration permit shall be carried on the vehicle at all times during its operation in this state.

The registration fees provided in this section shall be in lieu of any personal property or excise tax heretofore imposed on snowmobiles by this state or any political subdivision thereof, and no city, county, or other municipality, and no state agency shall hereafter impose any other registration or license fee on any snowmobile in this state.

Sec. 21. Section 7, chapter 29, Laws of 1971 ex. sess. and RCW 46.10.070 are each amended to read as follows:

The registration number assigned to each snowmobile shall be permanently affixed to and displayed upon ~~((each))~~ the right side of the front cowling of said snowmobile ~~((in painted numbers or decals no less than three inches high; and shall be of contrasting color with the surface on which they are applied and shall be maintained in a legible condition))~~ on a plate of such size as authorized by the department of motor vehicles; except dealer number plates as provided for in RCW 46.10.050 may be temporarily affixed.

Sec. 22. Section 8, chapter 29, Laws of 1971 ex. sess. and RCW 46.10.080 are each amended to read as follows:

The moneys collected by the department as snowmobile registration fees shall be distributed in the following manner:

(1) Ten percent each year for the first two years after August 9, 1971, and five percent each year for each year thereafter shall be retained by the department to cover expenses incurred in the administration of this chapter.

(2) Twenty-five percent each year shall be distributed to the treasurers of those counties of this state having significant snowmobile use in such sums or upon such a formula as shall be determined by the director after consulting with and obtaining the advice of the Washington state association of counties, and shall be deposited in the county general fund and expended to defray the cost of ~~((enforcing))~~ administering this chapter.

(3) For the first two years after August 9, 1971, fifteen percent each year shall be remitted to the state treasurer for deposit into the general fund and shall be credited to the commission and shall be expended for snow removal operations at other than developed recreational facilities. Thereafter twenty percent each year shall be so remitted for such purposes.

(4) Fifty percent each year shall be remitted to the state treasurer to be deposited in the general fund, and shall be credited in equal amounts to the commission, the department of natural resources, and the department of game and shall be expended on the development or operation of snowmobile facilities, but not on the acquisition or operation thereof.

Sec. 23. Section 11, chapter 29, Laws of 1971 ex. sess. and RCW 46.10.110 are each amended to read as follows:

Notwithstanding the provisions of RCW 46.10.100, it shall be lawful to operate a snowmobile upon a public roadway or highway:

Where such roadway or highway is completely covered with snow or ice and has been closed by the responsible governing body to motor vehicle traffic during the winter months; or

~~((Where))~~ When the responsible governing body gives notice that such roadway or highway is ~~((posted))~~ open to ~~((permit))~~ snowmobiles or all-terrain vehicle use; or

In an emergency during the period of time when and at locations where snow upon the roadway or highway renders such impassible to travel by automobile ~~((impractical))~~; or

When traveling along a designated snowmobile trail.

Sec. 24. Section 12, chapter 29, Laws of 1971 ex. sess. and RCW 46.10.120 are each amended to read as follows:

No person under twelve years of age shall operate a snowmobile on or across a public roadway or highway in this state, and no person between the ages of twelve and ~~((eighteen))~~ sixteen years of age shall operate a snowmobile on or across a public road or highway in this state unless he has taken a snowmobile safety education course and been certified as qualified to operate a snowmobile by an instructor designated by the commission as qualified to conduct such a course and issue such a certificate, and he has on his person at the time he is operating a snowmobile evidence of such certification: PROVIDED, That persons under sixteen years of age who have not been

certified as qualified snowmobile operators may operate a snowmobile under the direct supervision of a qualified snowmobile operator.

NEW SECTION. Sec. 25. There is added to chapter 29, Laws of 1971 ex. sess. and to chapter 46.10 RCW a new section to read as follows:

Notwithstanding any other provisions of this chapter, the local governing body may provide for the safety and convenience of snowmobiles and snowmobile operators. Such provisions may include, but shall not necessarily be limited to, the clearing of areas for parking automobiles, the construction and maintenance of rest areas, and the designation and development of given areas for snowmobile use.

Sec. 26. Section 27, chapter 47, Laws of 1971 ex. sess. is amended to read as follows:

To carry out the provisions of (~~section 46(3) of this 1974~~) this 1972 amendatory act, there is appropriated to the interagency committee for outdoor recreation from the outdoor recreation account those moneys as provided from ATV (~~registration fees~~) permit fees and dealer permit and tag fees, in the sum of one million dollars, or such lesser amounts (~~as represent fifty-five percent~~) of the all-terrain vehicle (~~registration~~) use permit fees and dealer permit and tag fees collected by the department, or so much thereof as may be necessary.

To carry out the provisions of (~~section 22 of this 1974~~) this 1972 amendatory act there is appropriated to the interagency committee for outdoor recreation from the outdoor recreation account, those moneys as provided from ATV fuel tax refunds, in the sum of one million dollars, or such lesser amount, as represents the refund of tax on motor vehicle fuel which has been determined to be a tax on all-terrain vehicle fuel, or so much thereof as may be necessary.

To carry out the provisions of (~~section 24 of this 1974~~) this 1972 amendatory act, there is appropriated to the department from the motor vehicle fund, the sum of twenty thousand dollars, or so much thereof as may be necessary.

NEW SECTION. Sec. 27. Section 15, chapter 47, Laws of 1971 ex. sess. and RCW 46.09.100 is hereby repealed.

NEW SECTION. Sec. 28. This 1972 amendatory act is necessary for the immediate preservation of the public peace, health and safety, the support of the state government and its existing public institutions, and shall take effect immediately.

Passed the House February 18, 1972.

Passed the Senate February 17, 1972.

Approved by the Governor February 27, 1972.

Filed in Office of Secretary of State February 28, 1972.

# **App. 10**

EXPLANATION OF S.H.B. 29  
Relating to All Terrain Vehicles  
(with explanation of Senate Amendments)  
(References are to page and line numbers in S.H.B. 29)

SECTION 1 Adds "all-terrain vehicle trails and areas" to five present categories of trails within the statewide trail system. States that the purpose of this amendatory act is to increase the availability of trails and areas for all-terrain vehicles.

SECTION 2 Clarification of specific statutes not intended to affect use of private property without permission.

SECTION 3 Definitions:

"All-terrain vehicle" new definition applies only to vehicles "when used for" cross-country travel on "trails and nonhighway roads" or on natural terrain. Further defines 4-wheel vehicles as 4-wheel drive vehicles and logging vehicles as logging and forestry vehicles. ~~Excludes~~ snowmobiles.

*Includes*

"ATV Use Permits" establishes a permit system in place of present registration system.

"Roadway" since the definition of this term in the original bill caused considerable confusion, the term has been eliminated.

"Nonhighway Road" includes those roads not defined as "highways."

"Highway" includes all roads maintained by the state Department of Highways or any county or city and the road is open to use by the public as a matter of right.

Senate  
Amendment

1. On page 4, line 8 change "four-wheeled" to "four wheel."
2. On page 5, line 12, change to exclude roads maintained by federal government.
3. On page 5, line 14, corrects designation of parks and recreation commission.
- 3a. On page 5, line 16, clarifies definition

SECTION 4 Establishes an ATV use permit system to be administered by the Department of Motor Vehicles. Filing fees collected directly by the director of the department to be deposited in the Outdoor Recreation Account.

SECTION 5 Refers to the effective date of this act which would be immediately upon passage since an emergency clause (new section 22) is included. Directs that an ATV use permit and an ATV tag will be issued.

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Senate  
Amendment

4. On page 6, line 12, change to permit those who have already registered for 1972 to use such registration as "use permit".

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SECTION 6

(3) Exempts ATV's from both in-state and out-of-state that are participating in organized competitive events on privately owned or leased land from the requirement of having an ATV use permit. Further provides that if the leased land is owned by the state of Washington, the exemption would not apply unless the appropriate state management agency authorized the competitive event.

(5) Eliminates the so-called "double licensing" by exempting ATV's that are validly licensed to operate over the highways of this or other states from the requirement of having an ATV use permit.

(6) Liberalizes the provision for exempting the smaller 2-wheel "mini bike type" vehicles by requiring that the machine meet only one of the several minimum requirements rather than all of them.

(7) (8) Adds search and rescue and commercial construction vehicles as being exempt from ATV use permit requirement.

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Senate  
Amendment

5. On page 7, line 18, adds "or inspection" to "construction" to clarify intent.

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SECTION 7

Establishes the ATV use permit transfer period as concurrent with the normal registration periods established by the Department of Motor Vehicles.

SECTION 8

Extends the ATV use permit transfer period from 10 to 15 days and clarifies the option of a nonresident ATV owner to purchase a 60 day, \$2 permit, or an annual \$5 permit.

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Senate  
Amendment

6. On page 7, line 33, adds language permitting the department of motor vehicles to utilize same forms as now used during balance of 1972. (There is an emergency clause on this bill.)

SECTION 9

Provides for an ATV dealer use permit and number plates. Limits this requirement to only those ATV dealers who do not have a current "dealer's plate" under the regular motor vehicles dealers license provisions.

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Senate  
Amendment

7. On page 9, line 9, puts ATV dealer license fees in outdoor recreation account.

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SECTION 10

Gives the Department of Motor Vehicles authority to prescribe the manner in which ATV use permit tags and dealer number plates shall be displayed on each ATV.

SECTION 11

Lowers the maximum percentage that the Department of Motor Vehicles can retain for issuing ATV use permits from 25 to 18%. Provides that the IAC will get up to 5% for administering the act. IAC administration will involve qualifying and distributing ATV moneys and coordinating ATV trails and inventories.

The balance of funds to be divided by the IAC between departments of state government, counties and cities on the basis of present and proposed ATV use they provide on their respective ownerships. Requires that the funds received be used for defraying the costs of "development, acquisition and management of ATV recreational areas or trails".

Directs that eligible agencies consider the possibility of contracting with appropriate youth organizations for the construction of ATV trails, campgrounds and recreational areas and facilities.

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Senate  
Amendment

8. On page 11, line 31 add word "planning" to line.

9. On page 12, line 10, clarifying language.

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SECTION 12

(1) Substitutes the term "controlled substance" for term "drugs" that was used in the original bill.

(3) (4) (7) (8) Allows the operator of an ATV to operate his vehicle on lands that he or the owner of the ATV own, under certain conditions that would be considered unlawful on other lands.

(8) Adds the condition that it shall be unlawful to operate an ATV in any area or in such a manner as to unreasonably expose the underlying soil.

(9) Prohibits ATV travel on any non-highway road or trail which is restricted to pedestrian or animal travel.

SECTION 12 (10) Prohibits operation on public lands in violation  
cont. of rules and regulations of the administering land  
management agency.

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Senate  
Amendment

10. On page 12, line 33 - strikes language which would permit excessive noise by ATV's used in competitive event.
  11. On page 13, line 14 - clarifying word.
  12. On page 13, line 23 - clarifying language.
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SECTIONS 13  
and 14

Removes reference to "other than public highways" and "non-highway use of" in sections 13 and 14 dealing with motor fuel tax on ATV fuel.

The Department of Motor Vehicles says these changes are necessary to avoid conflict with certain definitions of "public highways" and "highways" in their statutes. The use of the two terms in section 13 and 14 is not necessary because the definition of ATV's is now limited to such vehicles "when used for cross-country travel on trails and non-highway roads or on natural terrain".

SECTION 15

Directs the director of the Department of Motor Vehicles to at least once each biennium request the state treasurer to refund the motor fuel tax on ATV fuel to the Outdoor Recreation Account. These funds to be distributed by the Interagency Committee for Outdoor Recreation to the departments of state government, counties, and municipalities based on the present and proposed amount of trails and areas on which they have permitted ATV use. Counties and municipalities were not eligible for funds of this type under the original act.

Funds under this section to be used only for ATV trail related expense.

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Senate  
Amendment

13. On page 14, line 14, places one million dollar limitation for 1971-73 biennium on amount the director of the Department of Motor Vehicles can direct transfer of from motor vehicle fund to outdoor recreation account.
  14. On page 14, line 15, changes language governing distribution to facilitate administration.
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SECTION 16

Removes the \$100 minimum damage to land owners but retains triple damage provision (and misdemeanor provision).

SECTION 17

Clarifies that landowner relief from liability from the

public when allowing the public free use of land for various recreational use shall apply to public lands as well as private lands and adds ATV and snowmobile use.

NEW SECTION 18 Provides that the Interagency Committee for Outdoor Recreation will coordinate the implementation and administration of this act.

NEW SECTION 19 Exempts vehicles operating with ATV use permit from the Financial Responsibility Act.

Senate  
Amendment

15. On page 16, line 3 - section is stricken. Amendment has effect of reinstating Financial Responsibility Act insofar as that act may be applicable to ATV use.

NEW SECTION 20 Permits any ATV registration fee paid from August 9, 1971 to the effective date of this act to be credited to the 1972 or 1973 permit fee.

Senate  
Amendment

16. On page 16, line 10 - simply makes it clear that those persons entitled to a credit are those who purchased registration for 1971.

NEW SECTION 21 Repeals two sections of the 1971 ATV Act which have to do with methods of displaying ATV registration numbers and reporting accidents resulting in injury or death of any person or property damage to another of \$200 or more.

Senate  
Amendment

17. On page 16, line 18 - reinstates law requiring reporting of accidents involving ATV's where death, injury or \$200 property damage involved.

NEW SECTION 22 Establishes an immediate effective date for this 1972 amendatory act.

SYNOPSIS OF S.H.B. 29  
Relating to All Terrain Vehicles  
(and Senate Amendments)

- (1) The 1971 ATV legislation provided that all terrain vehicles operating off "roadways" were required to be registered as ATV's, and display an ATV number, even though the ATV was licensed for use on the highways of the state.

Confusion existed relative to where "roadways" ended and "trails requiring ATV registration" began.

S.H.B. 29 will eliminate dual registration and require an ATV use permit only for vehicles not licensed for highway use. Such non highway licensed ATV's will now need ATV use permits for all off highway use and not just for off roadway use with certain specified exception. This will reduce income from ATV registration fees but will still provide identification for all vehicles traveling off the highways.

- (2) The ATV "registration" by the motor vehicles department has been changed to a "use permit" but will still be issued by the Department of Motor Vehicles.
- (3) The act broadens the exception for minibikes and exempt vehicles involved in organized search and rescue.
- (4) It provides that ATV dealers who have a dealer's license for motor vehicles generally will be exempt from the requirement of an ATV dealer's license.
- (5) It lowers the percentage that the Department of Motor Vehicles can retain for issuing ATV use permits. It provides that the IAC will get up to 5% for administering the act and that the balance will be divided by the IAC between departments of state government, counties and cities on the basis of present and proposed ATV use provided by their respective administrations. IAC will coordinate enforcement of the act and distribute ATV moneys.
- (6) It removes certain restrictions in the instance of operating ATV's on private lands owned by the owner or operator of an ATV.
- (7) It prohibits ATV's on trails restricted to pedestrian or animal travel.
- (8) It creates a new formula for determining the amount of gas tax related to all terrain vehicle fuel. Discussed in connection with Senate amendments to S.H.B. 29.

- (9) It removes the minimum damage to land owners but retains triple damage provision (and misdemeanor provision).
- (10) Section 17 clarifies the position of the liability of a land owner who permits the public free use of his land for recreational vehicle use.
- (11) It allows a credit for 1971 registration fees. That credit may be taken either in 1972 on a use permit or in 1973 if the ATV is already registered for 1972.

#### SENATE AMENDMENT

While there are some 20 changes from the bill as it passed the House which have been adopted by the Committee on Parks, Tourism, Capitol Grounds and Veterans Affairs and are contained in the amendment proposal, 16 of these are simply housekeeping changes reflecting problems with grammar, word use, or clarifying the language used by the House. Included in this number are some changes made necessary for administrative enforcement purposes because of the emergency clause which is contained in this bill.

There are four substantive changes effected by this amendment. They are:

- (1) The bill as passed by the House exempted vehicles operating under a use permit from the provisions of the Financial Responsibility Act. That provision has been ~~restricted~~ from the bill. The effect of this is simply to reinstate the provisions of the Financial Responsibility Act insofar as those provisions may be applicable to all terrain vehicle use.
- (2) Likewise, the House bill had repealed the provision in the original act that required reporting of accidents involving death, bodily injury, or property damage in an amount of \$200 or more. This bill reinstates that provision.
- (3) The original law contained an exemption permitting ATV's in an organized competitive event to exceed acceptable noise levels. This bill strikes that exemption.
- (4) The most significant change offered here has to do with the method of funding. Relying heavily on the gas tax as a source of revenue, the bill as passed by the House would have authorized a transfer of gas tax revenues to the outdoor recreation account in an amount to be determined by the director of the Department of Motor Vehicles. In effect, he was to compute the amount of fuel consumed on trails, cross-country use, and all roads not maintained by the

Department of Highways, counties or cities. Considerable opposition was voiced to this proposal in that included among the roads that the director would have to compute the gas usage on were some 15,000 miles of roads and highways maintained in this state by the federal government, many of which are very highly travelled. Also, no figures were available to ascertain the total effect of this type of action on the motor vehicle fund. The proposal before the Senate treats this problem in two ways. First, it limits the amount that may be transferred from the motor vehicle fund in the 1971-73 biennium to one million dollars. Secondly, it removes all federal highways and roads from the basis upon which the determination of gas tax is attributable to ATV use can be made. In this bill the director of the Department of Motor Vehicles is to determine the amount of tax attributable to use on private roads, roads maintained by the Department of Natural Resources, Parks & Recreation Commission, and the Game Department. He is to continue to ascertain the use on trails and cross-country and to certify the total amount, not to exceed one million dollars in this biennium, to the outdoor recreation account.



*L. Gorton*

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TEMPLE OF JUSTICE OLYMPIA, WASHINGTON 98501

February 23, 1972

M E M O R A N D U M

TO: Jack Nelson, Director, DMV

FROM: Richard A. Mattsen, Assistant A. G.

RE: SHB 29

This, of course, is the all terrain vehicle bill and you already know what I think about it. The portion of the bill relating to all terrain vehicles takes sixteen pages to say what could have been said in five. Fortunately, the Senate did permit us to make some changes so that the bill is at least administrable in its present form and probably does not require any veto of any kind. There are a number of minor problem areas in the bill, however that could use cleaning up and I shall simply run down the bill and what it purports to do for the purpose of this memo.

Section 3 of the bill, the definition section, contains a change in the definition of an all terrain vehicle and adds definitions of nonhighway roads and highways. These changes really only have any meaning in connection with §§ 13, 14 and 15 governing the distribution of motor vehicle fuel used in all terrain vehicles. As you can see, an "all terrain vehicle" isn't any particular vehicle at all and in fact, includes all vehicles except those specifically excluded. The definition of "nonhighway road" is made to pick up the approximately five thousand miles of road maintained by state agencies other than the Department of Highways and a figure that we haven't even been able to determine yet in number of miles maintained by private groups generally timber companies available for use by the public as a general proposition. The meaning of "highway" doesn't have any meaning whatsoever in the latest draft and is merely superfluous.

Section 4. This amendment was at our request and uses the language that we request simply to facilitate the marketing of use permits.

Section 5. This is another section that we were able to fix up and it certainly doesn't look bad now.

Section 6. While there are a number of amendments to this section, the only one of considerable significance which permits vehicles already licensed for highway use to be used for cross-country travel on nonhighway roads, trails, or on anything else for that matter, without purchasing an ATV use permit.

Section 7. No significant amendment.

Jack Nelson, Director, DMV  
February 23, 1972  
Page -2-

Section 8. This section and all of § 10 as it is now amended, do create a problem for enforcement. It is not our problem but it is something that we brought to the attention at least of the ad hoc committee considering this bill in the Senate. Under the language as it now exists, we are going to be giving people a use permit which will ordinarily amount to a piece of paper, and a decal similar to our renewal decals that one places on a license plate. Under the law as it formerly was we issued a permit or registration and a registration number and required the person obtaining the registration to place the number in certain places on his vehicle. The number was of a certain dimension. The idea, of course, of all this was under the former law, that the vehicle not licensed for highway use would be identifiable at some distance by law enforcement agencies and by private persons who were having their crops trampled upon or whatever. Under the section as it has been amended, however, unless one is right up on top of the trailbike or the other type of all terrain vehicle that may not have a highway license, he is not going to be able to identify the vehicle for either enforcement purposes or for purposes of civil liability.

This can be corrected simply by dropping the words "tag or decal" as they appear on line 10 of page 8. The department does have authority within this section to describe how a number is to be displayed and our present rule would be good enough for that. And, as the vehicle division points out, it is probably not very sensible although I don't think we ever brought this to anyone's attention, to issue a use permit number tag in the case of short term nonresidence permits. This could be corrected simply by dropping the words "number and tag" on line 2 of page 9.

Section 9. This is one we lost on. I tried to tell anybody who would listen that we don't need all this hocus-pocus to govern the very few people who deal in "all terrain vehicles" but do not deal in motor vehicles generally. All we really needed here was a simple little section that would permit us to give those persons some sort of "dealer's plate" to demonstrate ATV's. I think mainly what we are talking about here are a few department stores and discount houses that sell a bike now and then or one of these six wheel true all terrain vehicles. Nonetheless, the legislature in its wisdom thought we should have this kind of thing and I suspect that we are going to have a few or no ATV dealers as such. My suspicions would be that those discount houses and department stores that do deal in an occasional vehicles not suitable for road use are going to either go out of business or opt for a motor vehicle dealer's license so that they are bona fide full time employees can run around on dealer plates. On the other hand, if the whole section was simply vetoed, there would probably also be some problems but I suspect that we could probably take care of any problems that might arise administratively.

Section 10. If the Governor buys the idea that we ought to retain some sort of visible numbering system for enforcement.

Jack Nelson, Director, DMV  
February 23, 1972  
Page -3-

purposes and identification purposes by deleting the language suggested in § 8 then, of course, all of section 10 ought to be vetoed also because it simply says the same thing as is, so far as I can see, redundant to the language of § 8.

The rest of the sections of the bill relating to ATV's do not affect us very much except for §§ 13, 14 and 15 relating to the fuel tax.

Sections 13, 14 and 15: The principal method under which the trails system is to be financed is outlined in these three sections. The idea expressed herein is that fuel used on roads maintained by departments of state government other than Highways, trails, privately maintained roads, and cross-country, is a non-highway use of fuel and is rightfully diverted from the sanctuary of the 18th Amendment uses to the use of building trails. The director of the Department of Motor Vehicles at least once each four years is to determine how much fuel is used in this manner and to certify that amount into the Outdoor Recreation Account. We told every committee of the House and Senate considering this that this was an utterly impossible task and that what we were going to end up with was a guess based upon input from affected agencies. It now appears that that guess is going to probably be somewhere in the neighborhood of \$250,000 a year and a guess of that amount is probably as good as any guess that we are going to be able to make after the input. Nonetheless, both the House and the Senate committees considering this were more than happy to have the director make this kind of guess rather than have the guess made within the law itself. There is nothing whatsoever that can be done about this because obviously without the fuel tax money there is absolutely no money to accomplish the purpose of the bill which is to provide more recreational trails for vehicles.

Section 19: I forgot to mention, there is one other section of some significance in this bill relating to ATV's. Under § 19 the department is directed to give credit against a use permit fee which might occur in either 1972 or 1973 to any registration fee which was paid under the 1971 law. This results from the feeling of the principal sponsors of this bill that they had passed a law which would become effective on January 1, 1972. Of course, in truth and fact the law become effective August 9, 1971 and the department was placed in the position of being required to provide the implementing facilities for the bill on that date. The effect of such a credit, of course, is simply that very little money will be coming in as the result of use permit fees during the next year or so.

The rest of SHB 29 relates to snowmobiles and makes some relatively minor changes in the Snowmobile Act, shortening the period of registration from three to one year, facilitating the operation of snowmobiles by persons under 16, facilitating the means by which by certain roads may be open for snowmobile use, etc.

Jack Nelson, Director, DMV  
February 23, 1972  
Page -4-

The one thing that is surprising in this section is contained in § 21 on the top of page 18. Every place that we testified on the particular language being used there we found agreement that the language beginning on line 2 should be deleted. The language, of course, is relatively unclear and certainly we cannot provide a plate at the amount of money available under this bill. So, I suspect that what we will be doing under this language is authorizing people to put a plate on but they are going to have to get their own plates. And, of course, this is probably extremely difficult if not impossible in this situation. It seems to me that a far more sensible way would be simply to strike the language as it is now and continue on to the system that we now have. Basically that system is the same as on ATV's. We assign a registration number and require the registration number to be affixed in a certain manner on a snowmobile. It could either be by decal or by painted number, the choice is the registrant's.

Section 26: I do see one other point that we thought we had taken care of. As a matter of fact, § 26 did not appear on the bill until the very last draft and we didn't get a chance to address ourselves to that problem except to a particular Senator as I recall who was going to be appointed to the Free Conference Committee. He told us that he would take care of it but apparently forgot and missed the problem. The amendatory language here could be read to require the department to place dealer tag fees into the Outdoor Recreation Account. This is entirely inconsistent with the previous concept outlined in the dealer section which authorizes the department to charge dealers the cost of providing these fees. What we have here then is the anomaly of having this section saying that we should put the money in the Outdoor Recreation Account but should incur the expense nonetheless of providing these dealer plates. It can be solved in either of two ways. Either veto the dealer section as suggested above, or simply strike out the words "and tag" as they appear on line 10 and line 13 of page 20.

RAM

bmc

1972 PASSED LEGISLATION  
OPP&FM REVIEW

Enrolled House Bill No. 29 - ALL TERRAIN VEHICLE LAW ADMINISTRATION

House Bill 29 removes the titling requirement for all-terrain vehicles and provides that highway licensed vehicles need not have ATV use permits. The bill also limits the amount of motor vehicle fuel tax revenue that can be transferred to the Outdoor Recreation Account to \$1 million during the 1971-73 biennium. House Bill 29 also changes the method of distribution of all-terrain vehicles funds and designates the IAC and the Department of Natural Resources as the administering agency.

Revenue losses attributable to this bill, as estimated by the Department of Motor Vehicles, would amount to approximately \$296,000 during fiscal 73. Expenditures incurred in collecting use permit fee revenues and issuing permits will similarly be reduced by approximately \$44,000. Revenues accruing to the state will be deposited in the IAC Account to be used for the creation of parks and trails for all-terrain vehicle users. The IAC and DNR will be coordinating effort between agencies and local governments in the distribution of grants to promote the provision of such trails. However, the lines of responsibility are not clear, leaving a great potential for duplication and conflict between the IAC and DNR. Nevertheless, recommend the Governor's approval.

A fiscal note is on file.

*Comments  
on Nelson's  
(Mattison's)  
memo*

EW: 1m  
2/24/72

*Sec 8 - seem to allow Dept  
to set where + how  
tag will be affixed + I  
presume could be of  
a size to be readily seen.*

*OK - no vetoes  
JZ*

DEPARTMENT OF MOTOR VEHICLES

OFFICE OF THE DIRECTOR

TO: Richard W. Hemstad

DATE: February 24, 1972

FROM: Jack Nelson *JN*

RE: SHB 29

It is recommended that the following veto action be applied:

1. Section 8, page 8, line 10, after permit number, delete "tag or decal."

Section 8, page 9, line 2, after permit number, delete "and tag;" and after annual permit, delete "and tag."

Comment: This section and all of Section 10 as it is now amended, do create a problem for enforcement. It is not our problem but it is something that we brought to the attention at least of the ad hoc committee considering this bill in the Senate. Under the language as it now exists, we are going to be giving people a use permit which will ordinarily amount to a piece of paper, and a decal similar to our renewal decals that one places on a license plate. Under the law as it formerly was we issued a permit or registration and a registration number and required the person obtaining the registration to place the number in certain places on his vehicle. The number was of a certain dimension. The idea, of course, of all this was under the former law, that the vehicle not licensed for highway use would be identifiable at some distance by law enforcement agencies and by private persons who were having their crops trampled upon or whatever. Under the section as it has been amended, however, unless one is right up on top of the trailbike or the other type of all terrain vehicle that may not have a highway license, he is not going to be able to identify the vehicle for either enforcement purposes or for purposes of civil liability. *no*

This can be corrected simply by dropping the words "tag or decal" as they appear on line 10 of page 8. The department does have authority within this section to describe how a number is to be displayed and our present rule would be good enough for that. And, as the vehicle division points out, it is probably not very sensible although I don't think we ever brought this to anyone's attention, to issue a use permit number tag in the case of short term nonresidence permits. This could be corrected simply by dropping the words "number and tag" on line 2 of page 9.

2. Section 10, pages 10 and 11. Recommend deletion of entire section.

Comment: If the Governor buys the idea that we ought to retain some sort of visible numbering system for enforcement purposes and identification purposes by deleting the language suggested in Section 8 then, of course, all of Section 10 ought to be vetoed also because it simply says the same thing as is, redundant to the language of Section 8. *no*

3. Section 21, pages 17 and 18, lines 2 and 3, after said snowmobile delete "on a plate of such size as authorized by the Department of Motor Vehicles."

Comment: Every place that we testified on the particular language being used there we found agreement that the language beginning on line 2 should be deleted. The language, of course, is relatively unclear and certainly we cannot provide a plate at the amount of money available under this bill. So, I suspect that what we will be doing under this language is authorizing people to put a plate on but they are going to have to get their own plates. And, of course, this is probably extremely difficult if not impossible in this situation. It seems to me that a far more sensible way would be simply to strike the language as it is now and continue on to the system that we now have. Basically that system is the same as on ATV's. We assign a registration number and require the registration number to be affixed in a certain manner on a snowmobile. It could either be by decal or by painted number, the choice is the registrant's. *I see no reason a "plate" could not be feasible cheap + in fact a decal if desirable*

4. Section 26, page 20, line 10, after permit fees, delete "and dealer permit and tag fees;" on line 12, after use permit fees, delete "and dealer permit and tag fees."

Comment: This bill authorizes the department to retain 18% of the \$5.00 fee to cover the cost of annual registration. Annual registration costs 90 cents per vehicle and does not cover the transaction cost of buying plates costing \$1.10 from prison industries nor does it cover dealer registration and investigative costs.

The mandatory language here could be read to require the department to place dealer tag fees into the Outdoor Recreation Account. This is entirely inconsistent with the previous concept outlined in the dealer section which authorizes the department to charge dealers the cost of providing these fees. What we have here then is the anomaly of having this section saying that we should put the money in the Outdoor Recreation Account but should incur the expense nonetheless of providing these dealer plates. It can be solved in either of two ways. Either veto the dealer section as suggested above, or simply strike out the words "and tag" as they appear on line 10 and line 13 of page 20. *no*

cc: E. Wilson, OPP&FM

RELATES TO ALL TERRAIN VEHICLE USE PERMITS

This bill amends the all terrain Vehicle Registration Act adopted last year and establishes within the interagency committee administering the Washington State Recreation trails system new authority to plan and designate trails for all terrain vehicles and areas where they can be used. Chapter 46.09 RCW, which is the all terrain Vehicle Registration Act, would be amended to change the definition of all terrain vehicle from a vehicle capable of doing certain things to a vehicle when used for those things. Changes four wheeled vehicles to four wheeled drive vehicles and exempts from the definition of all terrain vehicles those vehicles known as snow mobiles. Would amend the law to change the registration of all terrain vehicles to a use permit system. Adds a definition of "non-highway road" and a definition of "highway". Provides for the issuance of use permits and provides that filing fees for use permits shall be certified to the State Treasurer and deposited to the credit of the Outdoor Recreation Account. Provides that all terrain vehicles which are licensed to operate over highways of this state, or if owned by non-residents of this and are licensed to operate over public highways in the state of the owners residence, are exempted from the use permit requirement. Exempts two wheeled vehicles which develop five or less horsepower. Exempts all terrain vehicles while being used for search and rescue purposes under the direction of an appropriate search and rescue or law enforcement agency. Exempts vehicles used primarily for construction purposes. Provides that use permits shall be renewable each year. Sets up a new category of dealer permit for all terrain vehicle dealers instead of the previous requirement of registration. Changes the amount of money previously specified to be retained by the Department to cover administration of the use permit system to read only enough money shall be retained to cover expenses rather than a certain percentage of the money collected. Provides that such retention shall never exceed 18 percent of fees collected. Provides that the remaining funds shall be deposited in the Outdoor Recreation Account of the General Fund to be distributed by the interagency committee to departments of state government, counties, and municipalities on a basis determined by the amount of present or proposed all-terrain vehicle trails or areas for ATV use. The interagency committee is to prescribe methods, rules, and standards by which such entities may apply for and obtain moneys from the recreation account. Provides that the IAC may use up to 5 percent of the use permit fees for administration costs. Deletes certain restrictions previously included on all terrain vehicles on those situations where they are being operated on lands owned by the operator or owner of the all terrain vehicle. Provides that the financial responsibility act shall not apply to persons operating or owning all terrain vehicles operated under a use permit. Provides for an emergency clause.

HOUSE COMMITTEE ON NATURAL RESOURCES AND ECOLOGY RECOMMENDS DO PASS SHB 29 (18)

JB:ms  
1/31/72

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(Committee on Parks, Tourism, Etc.)

An act relating to outdoor recreation. Eliminates dual registration of ATV's and requires an ATV use permit only for vehicles not licensed for highway use.

Changes "registration" by the motor vehicles department to a "use permit."

Broadens the exception for minibikes and exempt vehicles involved in organized search and rescue.

Provides that ATV dealers who have a dealer's license for motor vehicles generally will be exempt from the requirement of an ATV dealer's license.

Lowers the percentage that the department can retain for issuing ATV use permits. Provides that the IAC will get up to five percent for administering the act and that the balance will be divided by the IAC between departments of state government, counties and cities on the basis of present and proposed ATV use provided by their respective administrations. IAC will coordinate enforcement of the act and distribute ATV monies.

Removes certain restrictions in the instance of operating ATV's on private lands owned by the owner or operator of an ATV.

Prohibits ATV's on trails restricted to pedestrian or animal travel.

Creates a new formula for determining the amount of gas tax related to all terrain vehicle fuel.

Removes the minimum damage to land owners but retains triple damage provision (and misdemeanor provision).

Clarifies the position of the liability of a landowner who permits the public free use of his land for recreational vehicle use.

Allows a credit for 1971 registration fees. That credit may be taken either in 1972 on a use permit or in 1973 if the ATV is already registered for 1972.

SENATE COMMITTEE AMENDMENT: By scalping, effects housekeeping and four substantive changes: (1) Strikes the exemption as to vehicles operating under a use permit from the provisions of the financial responsibility act; (2) reinstates the provision in the original act that required reporting of accidents involving death, bodily injury, or property damage in an amount of \$200 or more; (3) strikes the provision permitting ATV's in an organized competitive event to exceed acceptable noise levels; (4) as passed by the House would have authorized a transfer of gas tax revenues to the outdoor recreation account in an amount to be determined by the director after computing the amount of fuel consumed on trails, cross-country use and all roads not maintained by the department of highways, counties or cities. Included among the roads that the director would have to compute the gas usage on were some 15,000 miles of roads and highways maintained by the federal government, many of which are very highly traveled. Senate amendment limits the amount that may be transferred from the motor vehicle fund in the 1971-73 biennium to one million dollars; and removes all federal highways and roads from the base upon

Passed 2-11-72 46-2-1X

# FISCAL NOTE

**INTERAGENCY COMMITTEE FOR OUTDOOR RECREATION 467**  
 Responding Agency Title Code No.  
**Carl Wieland**  
**Office of Program Planning and Fiscal Management**  
 Requested By

REQUEST NUMBER **72-2**

Concerning **29**  
 SB NO. HB NO.  
 Original   
 House Committee Amendment   
 Senate Committee Amendment   
 Engrossed House Bill   
 Engrossed Senate Bill   
 Substitute

Reviewed By **OPP&FM**

Bill Requested By: Executive ; Department ; Legislative Committee  Title

New Program or Activity ; Change in Existing Program or Activity

Title of Bill: An Act Relating to **outdoor recreation; ... (establishing IAC as the agency issuing use permits for all-terrain vehicles).**

## ESTIMATED FISCAL IMPACT OF PROPOSED LEGISLATION

A. Revenue Impact by Fund and Source:	BIENNIAL IMPACT			FIVE-YEAR IMPACT
	FIRST YEAR Increase (Decrease)	SECOND YEAR Increase (Decrease)	TOTAL Increase (Decrease)	
Fund Title: <b>Outdoor Recreation Account 070</b>				
Source Title: <b>Motor Vehicle Special Permit Fees 253</b>				
State	71,750	351,750	423,500	1,368,750
Federal				
Local				
<b>TOTAL</b>	<b>71,750</b>	<b>351,750</b>	<b>423,500</b>	<b>1,368,750</b>
<b>B. Expenditure Impact by Source of Funds:</b>				
Fund Title: <b>Outdoor Recreation Account 070</b>				
State	23,474	292,257	315,731	1,201,625
Federal				
Local				
<b>TOTAL</b>	<b>23,474</b>	<b>292,257</b>	<b>315,731</b>	<b>1,201,625</b>
<b>C. Expenditure Impact Detail:</b>				
Man Years	1.2	7.0	8.2	29.2
Salaries and Wages	5,432	33,287	38,719	153,727
Personal Service Contracts				
Goods and Services	10,800	38,000	48,800	156,646
Travel				
Equipment	6,400	600	7,000	8,000
Employee Benefits	842	5,260	6,102	23,814
Grants and Subsidies		215,110	215,110	859,438
Debt Service				
Capital Outlay:				
Land				
Buildings				
Improvements Other Than Buildings				
<b>TOTAL</b>	<b>23,474</b>	<b>292,257</b>	<b>315,731</b>	<b>1,201,625</b>

D. Attach Explanation of Estimate  
 (Use Form FN-2)

*Kenn Cole*  
 Prepared By Title  
**Accounts Officer** 1-20-72  
 Date

**KENN COLE**

## FISCAL NOTE

INTERAGENCY COMMITTEE FOR OUTDOOR RECREATION 467

REQUEST NUMBER 72-2

Responding Agency Title

Code No.

Concerning

SB NO.

29  
HB NO.

January 20, 1972

Date Submitted

The revenue estimate is developed from figures obtained from the Department of Motor Vehicles relative to numbers of all-terrain vehicles expected to be registered annually during the current biennium. These numbers were increased on a straight-line projection for the five-year impact.

Both revenue and expenditure estimates were developed on the basis of the calendar year, since that is the use permit period established in the bill, and then converted to the fiscal year to conform to the format of the Note.

The operating impact was developed on the hypothesis that the IAC would implement the program about May 1, 1972, and handle the workload through the mails and over the counter at the agency's offices in the Olympia vicinity. Since the functions of the program are strictly clerical in nature, staffing would consist exclusively of clerks and typists employed as the needs arose. The man-year estimates are the result of a simulated time-study of the use-permit processing procedure. Salary figures are based on current Merit System entry level pay scales, projected to include regular increments as well as the 3% "cost-of-living" increase budgeted effective September, 1972. Goods and services include estimates for printing of application/renewal forms, purchase of permit tags, various supplies such as envelopes and paper, postage expense, rental of office space, furnishing of utilities and telephone service, etc. Equipment provides for the acquisition of necessary office furniture, filing apparatus, typewriters, and adding machines. Employee benefits are extended in direct proportion to salaries. The amounts entered for the category of grants and subsidies were determined by subtracting the estimated operating cost for each calendar year from the anticipated revenue for the same period. The presumption was made that these net monies available for grants would be distributed annually, in the first quarter of the year.

The bill provides that no more than twenty-five percent of fees collected can be used for the expense of operating the program, and this limit has been reached but not exceeded in these projections.

# FISCAL NOTE

REQUEST NUMBER 15

Department of Motor Vehicles 210  
 Responding Agency Title: Code No.

Concerning \_\_\_\_\_  
 SB NO. 29 HB NO. \_\_\_\_\_

Requested By \_\_\_\_\_

- Original .....
- House Committee Amendment
- Senate Committee Amendment
- Engrossed House Bill .....
- Engrossed Senate Bill .....
- Substitute .....

Reviewed By OPP&FM \_\_\_\_\_

Bill Requested By: Executive ; Department ; Legislative Committee \_\_\_\_\_ Title \_\_\_\_\_

New Program or Activity ; Change in Existing Program or Activity

Title of Bill: An Act Relating to All-Terrain Vehicle Law Administration

## ESTIMATED FISCAL IMPACT OF PROPOSED LEGISLATION

A. Revenue Impact by Fund and Source:	BIENNIAL IMPACT			FIVE-YEAR IMPACT
	FIRST YEAR Increase (Decrease)	SECOND YEAR Increase (Decrease)	TOTAL Increase (Decrease)	Increase (Decrease)
Fund Title: <u>See Attached Breakdown</u>				
Source Title: <u>See FN-2</u>				
State	-0-	(135,000)	(135,000)	(715,810)
Federal				
Local				
<b>TOTAL</b>	<b>-0-</b>	<b>(135,000)</b>	<b>(135,000)</b>	<b>(715,810)</b>
<b>B. Expenditure Impact by Source of Funds:</b>				
Fund Title:				
State				
Federal				
Local				
<b>TOTAL</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>
<b>C. Expenditure Impact Detail:</b>				
Man Years				
Salaries and Wages				
Personal Service Contracts				
Goods and Services				
Travel				
Equipment				
Employee Benefits				
Grants and Subsidies				
Debt Service				
Capital Outlay:				
Land				
Buildings				
Improvements Other Than Buildings				
<b>TOTAL</b>				

D. Attach Explanation of Estimate  
 (Use Form FN-2)

*WML*

*R. L. Pearson* Controller  
 Prepared By H. L. Pearson Title \_\_\_\_\_

1-14-77  
 Date

App 10:20  
3:38 P.M.

# FISCAL NOTE

Department of Motor Vehicles  
Responding Agency Title

240  
Code No.

REQUEST NUMBER 15  
Concerning SB NO. 29  
HB NO.

1/14/72

Date Submitted

While the loss to the State of Washington as a result of decreasing the fee for ATV's from \$5 to \$3.50 would be as reflected on FN-1, the loss to the Department of Motor Vehicles would be as follows, assuming the responsibility of ATV Registration is completely removed from this agency:

Fiscal Year 1973:	\$450,000 Decrease
5-Year Revenue Decrease :	\$2,496,229

HOUSE BILL NO. 29

Fiscal Year 1973

90,000 ATV Registrations x \$1.50 (Decrease) = (\$135,000) Total  
Revenue Decrease

(\$135,000) Total Revenue Decrease  
( 101,000) Decrease 001-253-22 (75%)  
( 34,000) Decrease 101-253-22 (25%)

Five-Year Impact 1/

(\$745,810) Total Revenue Decrease

Discussion

This bill would have the effect of turning over the responsibility for registering ATV's from the Department of Motor Vehicles to the Inter-agency Committee for Outdoor Recreation. In addition, the "registration fee" is called a "use fee" under this bill and would be reduced from \$5.00 per year to \$3.50 - a decrease of \$1.50 per registration. The distribution of registration revenue during fiscal year 1973 would change from the following:

- 25% - DMV
- 20% - Gen. Fund of Counties
- 55% - IAC

to an undetermined amount up to a maximum of 25% to the Interagency Committee for Outdoor Recreation to cover expenses of administering this act. The other 75% or more would be distributed to departments of state government, to counties, and to municipalities on a pro rate basis determined by the amount of land or area they have devoted to ATV use. Therefore, the \$104,650 estimated as 25% to DMV under current law would be lost to this Department if this bill is passed.

The 25% portion would be reduced by \$34,000 if this bill were passed and therefore, the maximum of 25% available to IAC for administration during FY-1973 would be \$70,650 (\$104,650 - \$34,00) if this bill were passed.

cc: Nelson  
Pearson  
Diehl  
Mattsen  
Wolf  
Barclift  
Green

App10-22

1/  
For the five-year period beginning July 1, 1973.





# FISCAL NOTE

Department of Motor Vehicles  
 Responding Agency Title

240  
 Code No.

REQUEST NUMBER 15 (S)  
 Concerning SB NO. 29 HB NO.

Requested By

- Original
- House Committee Amendment
- Senate Committee Amendment
- Engrossed House Bill
- Engrossed Senate Bill
- Substitute

Reviewed By OPP&FM

Bill Requested By: Executive ; Department ; Legislative Committee

Title

New Program or Activity ; Change in Existing Program or Activity

Title of Bill: An Act Relating to **ALL TERRAIN VEHICLE LAW ADMINISTRATION**

## ESTIMATED FISCAL IMPACT OF PROPOSED LEGISLATION

A. Revenue Impact by Fund and Source:	BIENNIAL IMPACT			FOUR
	FIRST YEAR Increase (Decrease)	SECOND YEAR Increase (Decrease)	TOTAL Increase (Decrease)	YEAR IMPACT Increase (Decrease)
Fund Title: <b>See Revenue Impact</b>				
Source Title:				
State		(209,305)	(209,305)	(1,156,310)
Federal				
Local				
<b>TOTAL</b>		<b>(209,305)</b>	<b>(209,305)</b>	<b>(1,156,310)</b>
B. Expenditure Impact by Source of Funds:				
Fund Title: <b>Contingent Receipts</b>				
State		( 9,464)	( 9,464)	( 39,306)
Federal				
Local				
<b>TOTAL</b>		<b>( 9,464)</b>	<b>( 9,464)</b>	<b>( 39,306)</b>
C. Expenditure Impact Detail:				
Man Years				
Salaries and Wages				
Personal Service Contracts				
Goods and Services		( 7,462)	( 7,462)	( 29,848)
Travel				
Equipment				
Employee Benefits				
Grants and Subsidies				
Debt Service				
<b>Information Systems</b>		<b>( 2,002)</b>	<b>( 2,002)</b>	<b>( 9,458)</b>
Capital Outlay:				
Land				
Buildings				
Improvements Other Than Buildings				
<b>TOTAL</b>		<b>( 9,464)</b>	<b>( 9,464)</b>	<b>( 39,306)</b>

D. Attach Explanation of Estimate  
 (Use Form FN-2)

*WMS*  
*R. L. Pearson*  
 Prepared By  
**R. L. Pearson**

Controller, Feb. 4, 1972

Title Date

## FISCAL NOTE

Department of Motor Vehicles REQUEST NUMBER 15 (S)  
 Responding Agency Title Code No. 240 Concerning 29  
SB NO.            HB NO.           

2/4/72

Date Submitted

The revenue loss to the State as a result of the exemptions will be as shown on FN-1. The loss to DMV will be as follows, reflecting these exemptions, together with the reduction from 25% to 18% of Use Permit fees collectible by DMV.

118,600	(Est. Reg. Fees Current Law)
-209,300	(Decrease Due To Exemptions)
<hr/>	
209,300	(Est. Use Permit Fees, 1973)
<u>X.18</u>	(Portion DMV May Retain)
37,674	(DMV Revenue - Amended Law)
$104,650 - 37,674 = 66,976$ (Loss To DMV)	

While the 50% of Vehicles Exempted will not call for a reduction in personnel, certain variable costs will decrease by this percentage:

	<u>Allotted</u>	<u>-50%</u>
Postage	11,100	-5,550
Printing	1,823	- 912
Licenses	2,000	-1,000
		<hr/>
<b>TOTAL DECREASE:</b>		<b>(7,462)</b>

REVISED REVENUE IMPACT OF SHB #29

Discussion

My original impact of this bill did not take into account that this amendment would exempt all vehicles licensed for highway use from having to obtain a use permit for an ATV vehicle. Therefore, the revenue impact would be the same as for House Bill #51 (See Attached).

The Department of Motor Vehicles will be required to determine the amount of fuel used off-highway whether or not the ATV is registered with an ATV use permit or for highway use. Therefore, there will be no revenue impact upon current estimates because this is the same fuel estimates for the current law. Only under current law ATV's licensed for the highway must also register as ATV's for off-highway use.

cc: Nelson  
Mattsen  
Wolf  
Barclift  
Green  
Pearson  
Diehl  
File (2)

Attachment

HOUSE BILL NO. 51

Fiscal Year 1973

001-253-22	(\$156,980)	Revenue Decrease
101-253-22	( 52,325)	Revenue Decrease
	<u>(\$209,305)</u>	Total Decrease from R <sup>e</sup> gistration & Title Fees

Five-Year Impact

001-253-22	( \$867,230)	Revenue Decrease
	( 289,080)	Revenue Decrease
	<u>(\$1,156,310)</u>	Revenue Decrease

Discussion

This bill would have the effect of exempting from the ATV registration requirement those vehicles which use ATV facilities but are licensed with the Department of Motor Vehicles for highway use. A Sample of 17,121 ATV's that have registered during this fiscal year revealed that about 66% were registered for highway use. However, we feel that this percentage is higher than what we'll expect in the future because questionnaires returned indicated that some people were purchasing ATV licenses due to a misunderstanding of the law. Some jeep owners, for example, thought they were required to purchase an ATV license whether or not they used ATV facilities because their vehicle was an ATV type. I have estimated that exempting ATV's licensed for highway use will reduce ATV registrations by about 50%. Therefore, I have shown a decrease of 50% of our current estimates from ATV registrations.

cc: Pearson  
Diehl  
Barclift  
Green

1/  
For the five-year period beginning July 1, 1973.

# **App. 11**

CHAPTER 52

[House Bill No. 69]

WASHINGTON STATE UNIVERSITY—FOREST TREE NURSERY REPEAL

AN ACT Relating to Washington State University; and repealing sections 28B.30.370, 28B.30.375 and 28B.30.380, chapter 223, Laws of 1969 ex. sess. and RCW 28B.30.370, 28B.30.375 and 28B.30.380.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. Section 1. Sections 28B.30.370, 28B.30.375, and 28B.30.380, chapter 223, Laws of 1969 ex. sess. and RCW 28B.30.370, 28B.30.375 and 28B.30.380 are each hereby repealed.

Passed the House January 29, 1979.

Passed the Senate March 2, 1979.

Approved by the Governor March 19, 1979.

Filed in Office of Secretary of State March 19, 1979.

CHAPTER 53

[House Bill No. 50]

RECREATIONAL USE OF LAND—OWNER'S LIABILITY

AN ACT Relating to liability of landowners or others in possession or control; and amending section 2, chapter 216, Laws of 1967 as last amended by section 17, chapter 153, Laws of 1972 ex. sess. and RCW 4.24.210.

Be it enacted by the Legislature of the State of Washington:

Section 1. Section 2, chapter 216, Laws of 1967 as last amended by section 17, chapter 153, Laws of 1972 ex. sess. and RCW 4.24.210 are each amended to read as follows:

Any public or private landowners or others in lawful possession and control of ~~((agricultural or forest))~~ any lands whether rural or urban, or water areas or channels and ~~((rural))~~ lands adjacent to such areas or channels, who allow members of the public to use them for the purposes of outdoor recreation, which term includes, but is not limited to, hunting, fishing, camping, picnicking, swimming, hiking, bicycling, the riding of horses or other animals, clam digging, pleasure driving of ~~((all-terrain))~~ off-road vehicles, snowmobiles, and other vehicles, boating, nature study, winter or water sports, viewing or enjoying historical, archaeological, scenic, or scientific sites, without charging a fee of any kind therefor, shall not be liable for unintentional injuries to such users: PROVIDED, That nothing in this section shall prevent the liability of such a landowner or others in lawful possession and control for injuries sustained to users by reason of a known dangerous artificial latent condition for which warning signs have not been conspicuously posted: PROVIDED FURTHER, That nothing in RCW

4.24.200 and 4.24.210 limits or expands in any way the doctrine of attractive nuisance: AND PROVIDED FURTHER, That the usage by members of the public is permissive and does not support any claim of adverse possession.

Passed the House March 7, 1979.

Passed the Senate March 2, 1979.

Approved by the Governor March 19, 1979.

Filed in Office of Secretary of State March 19, 1979.

---

#### CHAPTER 54

[Senate Bill No. 2159]

#### PUBLIC LANDS AND MATERIALS—SALES AND EXCHANGES

AN ACT Relating to public lands and materials; amending section 2, chapter 107, Laws of 1975 1st ex. sess. and RCW 79.08.015; amending section 50, chapter 255, Laws of 1927 as last amended by section 1, chapter 45, Laws of 1975 1st ex. sess. and RCW 79.01.200; amending section 51, chapter 255, Laws of 1927 as last amended by section 4, chapter 73, Laws of 1961 and RCW 79.01.204; and declaring an emergency.

Be it enacted by the Legislature of the State of Washington:

Section 1. Section 2, chapter 107, Laws of 1975 1st ex. sess. and RCW 79.08.015 are each amended to read as follows:

~~((At least ten days but not more than twenty-five days))~~ Before the department of natural resources presents a proposed exchange to the board of natural resources involving an exchange of any lands under the administrative control of the department of natural resources, the department shall hold a public hearing on the proposal in the county where the state land or the greatest proportion thereof is located. Ten days but not more than twenty-five days prior to such hearing, the department shall publish a paid public notice of reasonable size in display advertising form, setting forth the date, time, and place of the hearing, at least once in one or more daily newspapers of general circulation in the county and at least once in one or more weekly newspapers circulated in the area where the state-owned land is located. A news release pertaining to the hearing shall be disseminated among printed and electronic media in the area where the state land is located. The public notice and news release also shall identify lands involved in the proposed exchange and describe the purposes of the exchange and proposed use of the lands involved. A summary of the testimony presented at the hearings shall be prepared for the board's consideration when reviewing the department's exchange proposal. If there is a failure to substantially comply with the procedures set forth in this section, then the exchange agreement shall be subject to being declared invalid by a court. Any such suit must be brought within one year from the date of the exchange agreement.

WestlawNext™

4.24.200. Liability of owners or others in possession of land and water areas for injuries to recreation users--Purp...  
West's Revised Code of Washington Annotated Title 4. Civil Procedure (Approx 2 pages)

NOTES OF DECISIONS (6)

West's Revised Code of Washington Annotated  
Title 4. Civil Procedure (Refs & Annos)  
Chapter 4.24. Special Rights of Action and Special Immunities (Refs & Annos)

In general  
Common law  
Purpose

West's RCWA 4.24.200

4.24.200. Liability of owners or others in possession of land and water areas for injuries to recreation users--Purpose

Currentness

The purpose of RCW 4.24.200 and 4.24.210 is to encourage owners or others in lawful possession and control of land and water areas or channels to make them available to the public for recreational purposes by limiting their liability toward persons entering thereon and toward persons who may be injured or otherwise damaged by the acts or omissions of persons entering thereon.

Credits

[1969 ex.s. c 24 § 1; 1967 c 216 § 1.]

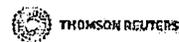
Notes of Decisions (6)

West's RCWA 4.24.200, WA ST 4.24.200

Current with all laws from the 2015 Regular and First Special Sessions that are effective on or before July 24, 2015, the general effective date for laws from the Regular Session, and available laws from the 2015 Second and Third Special Sessions

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# **App. 12**

BILL REPORT  
(As Passed by Committee)

Bill No.

HB 50

HOUSE OF REPRESENTATIVES  
Olympia, Washington

Original      Companion Measure

Amended      No. \_\_\_\_\_

Substitute      January 15, 1979  
Date.

Landowners limited liability  
Brief Title (From Status of Bills)

Representatives Newhouse and Smith (R) (by request of  
Sponsor (Note if Agency, Committee, Agency or Executive Request  
the Judiciary Committee of the 45th Legislature)

David Cheal-4858  
Staff Contact  
(Name & Phone No.)

Reported by Committee on Judiciary

Fiscal Impact:

Committee Recommendation: Majority DP-8 Minority \_\_\_\_\_  
(If a Minority Report is filed, list last names below)

Yes (see fiscal note)

No

Majority Report Signed By: Representatives Newhouse, Smith (R), Chandler,  
Knowles, Sherman, Thompson, Tilly, and Winsley

Minority Report Signed By: \_\_\_\_\_

ISSUE: Private landowners should have clear protection from liability  
when they allow their land to be used for recreational purposes.

SUMMARY OF BILL (with amendments, if any): The bill amends the present landowner's  
immunity from liability for unintentional injury to members of the public who  
are allowed to enter the landowner's property for outdoor recreation. The bill  
extends the immunity to urban as well as rural landowners. It also expands  
the definition of outdoor recreation to expressly include bicycling and horse-  
back riding as well as language indicating that omission of a specific activity  
from the list in the bill does not necessarily exempt it from the definition.  
Finally, the bill provides that such usage by the public cannot be used to  
establish a claim of adverse possession against the owner.

ARGUMENTS PRESENTED FOR:

Should further reduce fears of landowners  
that they will be held liable for injury  
of recreational users of their land.  
Should increase use of private land  
for recreational use.

ARGUMENTS PRESENTED AGAINST:

NONE

PRINCIPAL PROPONENTS:

Representative Rick Smith

PRINCIPAL OPPOHENTS:

MEMBERS' VOTING RECORD

COMMITTEE: JUDICIARY

CHAIR: Representative Irv Newhouse  
Representative Rick Smith, Co-chairman

DATE: January 15, 1979 TIME: 8:00 a.m. PLACE: HOB 416

BILL NO.: HB 50

Amendment Amendment Amendment

	Yea	Nay	Absent - Not Voting	Y	N	Y	N	Y	N
CHANDLER	✓								
KNOWLES	✓								
SHERMAN	✓								
THOMPSON	✓								
TILLY	✓								
WINSLEY	✓								
SMITH, R.	✓								
NEWHOUSE	✓								

# Report of Standing Committee

## HOUSE OF REPRESENTATIVES

Olympia, Washington

January 15, 1979

(date)

House Bill

No. 50

(Type in House or Senate Bill, Resolution, or Memorial)

Prime Sponsor Representative Newhouse

Providing for limited liability of landowners for recreational use

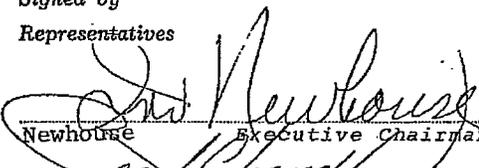
(Type in brief title exactly as it appears on back cover of original bill)

of their land by the public.

reported by Committee on JUDICIARY (8)

MAJORITY recommendation: Do Pass.

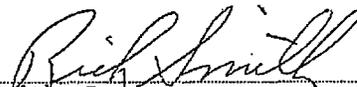
Signed by  
Representatives

  
Newhouse Executive Chairman

Chandler

Tilly

Winsley

  
Smith, R. Co-chairman

Knowles

Sherman

Thompson

STATE STATUTES LIMITING  
LANDOWNER LIABILITY FOR LAND USED  
FOR RECREATIONAL PURPOSES

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SAMUEL BUFFORD  
*Attorney at Law*  
1659 North High Street  
Columbus, Ohio 43210  
614/422-2039

MEMORANDUM OF LAW

TO: Gene Wirwahn  
American Motorcyclist Association

May, 1977

You have asked me to supervise the research of statutes in force in the various states of the United States which authorize a landowner to make his property available for recreational use without incurring the normal landowner liability for invitees on his property. In particular, I have focused upon the application of such statutes to motorcyclists as recreational users.

CONCLUSIONS

There are presently forty-four states with statutes limiting the liability of landowners who permit the free recreational use of their land to the public. No one region of the country is without these statutes; only Alabama, Arizona, Mississippi, Missouri, Rhode Island, and Utah appear not to have such a law.

The majority of the statutes fall into one of two basic patterns; the rest exhibit little underlying structural unity. Most of the statutes have sections parallel to those in the model legislation proposed in "Incentives to Use of Land for Outdoor Recreational Purposes: Insulation from Tort Liability; Tax Relief" prepared by the Office of Special Projects, University of Georgia School of Law. (Hereafter referred to as the "Georgia Study").

Most states list a number of specific recreational activities covered by their statutes. Motorcycling, however, is not generally included in these lists; only Connecticut, Florida, Illinois, Iowa and Michigan mention it explicitly. Judicial decisions have not been especially helpful in filling in this gap: New Jersey is the only state where a court has held that the residuary clause in its statutes, "... and any other outdoor sport, game and recreational activity"

includes the riding of motorcycles (see p. 27). In addition, it appears that motorcycling is not covered by the statutes in Tennessee, Texas or Virginia.

Relatively few cases have been reported interpreting these statutes. Cases have been found in only eleven states applying the statutes, and in one of these, Massachusetts, the statute is mentioned only briefly in a wholly different context. Otherwise, with the exception of the New Jersey case, the case law does not add much that is useful in understanding the statutes (see Part III, p. 27ff).

#### DISCUSSION

The discussion is organized in four parts. The first discusses the extent and distribution of Landowner Liability Limitation Statutes presently enacted in the United States as well as the basic patterns exhibited by the statutes. The purpose behind this inquiry is to show the variety of approaches taken by the state legislatures in dealing with tort liability limitations in this area and to provide a rough comparison with the model legislation in the Georgia Study. Part two analyzes the statutes to determine the recreational uses covered, the land areas covered, the effect on the landowners' duty of care, the relationship between landowner and recreational user, exceptions to liability limitations, and the effect on existing property and tort law. Part three examines the judicial decisions arising under the statutes. Attention is given particularly to the application of the statutes to motorcycle operation. Part four provides an analysis of the statute in each state, listed in alphabetical order.

PART I - GENERAL PATTERNS OF STATUTES

The majority of liability limitation statutes fall into one of two general patterns, each of which shows the influence of a model statute. Moreover, one form of the statute is, on the whole, a somewhat abbreviated expression of the other, although each is distinctive in several important respects. The first pattern ("Form A") is comprised primarily of seven major sections. The second group ("Form B") is made up of three central sections also found in Form A, but generally expressed in a slightly different manner. The remaining statutes exhibit few similarities to these main patterns and will be discussed separately in the report.

FORM A STATUTES

Form A statutes are in force in the following jurisdictions:

- |                |               |                    |
|----------------|---------------|--------------------|
| 1) Arkansas    | 8) Illinois   | 15) North Dakota   |
| 2) Colorado    | 9) Iowa       | 16) Oklahoma       |
| 3) Connecticut | 10) Kansas    | 17) Oregon         |
| 4) Delaware    | 11) Kentucky  | 18) Pennsylvania   |
| 5) Georgia     | 12) Maryland  | 19) South Carolina |
| 6) Hawaii      | 13) Minnesota | 20) West Virginia  |
| 7) Idaho       | 14) Nebraska  | 21) Wyoming        |

Although it is possible to discern a definite pattern among the statutes comprising the Form A group, they are not identical in either form or content. The variations in content will be explored more fully in Parts II and IV of this report; they will be mentioned here only in relation to their effect on the varying forms found within Form A statutes. Twenty-one of the forty-four statutes presently in force nationwide, or roughly one-half, are Form A statutes. There appears to be no geographical concentration of this pattern; it is found from Maryland to Hawaii and from Idaho to Georgia.

Form A statutes have seven major sections. They are organized as follows: Statement of Purpose, Definitions, Duty of Landowner, Liability Limitations, State as Lessee, Exceptional Conduct, and Judicial Constructio Most, but not all, Form A statutes include all seven. All have at least six of the seven; the most common omission is the Statement of Purpose section.

A. Statement of Purpose Section

Seventeen of the twenty-one Form A statutes (all but Oklahoma, Connecticut, Wyoming and North Dakota) begin with some form of Statement of Purpose. The exact wording of these legislative declarations differs only minimally from state to state. The Statement of Purpose Section found in the Kansas statute is typical:

The purpose of this Act is to encourage owners of land to make land and water areas available to the public for recreational purposes by limiting their liability toward persons entering thereon for such purposes. Kan. Stat. Ann. § 58-3201 (Supp. 1975).

Although basically similar in thrust to the Declaration of Purpose found in the model legislation put forth in the Georgia Study (p.167), these statutes differ from the model legislation in that all omit references to the "critical need for outdoor recreational areas" and the statements concerning the public interest and benefit to be derived from these statutes.

B. Definition Section

Another section that is typical of a Form A statute deals with important terms and statutory meanings. Here most of the wording among the acts is identical, or nearly so. A few add extra definitions peculiar to each state; some may combine two definitions. (These will be explored more later: see Part II and Part IV). But on the whole the definitions follow a single pattern. The definitions found in the Delaware statute are typical:

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

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

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

(4) "Charge" means the admission price or fee asked in return for invitation or permission to enter or go upon the land. Del. Code Ann. tit. 7 § 5902 (1975)

These definitions bear little resemblance to the definitions found in the Georgia Study (pp.167-168). The greatest similarity exists between the statutes and the model legislation in the definitions of "land" and "recreational use." The model legislation's definition of "person" is similar to the definition of "person" found in the enacted statutes. However, only four states have incorporated this term into their statutes. (See p. 26).

### C. Care of Premises Section

This section, and the following one limiting the landowner's liability, form the heart of both Form A and Form B statutes. Taken alone, it delineates the duty of the landowner who makes his land available to the public for recreational use. With the exception of a few actions specifically provided for by statute, (see below: F. Exceptional Conduct Section, p. 8 and Part II, p. 21). A landowner: "... owes no duty of care to keep the premises safe for entry or use by others for recreational purposes, or to give any warning of a dangerous condition, use, structure, or activity on such premises to persons entering for such purposes." Ark. Stat. Ann. § 50-1103 (1971).

This language is fairly uniform throughout the states and is very similar to the Georgia Study's model, with one exception. Besides relieving the landowner of a duty to keep the premises safe and to give warnings, the model statute relieves the landowner of the duty to inspect his premises (Georgia Study, p. 168). While this freedom from a duty to inspect is made clear in the model act, none of the statutes presently in force provide for such relief, although it may be implicit in the lack of duty to keep the premises safe (see Part II, p. 12).

From the landowner's point of view, the importance of this language cannot be understated. Inasmuch as an action in negligence depends on the existence of a duty owed to the injured plaintiff and a breach of that duty, this section virtually eliminates a primary element of such a suit. At least as to persons who do not have the owner's permission to be on the land for recreational purposes or otherwise, e.g., a

trespasser, the landowner has traditionally had little, if any, positive duty; and this section has, in effect, merely codified that part of the existing common law. But if recreational users qualify as licensees or invitees, this section makes it clear that the landlord owes no duty of care to them.

#### D. Liability Limitation Section

The general thrust of this section is the same for both Form A and Form B statutes, although some variation exists in certain instances (see pp. 43ff).

First of all, the landowner does not "extend any assurance that the premises are safe for any purpose." Colo. Rev. Stat. § 33-41-102(a) (1973). The reasons behind the inclusion of this language is at first somewhat puzzling. The general tone of all these statutes is the limiting of the landowner's tort liability. Yet, here, the statutes appear to contemplate the possibility of a contract action based on a broken guarantee. In all probability, the explanation lies with the doctrine of reliance in Section 90 of the Restatement (Second) of Contracts. In the absence of consideration, a prerequisite for the statute's operation, (see p. 21), a suit could still conceivably be grounded on the injured recreational user's reliance, reasonable or otherwise, on the assurance, actual or inferred, that the premises of the landowner are safe for his entry and use. Part (a) of this section eliminates the foundation of any such action.

Second, the landowner does not "confer upon such person the legal status of an invitee or licensee to whom a duty of care is owed." Colo. Rev. Stat. § 33-103(b) (1973). The purpose of this part is fairly evident. When most of these statutes were enacted in the early and middle 1960's, the law classified all persons on the land of another as trespassers, invitees, or licensees. A duty of care was owed by the landowner only to the latter two groups; a trespasser could generally expect, at most, that the landowner would refrain from willful and malicious conduct. W. Prosser, Torts § 58, (4th ed. 1971). Since the California decision of Rowland v. Christian, 69 Cal.2d 109, 3 Cal. Rptr. 97, 443 P.2d.561 (1968), there has been some judicial movement away from these often confusing categories. However, none of

the statutes, (including California's) reflect this change where it has occurred. In effect, Part (b) of this section has merely restated the previous section, i.e., that at most a minimal duty of care is owed to recreational users by private landowners.

Lastly, by opening his land to the public for recreational use, the landowner does not "assume responsibility for or incur liability for any injury to person or for the death of any person or property caused by an act or omission of such persons." Colo. Rev. Stat. § 33-41-103(c) (1973). Not only does he not owe a duty of care to recreational users, but he is also shielded from any liability that might otherwise arise from the negligence of those persons that cause injury to other persons or property. Of the three parts in this section, Part (c) has the least uniformity. (see Part IV, p.43).

Section 4 of the Georgia Study model legislation (p. 168) is very similar in form and content to the Liability Limitation Section found in most of the statutes.

#### E. State As Lessee Section

Form A statutes generally include a section expressly applying the provisions limiting liability to lands leased from the landowner by the state or a political subdivision. The parties to the lease agreement are not required, however, to make the act applicable. Language typical of this section reads:

Unless otherwise agreed in writing, the provisions of (the Care of Premises Section and Liability Limitation Section, Sections C. and D. above) this act shall be deemed applicable to the duties and liabilities of an owner of land leased to the state or any subdivision thereof for recreational purposes. Ga. Code Ann. § 105-407(1968).

A few of the Form A statutes have a section concerning land leased by the state based on another model. This model combines the Care of Premises Section (Section C. above) and the Liability Limitation Section (Section D. above) and restates them in terms applicable only to land leased to the state. Like the shorter version above, this section may be circumvented by a writing between the parties specifying duties and liabilities. Otherwise:

... an owner of land leased to the state or its political subdivision for recreational purposes owes not duty of care to keep that land safe for entry or use by others or to give warning to persons entering or going upon such land of any hazardous conditions, uses, structures, or activities thereon. An owner who leases such land to the state or its political subdivisions for recreational purposes shall not by giving such lease:

1. Extend any assurances to any person using the land that the premises are safe for any purpose;
2. Confer upon such persons the legal status of an invitee or licensee to whom a duty of care is owed; or,
3. Assume responsibility for or incur liability for any injury to person or property caused by an act of omission of a person who enters upon the leased land.

The provisions of this section apply whether the person entering upon the leased land is an invitee, licensee, trespasser, or otherwise. N.D. Cent. Code § 53-08-04 (1974).

The Georgia Study model legislation has no section corresponding to either of the above. Land leased to the state is included in the act by broadly defining "owner" to include not only individuals, but also the state, subdivisions, and private and public organizations of any character. (Georgia Study, § 2(a), p. 167).

#### F. Exceptional Conduct Section

Members of the public who use private land for recreational purposes are not without some protection. That protection is to be found in two types of conduct, enumerated by the statute, which will withdraw the protection of the statute from the landowner.

First, nothing in the statute will limit the liability of the landowner which otherwise exists: "(a) for willful or malicious failure to guard or warn against a dangerous condition, use, structure, or activity", Ill. Ann. Stat. ch. 70 § 36(a) (Smith-Hurd Supp. 1976-1977). In other words, the recreational user has the general status of a common law trespasser even though he has the owner's permission to be on the premises. This exception is generally recognized by most states, although it may be expressed in other terms such as "willful and wanton misconduct" Mont. Rev. Code Ann. § 67-808(1970), or "gross negligence." Mich. Comp. Laws § 300.201 (Supp. 1976-1977). These terms, though similar, are not generally recognized to be synonymous and that activity which falls within these exceptions will depend in large part on the body of common law already established in the particular state.

The second activity which is prohibited if the landowner wishes to remain within the scope of the statute is the charging of a fee in return for permission to enter and use the land; the landowner must give his permission gratuitously. There exists, however, a limitation to this exception: when the state or political subdivision leases land from a private owner and opens it to public recreational use, "the rent paid by the state is not considered a "charge" within the meaning of the statute.

The Georgia Study has no comparable section to the two exceptions above. There, the exceptional conduct which withdraws the statute's protection is specifically delineated in terms of the owner's actual knowledge of conditions which create an "unreasonable risk of death or bodily harm" while the property is being used for "non-fee recreational purposes." (Georgia Study, § 5, p. 168-169).

#### G. Construction Section

Form A statutes generally conclude with a short section on the judicial construction of the act. This section typically includes two declarations, one of importance to the landowner and the other of importance to the recreational user. The various legislatures have stated that nothing in these laws is to be construed to: "(a) Create a duty of care or ground of liability for injury to persons or property." Okla. Stat. Ann. tit. 76 § 15(a) (1976). For the landowner, this makes explicit what is left implied in the previous sections, i.e., that if his land is made available to the public for recreational use his duties and liabilities are no greater than if he had not.

The mirror image of this is directed to the recreational user. The public must exercise the same amount of care in using the owner's land as it would have had the statute not been enacted. Likewise, recreational users still face all legal consequences of their failure to observe their obligations. Thus, these acts are not to be construed in a way to:

"(b) Relieve any person using the land of another for recreational purposes from any obligation which he may have in the absence of this act to exercise care in his use of such land and in his activities thereon or from the legal consequences of failure to employ such care. Okla. Stat. Ann. tit. 76 § 15(b) (1976)

The standard of care envisioned by this section is, in all probability, the generally accepted tort standard of "ordinary care under the circumstances" as measured in terms of the reasonable man.

Although the Georgia Study has no section at all similar to part (a) above, § 6 of the model legislation is virtually identical to part (b) (Georgia Study, § 6, p. 168).

#### FORM B STATUTES

Form B statutes are in force in the following states:

- |                  |               |
|------------------|---------------|
| 1) Alabama       | 6) New Jersey |
| 2) California    | 7) New York   |
| 3) Maine         | 8) Tennessee  |
| 4) Nevada        | 9) Virginia   |
| 5) New Hampshire | 10) Wisconsin |

Form B statutes are not markedly different in purpose or essential function from Form A statutes. As was stated previously, they are basically abbreviated Form A statutes. Ten of the forty-four statutes or a little less than one-fourth, can be classified as Form B. As a group, they are generally less uniform than Form A statutes. The variations exhibited among them will also be considered later. (See Parts II and III).

Form B statutes are built around three sections found in Form A statutes: the Care of Premises Section, the Liability Limitations Section and the Exceptional Conduct Section. The basic thrust of these three sections is the same as those in Form A statutes; only a few of the important terms are different. The owner is generally under no duty to keep the premises safe for, or give a warning of dangerous conditions to, recreational users. Similarly, no assurances are extended that the premises are safe for recreational purposes; the user is explicitly precluded from claiming the legal status of an invitee or licensee; and the landowner is shielded from liability arising from the negligence of the recreational user. This type of statute also includes the two main exceptions found in Form A: Willful and malicious failure to guard or warn the recreational user of a dangerous condition, etc., and charging a fee will suspend the operation of the statute's liability limitation.

Beyond this, the legislatures have made various additions. Some have included a short definition section, usually limited to the term "premises" which is defined generally as "lands, private ways and any building and structures thereon," Me. Rev. Stat. Ann. tit. 12 § 3001 (1974). Others add a short construction section, similar to the first part of the Construction Section found in a Form A statute, i.e., that no duty of care or ground of liability is created by anything in the statutes.

#### SUMMARY

Several observations about the statutes as a whole may also be made at this point. First, the states have generally proceeded in a negative way towards encouraging private landowners to make recreational areas publicly available, i.e., by removing a risk. The statutes place the landowner in a rather neutral position where the threat of suit is virtually identical whether or not he commits any land to recreational uses. The Georgia Study recognized this drawback when it proposed tax incentives for the owner. Secondly, this balanced position is probably as far as statutes of this sort can go toward realizing their stated purpose and still remain within the bounds of acceptable considerations of public policy. The public's interest is obvious when the landowner is seeking a profit from the use of his land or where the injuries are caused in a wanton and willful manner.

Finally, this discussion of the broad patterns exhibited by the statutes, and the resulting appearance of uniformity, should not blur the point that important variations in coverage do exist, and that similar fact situations in different states may often result in inconsistent resolutions to an issue. These important variations among the operative terms are detailed in the next section. The scope of each particular state's statute follows this (Part III).

PART II: ANALYSIS OF THE STATUTES

A. Introduction

The previous section of this report has provided only a superficial view of the general scope of these acts. It was concerned instead with the larger structural configurations. Yet, notwithstanding the fact that they can be grouped according to form, there are very few of these statutes that are identical in all respects. Therefore, in order to discern the actual variety that exists, it is necessary to shuffle and regroup them in still a different way. For this, six categories have been chosen which would appear to be of the most interest to prospective recreational users concerned with the different aspects of tort liability limitation that confront them from state to state. The six categories have been given the following designations:

- 1) Recreational Uses Covered by the Statutes
- 2) Land Areas Covered by the Statutes
- 3) Legal Effect on Landowner's Duty of Care
- 4) Landowner - Recreational User Relationship
- 5) Exceptions to Liability Limitations
- 6) Effect on Existing Property and Tort Law

Since the interests of recreational users of motorcycles have been the prime criteria affecting the choice of these categories, the six mentioned are by no means exhaustive. However, the order in which they will be discussed reflects the assumed priority these matters would have for motorcyclists.

Because of special considerations, Indiana will not be included in the following discussion except as it relates to the first category. While not drastically dissimilar to the scope of the other state's statutes, Indiana has chosen to place the liability limitation provisions common across the country into three separate statutes, each directed to a separate area of concern. To avoid confusion, they have been omitted here. Reference should be made to Part IV of this report for a more extended treatment of these statutes.

B. RECREATIONAL USES COVERED BY THE STATUTES -

In a majority of states, the recreational activities that are covered by the statute are given in the definition of "recreational purpose." Usually, this takes the form of a number of specific activities. Those statutes which contain such a list nearly always contain the more obvious activities of hunting, fishing, swimming, picnicking, hiking, etc. Motorcycling is not generally included. In addition to these specifics, however, many statutes include a residuary term which leaves the definition of "recreational purpose" open-ended. Therefore, as a general matter, if motorcycling is to be considered an activity within the scope of the statute, it must fall within the purview of these more inclusive residuary terms.

Only five states explicitly include the operation of motorcycles within the scope of their statutes. Those states are: Connecticut, Florida, Illinois, Iowa and Michigan.

In addition to these five, the New Jersey Court for Salem County has held that operation of a motorbike falls within the requirements of that state's statute's residuary clause: "... and any other outdoor sport, game, and recreational activity ..." Krevics v. Ayars, 141 N.J. Super. 511, 358 A.2d 844 (Salem Co. Ct. 1976). This is significant for two reasons. First, New Jersey has a Form B statute. Therefore, an argument by analogy to the effect that other states with Form B statutes should be construed in a like manner would not be unreasonable. Secondly, as will be seen, the statutes as a whole fall roughly into four groups in their approach to motorcycles. The first includes motorcycling explicitly; the second group includes motorized vehicle operation the third group would have to be interpreted in such a way as to include motorcycles within the term "pleasure driving"; and the fourth group has merely a residuary clause. Since New Jersey is in this fourth group (see p.15), whose terminology is least likely to include motorcycles, the decision in Krevics provides added weight to the argument that the second (motorized vehicles) and the third group (pleasure driving) should likewise be read to include motorcycle operation.

In nine states the recreational use of motorized vehicles is expressly covered. With the exception of the five states given above and New Jersey, these states come the closest to unambiguously covering motorcycles in their acts. The exact wording is given below.

- 1) California: "all types of vehicular riding."
- 2) Colorado: "the riding of motorized recreational vehicles."
- 3) Indiana: "operating, using or riding in off-road vehicles for recreational purposes."
- 4) Louisiana: "motorized vehicle operation for recreational purposes."
- 5) Maryland: "operating motorized recreational vehicles."
- 6) Minnesota: "motorized recreational vehicles."
- 7) New Hampshire: "OHRV's" (off-highway recreational vehicles).
- 8) New York: "Motorized vehicle operation for recreational purposes."
- 9) Washington: "the pleasure driving of all-terrain vehicles, snowmobiles, and other vehicles."

While none of these mention motorcycles per se, the terms are most likely broad enough to encompass this activity without too much difficulty. The only problem may arise in the Indiana and New Hampshire statutes. A strict construction of the terms "off-road" and "off-highway" could foreclose the operation of motorcycles if such vehicles are considered both on and off-road modes of transportation.

A third category of recreational use that is common among the statutes is "pleasure driving." Whether the legislative intent behind this phrase was to include the use of motorcycles is impossible to tell. At first glance it seems to be directed toward automobile sightseeing; but again, the phrase is indefinite enough to arguably include motorcycle operation. Support for this position may be drawn from the Washington statute. There the phrase "pleasure driving" is qualified by, and connected to, the phrase "...of all-terrain vehicles, snowmobiles, and other vehicles." Although Washington is unique in this respect, all expressly provide that the generic category "recreational purpose" includes, but is not limited to those activities enumerated. The following states employ the phrase "pleasure driving":

- |             |                  |                    |
|-------------|------------------|--------------------|
| 1) Arkansas | 6) Kansas        | 11) Oklahoma       |
| 2) Delaware | 7) Kentucky      | 12) Pennsylvania   |
| 3) Georgia  | 8) Montana       | 13) South Carolina |
| 4) Hawaii   | 9) Nebraska      | 14) West Virginia  |
| 5) Idaho    | 10) North Dakota | 15) Wyoming        |

The remaining states are even less clear as to whether off-road motorcycling is to be considered a recreational activity covered by their statutes. After listing a series of included activities, the following states provide a residuary phrase in which motorcycling would have to fall:

- 1) Alabama: "other recreational purposes"
- 2) Maine: "a recreational activity"
- 3) Nevada: "any other recreational purpose"
- 4) New Jersey: "any other outdoor sport, game, and recreational activity"
- 5) New Mexico: "any other recreational use"
- 6) North Carolina: "or for other recreational use"
- 7) Ohio: "or engage in other recreational pursuits"
- 8) Vermont: "and similar activities"
- 9) Wisconsin: "or recreational purposes"

Massachusetts and South Dakota do not provide any specific list but include all covered activities under the general term "recreational purposes."

Oregon has no residuary, catch-all phrase. It defines "recreational purposes" as including, but not limited to, hunting, fishing, swimming, boating, etc. Thus, motorcycling would have to be judicially read into the statute to be covered.

Tennessee lists hunting, fishing, etc., in the section of the statute that defines the landowner's duty in caring for the premises. It does not state whether this list is all-inclusive or not, nor does it provide a residuary phrase that would include activities not mentioned in the list. Thus, according to the language of the statute itself, motorcycling is not a recreational activity for which the landowner's liability is limited. Finally, Virginia and Texas are similar to Tennessee in that they give a presumably all-inclusive list of recreational activities which does not include either motorcycling or a residuary phrase that could arguably cover such activity. There are at least a few states

which will require a statutory amendment, not merely a favorable judicial reading, to clearly admit recreational motorcyclists to the class of persons intended to be covered by the acts.

C. LAND AREAS COVERED BY THE STATUTES

For the most part, the state legislatures have given a broad definition to the words "land" or "premises" when they have decided to define them at all. The majority of states, however, have not provided any geographical limitations to the land that can be made available. The most common definition includes: "land, roads, water, water courses, private ways, and building, structures, and machinery or equipment when attached to the realty." Ky. Rev. Stat. Ann. § 411.190(1)(a) (Baldwin 1976). This language could include urban as well as rural land. (See Part III for states which have judicial interpretations of this language). The following states use this definition or one virtually identical to it:

- |                |               |                  |                 |
|----------------|---------------|------------------|-----------------|
| 1) Arkansas    | 7) Kansas     | 13) N. Carolina  | 19) Texas       |
| 2) Colorado    | 8) Kentucky   | 14) N. Dakota    | 20) Virginia    |
| 3) Connecticut | 9) Louisiana  | 15) Ohio         | 21) W. Virginia |
| 4) Delaware    | 10) Maryland  | 16) Pennsylvania | 22) Wyoming     |
| 5) Georgia     | 11) Minnesota | 17) S. Carolina  |                 |
| 6) Idaho       | 12) Nebraska  | 18) Tennessee    |                 |

Two states, Wisconsin and Maine, omit reference to water and water courses in their definition of "premises."

Several statutes use the term "land" and "premises" but provide no definition whatsoever. These statutes are found in the following states:

- |                  |                  |
|------------------|------------------|
| 1) Alabama       | 6) New Hampshire |
| 2) Massachusetts | 7) New Jersey    |
| 3) Michigan      | 8) New Mexico    |
| 4) Montana       | 9) New York      |
| 5) Nevada        |                  |

The rest of the states have various distinctive definitions:

- 1) California: "any estate in real property"
- 2) Florida: "land, water areas and park areas" (See p. 21)
- 3) Hawaii: "land, roads, water, water courses, private ways and building, structures, and machinery or equipment when attached to realty, other than lands owned by the govern."
- 4) Illinois: "land located outside the corporate limits of city, village or incorporated town and not subdivided into blocks and lots and includes roads, water, and water courses, private ways and building, structures, and machinery or equipment when attached to realty"
- 5) Iowa: "land used for agricultural purposes, including lands, timber, grasslands, and the privately owned lands and machinery or equipment appertenant thereto"

- 6) Oklahoma: "land which is used primarily for farming or ranching activities, roads, water, water courses, private ways and building structures and machinery or equipment when attached to realty which is used primarily for farming or ranching activities"
- 7) Oregon: "agricultural land, range land, forest land, and lands adjacent or contiguous to the ocean shore as defined by ORS § 390.605, including roads, bodies of water, water courses, private ways, and machinery or equipment on the land when attached to the realty, but shall not include lands described in ORS § 390.605 to § 390.770." (This last group of Oregon statutes describes particular tracks of ocean shore taken over by the state).
- 8) S. Dakota: "any rural real estate used exclusively for agricultural purposes ...".
- 9) Vermont: "areas which are: (a) unposted, and (b) more than 500 feet from any residential or commercial building, and (c) outside of city limits." "Land" includes machinery and equipment attached to the land.
- 10) Washington: "agricultural or forest lands or water areas or channels and rural lands adjacent to such areas or channels."

Attention should be focused on the fine distinction latent in the Iowa, Oklahoma and South Dakota statutes. What separates these from the others is the fact that idle land, a prime area for recreational motor-cycling, is apparently not included in the definition of "land". Agricultural activities must be carried on in addition to any recreational use. Washington and Oregon also segregate the various uses of land. Unlike the other three, however, Washington includes forest land in addition to agricultural land. To this, Oregon adds range land and certain shoreline areas. Although these two statutes apply to more types of land, they remain more restricted, theoretically, than most other statutes.

#### D. LEGAL EFFECT ON LANDOWNER'S DUTY OF CARE

At first glance, this aspect of the statutes would seem to be relatively unimportant to the recreational user. The following breakdown has been provided, however, for two reasons. First, recreational users interested in furthering the general purpose of these statutes, in making more land available for recreation, should also be interested in knowing what they can expect - or not expect - from private landowners as a result of these statutes. Second, since negligence actions are likely to be the most common result of injuries to persons and property engaged in recreational activity, the statutes' effect on the landowner's duty of care - a prime element of proof in negligence suits - has an impact on the recreational user.

Close to three-quarters of the statutes provide that the landowner owes no duty of care to recreational users to keep his premises "safe for entry or use." This follows closely the general common law rule of a landowner's duty to trespassers; and although the statutes don't say so, this language might also support the position that the landowner has no duty to make a safety inspection of the premises. Furthermore, these statutes relieve the landowner of the duty of care "to give any warning of a dangerous or hazardous condition, use, structure, or activity" on his property. Thus, even with actual knowledge by the owner of a possible danger, the recreational user can expect no warning; his entry on, and use of, the premises is strictly on an "as is" basis. It is solely up to him to be aware of dangerous conditions and take the appropriate actions.

Thirty states relieve the landowner of a duty to keep the premises safe or to warn of a dangerous condition:

- |                |                   |                    |
|----------------|-------------------|--------------------|
| 1) Alabama     | 12) Kansas        | 23) Oregon         |
| 2) Arkansas    | 13) Kentucky      | 24) Pennsylvania   |
| 3) California  | 14) Maine         | 25) South Carolina |
| 4) Connecticut | 15) Maryland      | 26) Tennessee      |
| 5) Delaware    | 16) Nebraska      | 27) Virginia       |
| 6) Florida     | 17) Nevada        | 28) West Virginia  |
| 7) Georgia     | 18) New Hampshire | 29) Wisconsin      |
| 8) Hawaii      | 19) New Jersey    | 30) Wyoming        |
| 9) Idaho       | 20) New York      |                    |
| 10) Illinois   | 21) N. Dakota     |                    |
| 11) Iowa       | 22) Oklahoma      |                    |

The remaining states deal with the statute's legal effect on the landowner in various ways. North Carolina, Louisiana, Colorado and Texas make no mention of a duty of care one way or another. The protection afforded by the statute is found wholly within the Liability Limitation Section: the owner, "extends no assurances" that the premises are safe; the user is denied the legal status of an invitee or licensee; and the owner incurs no liability for the negligence of the user.

In Montana, the landowner extends no assurances that the property is safe, does not confer invitee or licensee status of the user, and otherwise "shall not be liable...for any injury."

Minnesota's statute contains a somewhat odd combination of relief from the duty of care. As to users of the land for "recreational purposes" broadly defined to include motorized vehicle operation - the landowner owes no duty of care to "render or maintain the premises safe for entry or use." To this same group, the landowner has "no duty to curtail his use of his land during its use for recreational purposes."

For those persons who operate motorized recreational vehicles for recreational purposes, however, the landowner's duties are lightened even further. Besides the two instances just mentioned that apply to all recreational users, the owner has no duty to warn motorized vehicle operators of any dangerous condition, "whether patent or latent"; nor does he owe them any duty of care, "except to refrain from willfully taking action to cause injury ...". From this the inference could be drawn that to all recreational users, except motorized vehicle operators, the landowner does have a duty to warn of dangerous conditions and owes a greater duty of care generally. The second inference - concerning a greater duty of care - is prohibited by other language in the statute that places all recreational users on the level of a trespasser at law. But, as to a possible, negatively implied duty to warn all users except motorized vehicle operators, the statute is silent.

In Ohio and New Mexico, the owner has no duty of care to keep the premises safe for entry or use. No mention is made of a duty to warn recreational users of possible dangers nor is there any language from which such a duty could be implied.

In Vermont, the landowner owes "the invitee no greater duty ... than is owed a trespasser."

Washington and Massachusetts make no mention of duty whatever. Rather, both statutes merely provide that the landowner "shall not be liable" to recreational users injured on their land. The operative language in the Michigan and South Dakota statutes likewise makes no mention of any duty. It states instead that, "No cause of action shall arise" for injuries occurring to a recreational user. Since none of these four statutes make any mention of a landowner who might extend assurances as to the safe condition of his premises - unlike the language found in the typical Liability Limitations Section of most other statutes (see above) - the words that are employed would presumably cover any suit based on a breach of promise as well as a tort action.

E. LANDOWNER - RECREATIONAL USER RELATIONSHIP

Statutes vary in the kind of relationship that must exist between the landowner and the recreational user in order to trigger the statute's operation. For the largest group, the landowner "directly or indirectly invites or permits" the recreational user onto his land. In practice, this language could cover a wide range of possibilities, from an offhand remark to an express grant of permission to enter following a request by the recreational user. Indeed, "indirect permission" could conceivably be found without any words at all passing between the landowner and recreational user as when members of the public regularly trespass with no objection from the owner. The following states employ this language:

- |                |             |                  |                   |
|----------------|-------------|------------------|-------------------|
| 1) Arkansas    | 6) Hawaii   | 11) Kentucky     | 16) Oklahoma      |
| 2) Colorado    | 7) Idaho    | 12) Minnesota    | 17) Oregon        |
| 3) Connecticut | 8) Illinois | 13) Maryland     | 18) Pennsylvania  |
| 4) Delaware    | 9) Iowa     | 14) Nebraska     | 19) West Virginia |
| 5) Georgia     | 10) Kansas  | 15) North Dakota | 20) Wyoming       |

A second group of statutes uses language less broad than that given above. In these states the landowner "gives permission" to the user to enter and use his property for recreational purposes. The statutes do not make it clear whether this permission must be actual or whether it may be inferred from the surrounding circumstances. These states have such language:

- |                  |                   |
|------------------|-------------------|
| 1) Alabama       | 7) New Mexico     |
| 2) California    | 8) New York       |
| 3) Maine         | 9) North Carolina |
| 4) Nevada        | 10) Tennessee     |
| 5) New Hampshire | 11) Texas         |
| 6) New Jersey    | 12) Virginia      |
|                  | 13) Wisconsin     |

In Michigan and South Dakota the liability limiting effect becomes operative whenever the users are on the landowner's premises for recreational purposes "with or without permission." Unlike the statutes above, it is the activity of the user alone that triggers the protection of the statute.

The remaining statutes have unique language describing what the landowner must do to come within the scope of the statute's protection.

Florida - only the owner who "provides the public with a park area" falls within the statute's scope.

Louisiana - protects an owner who "permits.. any person to use his land for recreational purposes."

Massachusetts - protects an owner who "permits the public to use" his land for recreation.

Montana - protects an owner who "permits by act or implication" the recreational use of his land.

Ohio - "recreational user" is defined in part as a "person to whom permission has been granted."

South Carolina - protects landowner who "permits ... any person having sought such permission" to enter and use his land.

Vermont - the statute is triggered when the landowner "gratuitously gives permission, either actual or implied", to the recreational user.

Washington - protects a landowner who "allows members of the public to use" his land for recreational purposes.

Florida needs a special note. The statute's Statement of Purpose section speaks of making "land, water areas and park areas" available to the public. The operative sections are written in such a way as to restrict "park areas" solely to private owners and "land and water areas" to property that is leased to the state.

F. EXCEPTIONS TO LIABILITY LIMITATIONS

There are basically two actions which, if taken by the landowner, will suspend the operation of the statute and make him liable for injuries received by the recreational user. The first is that the owner generally cannot collect a fee in return for allowing members of the public to enter and use his land for recreational purposes. The most common way this is expressed is to require the owner to permit the recreational use of his land "without charge." Not all of the statutes, however, define this term in the same way. The prevailing definition of this term is an "admission price or fee asked in return for an invitation or permission to enter or go upon the land." The payment of money is obviously included here, but it is also conceivable that the terms "price" and "fee" might be construed to include nonmonetary charges, such as services. The following states employ such a definition of the word "charge":

- 1) Arkansas
- 2) Connecticut
- 3) Delaware
- 4) Georgia
- 5) Hawaii
- 6) Illinois
- 7) Kansas
- 8) Kentucky
- 9) Maryland
- 10) Minnesota
- 11) Oklahoma
- 12) Oregon
- 13) Pennsylvania
- 14) S. Carolina
- 15) Wyoming

Nebraska, North Dakota and West Virginia, on the other hand, limit the definition of the word "charge" to mean: "the amount of money asked in return for an invitation to enter or go upon the land." This is the most restrictive definition found in the statutes.

Iowa and Colorado define "charge" in terms of the broader concept "consideration", which can include nearly anything. Both states qualify it somewhat, however. In Iowa, the "consideration" must be "asked in return" for the landowner's permission; in Colorado, the "consideration" must be "paid for entry upon or use of" the premises.

In Massachusetts the statute operates only when the landowner opens the premises to public recreational use "without imposing a charge or fee therefore." Similarly, Washington limits the owner's liability when he makes his land available "without charging a fee of any kind therefore." Both states otherwise leave the terms undefined.

New Mexico employs the phrase "without charge or other consideration." Again, both operative terms are left otherwise undefined. Texas makes it clear that its statute will not apply when the premises are used for "a commercial recreational enterprise for purposes of profit" or when the owner "makes a charge for permission to enter." Money collected in return for removing game from the property and used to replace such game is not considered a "charge."

The next group of statutes provides that the owner's liability is not affected, i.e., not limited, when permission to enter and use the land for recreational purposes "was granted for consideration." Although not mentioned in the acts, the idea of a bargained-for-exchange like that found in the Restatement (Second) of Contracts §75(1) is clearly envisioned by the larger context within which the term "consideration" is placed.

The following states employ this wording:

- |                  |                   |
|------------------|-------------------|
| 1) California    | 6) New York       |
| 2) Maine         | 7) North Carolina |
| 3) Nevada        | 8) Tennessee      |
| 4) New Hampshire | 9) Virginia       |
| 5) New Jersey    |                   |

In addition, Michigan, Montana, Wisconsin and South Dakota employ the phrase "valuable consideration" when describing the exceptions to the statute.

The remaining statutes also limit the landowner's liability only when he opens his land without fee. In Vermont a landowner is protected only if he "gratuitously" gives his permission to the recreational user. In Idaho the statute has no application to a landowner who, "for compensation", allows his land to be used for "recreational purposes" which, in turn, is defined as a number of specific recreational activities "when done without charge of the owner." Similarly, Ohio's

statute defines the term "recreational user" in part as "... a person to whom permission has been granted, without the payment of a fee or consideration to the owner ...".

Alabama appears to be somewhat more generous to the property owner. It does not limit the liability "which otherwise exists ... (b) for injury suffered in any case where permission ... was granted for commercial enterprise for profit." This statute appears to permit the owner to take advantage of the statute if he is not in the business of charging the public for its use of his land. It may permit an owner who, as a private individual, occasionally charges the public to have his liability limited by the act's operation.

In contrast Florida is more demanding, by withdrawing the protection of its statute "if there is any charge made or usually made ... or any commercial or other activity for profit is conducted on such park area ...

Finally, in Louisiana a landowner is protected by the statute when he "permits with or without charge" (emphasis supplied) the recreational use of his land. However, the owner of "commercial recreational developments or facilities" is not within the protected class.

A second type of activity of the landowner not protected by the statutes is any action that would give a common law trespasser a cause of action. In twenty-six states this is described as: "liability which would otherwise exist for willful or malicious failure to guard, or to warn against, a dangerous condition, use, structure or activity." Again, however, the precise meaning of "willful or malicious" is not identical from state to state. This language exists in the following states:

- |                |                   |                   |
|----------------|-------------------|-------------------|
| 1) Alabama     | 10) Kansas        | 19) North Dakota  |
| 2) Arkansas    | 11) Kentucky      | 20) Oklahoma      |
| 3) California  | 12) Maine         | 21) Pennsylvania  |
| 4) Connecticut | 13) Maryland      | 22) Tennessee     |
| 5) Delaware    | 14) Nebraska      | 23) Virginia      |
| 6) Georgia     | 15) Nevada        | 24) West Virginia |
| 7) Hawaii      | 16) New Hampshire | 25) Wisconsin     |
| 8) Illinois    | 17) New Jersey    | 26) Wyoming       |
| 9) Iowa        | 18) New York      |                   |

The majority of the other statutes have similar language. In each case, if the landowner can be shown to have acted in the manner, or caused the injury, described he is liable to the same extent as if the statute were not in effect. The relevant language is given below:

Colorado - a) "willfull or malicious failure to guard or warn ...;  
c) for maintaining an attractive nuisance; d) for injury received on  
land incidental to the use of land on which a commercial or business  
enterprise of any description is being carried on."

Florida- "Deliberate, willful or malicious injury."

Idaho - No exceptional conduct specified. Landowner incurs no liability  
for any injury "caused by an act o (sic) omission" of the recreational  
user.

Louisiana - "willful or malicious failure to warn against a dangerous  
condition; use structure, or activity." No mention made of guarding  
against a hazard.

Massachusetts - "willful, wanton or reckless conduct."

Michigan - injuries caused by his "gross negligence or willful and  
wanton misconduct."

Minnesota - "conduct which, at law, entitles a trespasser to maintain  
an action and obtain relief."

Montana - a landowner is not liable for any act or omission which causes  
injury to the user "unless such act or omission constitutes willful or  
wanton misconduct."

New Mexico - No exceptional conduct specified.

North Carolina - the statute "does not affect the liability which would  
otherwise exist for failure to guard, or to warn, against a dangerous  
condition ... " etc. No mention is made of willful or malicious misconduct

Ohio - landowner incurs no liability for any injury "caused .  
by any act of a recreational user." In other words, no exceptional  
conduct by the landowner is specified which will withdraw the statute's  
protection.

Oregon - "reckless failure to guard or warn ..."

South Carolina - "grossly negligent, willful or malicious failure to  
guard or warn ..."

South Dakota - the landowner is liable only for injuries caused by his  
"gross negligence or willful and wanton misconduct."

Texas - "deliberate, willful or malicious injury."

Vermont - landowner's duty is no greater than that owed a trespasser,  
"except as to acts of active negligence."

Washington - landowner not liable for "unintentional injuries." By  
negative implication, an intentional injury withdraws the statute's  
protection.

Finally, several statutes have what might be termed a third-party exception to the limitation of the landowner's liability. Basically these sections provide that a landowner is liable, to the same extent as if the statute were not in effect, for any injury caused by a recreational user to another person on the premises to whom the owner does owe a duty of care to keep the premises safe or to warn of danger. In other words, as to persons who may properly be classified as invitees or licensees, the landowner's liability is not otherwise limited for injuries caused by recreational users also present on his land. The statutory language employed is as follows: the statute does not limit the liability which would otherwise exist:

for injury caused by acts of persons to whom permission was granted, (i.e., recreational users) to other persons\* as to whom the person granting permission or the owner, lessee, or occupant of the premises, owed a duty to keep the premises safe or to warn of danger

The following states have such an exception:

- |                  |              |
|------------------|--------------|
| 1) Alabama       | 6) Nevada    |
| 2) Maine         | 7) Tennessee |
| 3) New Hampshire | 8) Wisconsin |
| 4) New Jersey    |              |
| 5) New York      |              |

North Carolina's statute is identical to the above except that it adds the word "or" between "... was granted," and "to other persons ..."

NOTE: California has a similar exception which states that the statute does not limit the liability which otherwise exists: "... (c) to any persons who are expressly invited rather than merely permitted to come upon the premises by the landowner."

Hawaii has a unique category of persons termed "house guests" which is defined as:

any person specifically invited by the owner or a member of his household to visit at the owner's home whether for dinner or to a party, for conversation or any other similar purposes including for recreation, and includes playmates of the owner's minor children.

The statute then provides that liability is not otherwise limited:

for injuries suffered by a house guest while on the owner's premises, even though the injuries were incurred by the house guest while engaged in one or more recreational activity.

#### G. EFFECT ON EXISTING PROPERTY AND TORT LAW

For the most part, these statutes make no mention of other areas

\*New Hampshire and Alabama: "third persons"; Tennessee: "third persons or to persons."

of tort on property law which might be affected by their operation. A few however, make express reference to these areas.

In the following states, the landowner liability acts make provision for the retention of the tort doctrine of attractive nuisance:

- 1) Georgia
- 2) Indiana
- 3) Iowa
- 4) North Carolina
- 5) South Dakota
- 6) Texas
- 7) Washington

The doctrine of attractive nuisance is abrogated in Illinois, Louisiana, and South Carolina by the definition of the word "Person" as: "any person, regardless of age, maturity, or experience, who enters upon or uses land for recreational purposes."

The status of attractive nuisance is in a somewhat ambiguous position in Colorado. The definition section of the statute has a definition of "person" similar to that given above. However, the statute also provides, in the section on exceptional conduct, that nothing in the act limits the liability which would otherwise exist for maintaining an attractive nuisance. No reported decisions have been found which clear up this apparent contradiction.

Property law is referred to even less frequently than the doctrine of attractive nuisance. Furthermore, the states are by no means uniform in the area of property law covered. Thus:

Alabama: "Nothing in this chapter shall be construed as granting or creating a right for any person to go on the lands of others without permission of the landowner."

Hawaii: "No person shall gain any rights to any land by prescription or otherwise, as a result of any usage thereof for recreational purposes as provided in this chapter."

Minnesota: "No dedication of any land in connection with any use by any person for a recreational purpose shall take effect in consequence of the exercise of such use of any length of time hereafter except as expressly permitted or provided by the owner or as otherwise expressly provided by section 160.05 and 160.06, or other legislative act."

Nevada: " ... (b) Such person does not thereby acquire any property rights in or rights of easement to such premises."

Oregon provides the the most comprehensive section on the relationship between the statute and Oregon property law. Thus, the fact that a landowner makes his land available for public recreational use does not create in any such user "any right to continue use of his land for any recreational purpose without his consent." Also, even though the owner erects a fence, or otherwise restrict the use of his land which is available for recreational use, no presumption is to be raised that he intended to dedicate the land to the public or give the public a right

to continued use of the land. Finally, the statute is expressly to have no effect on: "any public right acquired by dedication, prescription, grant, custom or otherwise existing before October 5, 1973."

### PART III - SURVEY OF JUDICIAL DECISIONS

#### A. INTRODUCTION

This section of the report will deal with the little case law that has arisen around the various statutes. Considering the large number of states that have these statutes in force, the small number of cases interpreting them is surprising. This scarcity can perhaps be taken as further evidence that the statutes have not had a wide influence in persuading landowners gratuitously to open their land to public recreational use.

The cases involving these statutes have focused generally on the definitions of terms and the applicability of the acts to a particular tort situation. Only occasionally has a court addressed the meaning of a substantive provision, and constitutional questions are rarely raised. Overall, the cases add only formally to the statutes. This is not to say that all jurisdictions have been consistent, however; there are some which are plainly opposed. Most of the variances can be explained either by differences in the underlying statutes or by the different effects the acts have had on the diverse common law in each state.

The discussion will group decisions primarily by state and subject matter.

#### B. Definition of Terms

Exactly what is included in the general term "recreational purpose" has been discussed by several courts.

The most important case interpreting one of these statutes is Krevics v. Ayars, 141 N.J. Super. 511, 358 A.2d 844 (Salem Co. Ct. 1976). In this case the owner of an 11 acre tract of woodland, which had been used for several years as a motorbike trail, had a cable placed across the trail, ostensibly to keep others off the land. The plaintiff was injured in consequence of hitting the cable at a time near dusk, when

the cable was indistinguishable for the surrounding woodlands. No warning signs had been posted. The court found that motorbiking fell within the requirement of "sport and recreation" activity, and thus that the statute provided protection for the owner of the property. The court states that as a general principal the act was intended to protect landowners from liability only when it would be unreasonable to expect them to maintain supervision over the property in question: the size and nature of the property is crucial, as well as the quality of the hazard. But the court found in this case that the landowner had willfully and maliciously created the dangerous condition on his property, which foreseeably would lead to the kind of accident that here occurred, and the statutes would not protect the landowner from liability in such circumstances. The court noted that the statute was in derogation of the common law, and declared that as such it was to be strictly construed. The court determined that it made no difference whether the plaintiff was a trespasser or licensee, since the purpose of the statute was to put trespassers and licensees on an equal footing. It did declare, however, that it was inclined to consider the plaintiff a licensee, since the defendant knew of the long-standing activity on his land and he at least tolerated it. The court found that the statute was inapplicable, and overruled a summary judgment granted by the lower court in favor of the defendant.

The New Jersey court holding that motorcycling falls with the "other recreational activity" residuary clause for recreational uses covered by the statute lends considerable weight to the view that liability limitation statutes should, as a general rule, be construed to cover motorcycle operation. The force of this case is attenuated, however, by the fact that it is rendered by a very low level court.

It is clear, however, that the New Jersey courts are not about to accept any activity as "recreational" in Villanova v. American Federation of Musicians, Local 16, 123 N.J. Super. 57, 301 A.2d 457 (Super. Ct. Div. 1973) it was held that the plaintiff was not engaging in recreation when he entered the defendant's land to give a band concert. and his suit for injuries caused by "rocks and debris" was not precluded by the statute.

The only other interpretations of "recreational purpose" are quite obvious. A picnic and lake area made available by defendant corporation for a Sunday School picnic that plaintiff's decedent was attending when he drowned was held to have been made available for "recreational purposes" in Bourn v. Herring, 225 Ga. 67, 166 S.E. 2d 89, (1969). Likewise, swimming and diving were held to be within the Michigan statute's residuary phrase "similar outdoor recreational use" in a suit for injuries sustained by a child when a gravel bank gave way just as he began to dive from it. Anderson v. Brown Brothers, Inc., 65 Mich. App. 409, 237 N.W. 2d 528 (1975). In terms of precedential value, the Bourn case would be relatively more helpful than Anderson; many statutes are similar to Georgia's but Michigan's law is comparatively unique, being neither a Form A or Form B statute.

The definition of "owner" has been given considerable attention by the courts. The Georgia statute has a definition of "owner" identical to most Form A statutes (See Part I, p.4). Although that definition does not mention corporations, Bourn, supra, gave it a broad enough construction to include corporations. Likewise, in a case involving a motorcyclist who was injured while riding on a roadbed under construction, the Oregon statute (also Form A) was construed to encompass the Federal Bureau of Land Management, the Oregon Department of Transportation and the defendant construction company within the standard definition of "owner." Denton v. L.W. Vail, Inc., 541 P.2d 511 (Or. App. 1975). The court did not consider the question of whether the plaintiff motorcyclist was on the premises for recreational purposes, but rather considered the case on the assumption that he was a licensee. Similarly, in a Form B state, where "landowner" is defined as, inter alia, "title holder", the United States was considered the "landowner" under the Federal Claims Act where the plaintiff fell over a cliff in the National Capital Park Service. For purposes of the act, the government was protected from suit by the act. United States, 371 F. Supp. 230 (E.D. Va. 1974). The question of whether a government can be an "owner" was raised in a court in Wisconsin before the state courts had a chance to consider it. In Garfield v. United States, 297 F. Supp. 891 (W.D. Wis. 1969) the District Court, in a case involving injuries during a

hunting trip on a military reservation, assumed that the government was an "owner" within the meaning of the act. However, when the Wisconsin Supreme Court was faced with the issue, in a case where the plaintiff fell into an open trench in a park maintained by defendant municipality the court relied on the legislative history of the act in limiting its application to the landowners who open private land for recreational use. Goodson v. City of Racine, 61 Wis. 2d 554, 213 N.W. 2d 16 (1973). Thus, the statute was of no protective value to the city. Shortly thereafter, in a suit by three plaintiffs who fell into a gorge in a park ran by the State Department of Natural Resources, the court relied on Goodson and refused to extend the statute's protection to the State of Wisconsin. Cords v. Ehly, 62 Wis. 2d 31, 214 N.W. 2d 432 (1974). Thus, in states with statutes which have been here designated Form B, there is a split of authority over whether a government can be an "owner" and hence take advantage of the statutes. In states with Form A statutes, e.g., Oregon and Georgia, the courts appear to be in agreement that a government can be an "owner."

Finally, in a wrongful death action against a power company where the decedent ran his snowmobile into a utility pole guide wire, the Court of Appeals of Michigan held that the holder of an easement was an "owner" of property for purposes of the liability limitation statute. Estate of Thomas v. Consumer Power Company, 58 Mich. App. 486, 228 N.W. 2d 786, (1975). Due to the unique character of the Michigan act, the precedential value of this decision is open to question. However, the issue may never arise in many states, especially those with Form A statutes, who define "owner" as, inter alia, a "person in control of the premises." (See Part I, p. 4)

The general lack of geographical limitations on definition of "owner" has already been noted. (See Part II, p. 16). One court, however, had to wrestle with precisely this issue. In a wrongful death action against a property owner in a residential area, the New Jersey lower court held that a recent amendment to the statute which substituted the term "premises" for "agricultural lands or woodlands" did not broaden the scope of the statute to include property in a residential setting, and the defendants were thus not protected from suit by their

neighbor for the drowning death of her husband. Boileau v. De Cecco, 125, N.J. Super. 263, 310 A 2d (Super. Ct. App. Div. 1973). However, because of the court's reliance on the statute's wording before amendment as indicative of the legislative intent, it is an open question whether other courts would be persuaded by the New Jersey courts' reasoning.

Oregon has a facinating case, Tijerina v. Cornelius Christian Church, 539 P. 2d 634 (Or. 1975) limiting the geographic extent of its statute's operation. But, because it includes the definition of "agricultural land" specifically, it will have its effect, if any, only in Iowa, Oklahoma, Oregon, South Dakota and Washington (See Part II, pp. 16-17). The plaintiff was injured while playing softball on a vacant lot owned by defendant. The field was not used for commercial farming but did support "volunteer" grain intermixed with weeds. The "crop" was cut to comply with fire regulations and somehow harvested after the suit was brought. Relying on the legislative history of the act, the court held that the legislature had intended a restrictive definition of land, limited to areas with some recreational value but which were not susceptible to adequate policing or correction of dangerous conditions. In light of this, the statute's protection was denied to the defendant whose lot was located next to the church building. In another suit based as much on human sympathy and the otherwise harsh result, the Superior Court of New Jersey held that in an action for injuries to a 14 year-old plaintiff when he dove off a barge located next to a body of water on defendant's property, the statute did not apply. Mindful also of the state's infant trespasser rule, the court held that the legislature intended to distinguish between land where it would be unreasonable to expect close supervision and control by the owner and where it could be expected that the owner would have cognizance of intrusions. If the owner could, "without extraordinary effort", maintain supervision of the property which would be expected to reveal intruders or dangerous artificial conditions, then the statute is inapplicable. Scheck v. Houdaille Construction Materials, Inc., 121 N.J. Super. 335, 297 A. 2d 17 (Super. Ct. L. Div. 1972).

Going against the trend of restrictive definitions, the Supreme Court of Montana has held that, in a case where plaintiff was injured in a fall from a small private tram line on defendant power company's

property during a camping trip, the phrase "any property" found in the Montana statute was broad enough to include both real and personal property. Accordingly, it refused plaintiff's application for a writ of supervisory control seeking to set aside the District Court's denial of a motion to strike defendant's affirmative defense based on the act. State ex rel. Tuckor v. District Court, 155, Mont. 202, 468 P. 2d 773 (1970).

Also refusing to give a narrow interpretation of the term "land", the Georgia Supreme Court refused plaintiff's allegation that the statute only applied to private land such as that held by farmers, and applied it to the owner of Stone Mountain, a tourist attraction. More significantly, however, the court, in Stone Mountain Memorial Association v. Herrington, 225 Ga. 746, 171 S.E. 2d 521 (1969), also held that in a suit arising from a fall on defendant's land, a fee exacted only for parking privileges did not constitute a "charge" within the meaning of the act when persons entering on foot were not charged anything. The Stone Mountain case followed closely on the heels of Bourn, supra, which besides dealing with the "recreational purpose" issue, also held that the term "charge" did not include the benefits expected by defendant corporation -- in the form of advertising and promotion of its products -- as a result of its making its land available for the Sunday School picnic at which plaintiff's decedent drowned.

In the same vein, the District Court of Hamilton, supra, rejected the plaintiff's somewhat frivolous claim that by paying her federal income taxes, she had given "consideration" for entry into the park owned by the United States.

The Supreme Court of Appeals of West Virginia, in construing a statute identical in all relevant respects to the statute interpreted in Stone Mountain, supra, (both Form A), held that the plaintiff could recover. Kenser v. Tranton, 216 S.E.2d 880 (W. Va. Sup. Ct. 1975). Here, two teenage girls drowned while swimming in a dangerous channel at defendant's marina. The court held that the increased sales that could be reasonably expected by allowing members of the public to swim for free at the marina was a sufficient "charge" within the meaning of the statute to negate its operation. The defendant was left with the

duty of ordinary care toward business invitees on retrial. In a case very similar to this, the Supreme Court of Wisconsin held that a general store, run by defendant at his resort, which expected increased sales from allowing members of the public free access to and use of the resort's swimming facilities, had received a "valuable consideration", rendering the person entering the premises an invitee. It further found that this consideration was received in exchange for the "general implied permission" granted to the minor plaintiff as member of the public. Accordingly, in plaintiff's suit for injuries received while attempting to dive off the resort's pier, defendant's motion for summary judgement was denied. Copeland v. Larson, 46 Wis. 2d 337, 174 N.W. 2d 745 (1970).

The federal court in Garfield supra, concluded that the government was protected against liability only as to those hunters who did not purchase the small game hunting permit needed to hunt on the military reservation. Those persons who had bought the 50¢ permit had paid "valuable consideration," and the Wisconsin act was not a ban to actions based on the government's alleged negligence.

It has been previously suggested that the limitation statute's exception to liability for "willful and malicious failure to guard or warn ..." was likely to have varying standards. The cases from the four states that have passed on the question confirm this. In another "friendly neighbor" case, a thirteen year-old boy dove off the roof of a barbecue pit next to his neighbor's pool, and was injured because the water was only three feet deep. On appeal from a summary judgement granted in favor of the defendant, the Court of Appeals of Georgia quickly dismissed the claim that the defendant had been negligent when it was shown that the roof of the barbecue pit had not been built for diving purposes, nor had it been customary to use it as such. Rejecting also plaintiff's claim that the duty imposed by statute was "substantially" that owed to a licensee, i.e., ordinary care, the lack of which, according to Ga. Code Ann. § 105-402 (1968) may amount to "willful and wanton negligence" at times, the court defined "willful and malicious failure to guard or warn ...", Ga. Code Ann. § 105-408(a) (1968) as the failure to use even slight care. Herring v. Hauck 118 Ga. App. 623, 165 S.E.2d 198 (1968).

Four years later, the same court reversed a lower court's grant of summary judgement for defendant because an issue of fact was presented. Plaintiff's decedent, a minor, had drowned in a drainage pipe located just below defendant's power dam. There were no warning signs telling of a vacuum effect caused by the pipe, nor were any screens placed across the pipe. Defendant had placed "danger" signs and "no swimming" signs on the face of the dam; however, the evidence also showed that defendant was aware of persons who used the area to swim. There being no claim of malice, the court held that the jury must decide whether there had been a "willful ... failure to guard or warn ..." and hence, whether the statute's exception was applicable. A four part test was put forth:

(1) Actual knowledge that the property is being used for recreational purposes, (2) a condition involving unreasonable risk of serious bodily harm or death, (3) the condition is not apparent to users of the premises, and (4) having this knowledge, the defendant chooses not to guard or warn in disregard of the possible consequences. The test expressly excludes constructive knowledge or a duty to inspect. McGruder v. Georgia Power Co., 126 Ga. App. 562, 191 S.E.2d 305 (1972). Although ultimately reversed, Georgia Power Co. v. McGruder, 229 Ga. 811, 194 S.E.2d 440 (1972) (see p.37) the high court did not deal with this issue of what constitutes a willful failure to guard or warn. Presumably then, the Court of Appeals' four part test remains as the accepted definition of lack of slight care announced in Herring, supra.

The Michigan courts have had several opportunities to consider the meaning of "gross negligence" as used in its statute. Again, however, the precedential value of these cases may be limited by the fact that only two other states, South Carolina and South Dakota, use the phrase "gross negligence" in their statutes. Most are similar to the Georgia statute (See Part II, p.23). In the leading case, Taylor v. Matthews, 40 Mich. App. 74, 198 N.W.2d 843 (1972), plaintiff's minor son was injured while diving from a board attached to a tree overlooking defendant's gravel pond. There was evidence that defendant knew of the recreational swimming and diving that occurred but took no action to deny access to the area or avert the dangerous conditions that existed. The court reversed a summary judgement for the defendant, saying that a jury must decide whether defendant was guilty of "gross negligence or willful and wanton misconduct." It did not separate "gross negligence"

"willful and wanton misconduct" and set out a three part test: (1) Knowledge of a situation requiring ordinary care and diligence to avert injury, (2) ability to avoid harm by ordinary care and diligence in the use of the means at hand, and (3) failure to use such ordinary care and diligence when to the ordinary mind, the result is likely to prove disastrous. The Taylor court cited with approval a prior federal court decision, Magerowski v. Standard Oil Co., 274 F. Supp. 246 (W.D. Mich., 1967), which used the same test applied by Taylor in defining "gross negligence" alone. There too, a jury question was presented as to defendant's gross negligence when a 9 year-old boy drowned while fishing from a pier without permission. The Michigan act required the dismissal of a negligence count; but the gross negligence count could not be dismissed when there was evidence tending to show that defendant knew its pier was being used for fishing, and in the exercise of ordinary care could have prevented children from using it for such purposes.

Finally in Estate of Thomas v. Consumer's Power Co., 394 Mich. 459, 231 N.W.2d 653 (1975), the Michigan Supreme Court accepted in full the Court of Appeals' construction of the statute (see pp.30,39,40), but felt that in light of Taylor, supra, a summary judgement in favor of defendant was precluded by allegations which claimed that defendant knew of its unmarked guy wires and utility poles and the threat they posed to snowmobiles, that they were in violation of an industry safety code and that defendants could have avoided the resulting injuries in a number of ways but failed to do so.

Only one case involving "willful or malicious failure to guard or warn" has been decided in New Jersey. There, plaintiff's husband drowned in a natural pond on defendant's land when he rushed out onto the ice to rescue his daughter who had also fallen through while skating. Defendant knew that the pond was used for recreational purposes but did not fence, post or otherwise restrict access by licensees and trespassers. The court held that his failure to do so did not constitute "willful or malicious failure to guard or warn against a dangerous condition." Odar v. Chase Manhattan Bank, 138 N.J. Super. 463; 351 A.2d 309 (Super. Ct. App. Div. 1976). Although the tests set forth in Taylor, supra, and McGruder, supra, make no distinction between artificial and natural conditions, both were concerned with dangerous artificial

conditions on the defendant's property. Accordingly, Osar's emphasis on the fact that the pond was a natural condition may be the best explanation for its apparent inconsistency with the two former cases in Michigan and Georgia.

In Denton, supra, the court interpreted the statutory exception of "reckless failure to guard or warn ..." in terms of the common law. The crucial issue, according to the court, was whether the plaintiff, who ran his motorcycle into a barbed wire fence placed along a road construction site not open to the public, was a licensee or a trespasser. Refusing to hold as a matter of law that defendant's knowledge and toleration of plaintiff's presence constituted implied consent, the court held that plaintiff was a trespasser, i.e., a licensee who does not have the owner's consent, to whom the defendant owed only a duty of refraining from "wantonly and willfully" causing injuries. The court then concluded that neither erecting the fence nor failing to warn of its existence constituted willful and wanton injury of the plaintiff. The court ended its opinion by declaring that even if plaintiff were a licensee, the Landowner Liability Limitation statute would prevent it from finding a duty to warn on the defendant's part. The implication could be made that because the court found the statute applicable to this case, it considered motorcycling a "recreational purpose", however, this issue was not faced by the court and no dicta in any way addresses the question.

In Rock v. Concrete Materials, Inc., 46 App. Div. 2d 300, 362 N.Y.S. 2d 258 (1974), the plaintiff's decedent was killed while snowmobiling when he struck a gate on the defendant's property. In order to raise a duty to warn on the part of the defendant, the court held that the plaintiff must meet the burden of proving that the gate constituted a dangerous condition, that the defendant should have known it was a hazard, and the defendant had reason to believe that a passerby could not have discovered the condition for himself. Since there was evidence to show that the gate was not concealed and that other snowmobilers were aware of its presence, the fact that plaintiff's decedent did not see the gate was not sufficient to meet the burden of proof. Hence, the statute immunized defendant from liability. Somewhat reminiscent of Denton, supra, the court read into the statute a common law duty to warn.

C. CONSTRUCTIONS NOT DEPENDENT ON THE DEFINITION OF TERMS

of the remaining cases decided by the court, as well as a few, as mentioned, have had to deal with the broad problem of applying the statute in situations where the answer was not completely indicated by construing the statutory meanings given to important terms. In the Georgia case of Herring v. Hauck, supra, where the plaintiff was injured while diving from the roof of a barbeque pit, the court, as a prelude to defining "willful and malicious", construed the statute in such a way as to deny its applicability in that case. In order to take advantage of the statute, the court said, the landowner must permit the free use of his land by the public generally or by a particular class of the public, such as the Boy Scouts. The landowner who allows classes of individuals, such as his neighbors, to use his facilities gratuitously is not within the class intended to be protected by the act. On the authority of this case, the Georgia Court of Appeals refused to apply the statute to a case where a 3 year-old child wandered onto defendant's vacant lot situated next door to the plaintiff's house. The child was burned while poking in a bed of hot coals remaining after defendant had burned some scrap lumber. Shepard v. Wilson, 123 Ga. App. 74, 179 S.E2d 550 (1970).

After the Georgia Court of Appeals set forth the four part test for a "willful ... failure to guard or warn ..." in McGruder, supra, a test that is presumably still in effect, the Georgia Supreme Court decided, on other grounds, that the statute did not apply. Instead of permitting the jury to consider the question discussed by the Court of Appeals, the high court held that the presence of signs reading "Danger ... Keep Out" precluded a finding that the defendants had "directly or indirectly invited or permitted" the plaintiff on their land. The statute, said the court, is not applicable where use of the land was expressly denied. Georgia Power Co. v. McGruder, 229 Ga. 330, 183 S.E.2d 441 (1972).

Michigan courts, in the course of deciding cases under its statute, have directed their attention to some questions raised by the statute. Since the owner's permission is not relevant to the Michigan statute (see Part II, p.20) the State Supreme Court, in a 6 to 3 decision, held that absent proof of (1) payment of a valuable consid-  
eration or (2) gross negligence or willful and wanton misconduct, the

relatives of two minor boys who drowned in defendant's pond while trapping muskrats could not recover. Heider v. Michigan Sugar Co., 375 Mich. App. 490, 134 N.W.2d 637 (1965). More importantly, however, this case is cited for the proposition that the liability statute is applicable to minors as well as adults. This softens considerably the case of Lyshake v. City of Detroit, 351 Mich. 230, 88 N.W.2d 596 (1958) imposing the negligence standard duty of care on landowners who are aware of the presence of trespassing children. Of course, a recreational purpose must lie behind the child's presence before the statute is operative. Heider was extended somewhat by the Sixth Circuit Court of Appeals in the case of Lovell v. Chesapeake & Ohio Rr. Co., 457 F2d 1009 (6th Cir. 1972). Here, plaintiff was seeking to recover for the death of her husband who was killed when struck by defendant's train. The decedent had been on a trestle trying to rescue a member of his Boy Scout troop from the approaching train when he was killed. The Scouts had been on a march whose route took them near defendant's tracks. Notwithstanding plaintiff's claim to the contrary, the court held that since the decedent had entered the property for recreational purposes, he was a "trespasser before he became a hero" and therefore plaintiff could not recover absent proof of gross negligence or the payment of a valuable consideration.

In Anderson v. Brown Bros., Inc., supra, the gravel pit where plaintiff was swimming at the time of his injury was owned by the City of Lansing and the defendant Brown Bros., Inc., was the municipality's lessee. The court concluded that the statute did not cover the defendant; since the governmental immunity statute was more inclusive, i.e., it had no exception for gross negligence or willful and wanton misconduct, the legislature intended for municipalities to be protected solely by that statute. Likewise, the lessee who is performing a governmental function has that level of immunity enjoyed by the government subdivision itself. And, since the governmental immunity statute had recently been declared unconstitutional, neither the City of Lansing nor its lessee enjoyed any immunity from injured recreational users. Thus, Michigan has joined Wisconsin in refusing to define "owner" in such a way as to include the state or its subdivisions (see pp. 29-30).

Finally, it should be noted that the Michigan Court of Appeals in Estate of Thomas, supra, rejected the argument that the liability statute was not applicable in an action for wrongful death. In addition, the court refused a construction of the statute which would have made its application dependent on the defendant's ability to collect a valuable consideration from the recreational user. It is the fact that defendant did not collect a fee from the recreational snowmobiler that provides the immunity; its ability to do so is not relevant. As was noted earlier, the State Supreme Court accepted this construction even though it sent the case back for a jury trial on the issue of defendant's gross negligence in failing to warn snowmobilers of the presence of its utility poles and guy wires.

The same issue was presented in Smith v. United States, 383 F. Supp. 1076 (D. Wyo., 1974). There, a 14 year-old boy fell into a thermal pool at Yellowstone National Park. A National Park Service regulation prohibited the charging of an admission fee to anyone under 16 years of age. Thus, even though his parents paid a fee for entry, the child was precluded from relying on the exception to the statute, and, as to him, the defendant owed no duty of care to keep the park safe or warn of dangerous conditions, especially dangers which are so obvious that they should be noticed by visitors in the exercise of ordinary care. The fact that the park could not collect a fee from the minor plaintiff was not sufficient to circumvent the state statute which, in this Federal Tort Claims Act suit, was applicable to the federal government.

New Jersey has carved an infant trespasser rule out of its statute's broad sweep of immunity. In O'Connell v. Forest Hill Field Club, 110 N.J. Super. 317, 291 A.2d 286 (Super. Ct. L. Div. 1972), a three year-old infant, who was known by defendant to frequently enter on its golf course, fell into an excavation pit located on the course. In holding that the statute did not immunize defendant in this case, the court relied heavily on two considerations. First, it noted that before the statute's enactment, New Jersey followed the infant trespasser rule enunciated in the Restatement (Second) Torts, § 339. Secondly, inasmuch as the liability act reduced a landowner's duty to licensees, it was in derogation of the common law and must be construed narrowly. Thus, at

New Jersey and Wisconsin leave no doubt about which way they intend to proceed. The New Jersey court in O'Connell v. Forest Hill Field Club, supra, felt free to carve out an infant trespasser exception to its statute (Form B) only after it concluded that its statute was in derogation of the common law and, hence, required a narrow construction. The court said it did not alter the common law of trespassers, but only the duty owed to a licensee. But, by reducing the owner's liability to licensees, it correspondingly increased the class of trespassers. The infant trespasser exception prevents that class from expanding inordinately.

In the Wisconsin case of Copeland v. Larson, supra, the court found that its statute (Form B) was also in derogation of the common law duty owed to licensees. But, rather than finding a reduction in the landowner's duty, as New Jersey did, it found an alteration in duty which on the surface, looks less like a real change (not necessarily a reduction) of duty than a semantic clarification of an existing duty. The common law duty owed to a licensee before the act was passed was a duty to keep the premises safe from traps and a duty to refrain from "active negligence." The statute, according to the court, "altered" this into a duty to refrain from willfully or maliciously failing to guard or warn of a dangerous condition, use, structure or activities. Hence, a narrow construction is required. In this case, it required the finding of a "valuable consideration" in the form of expected increased sales at defendant's resort in return for a "general implied permission" to the public to use the resort's bathing facilities.

#### E. CONSTITUTIONALITY

Only two courts have construed liability limitation statutes in the face of constitutional attack by the plaintiff. Both had no trouble finding the acts constitutional.

In Michigan, the plaintiff in Estate of Thomas v. Consumers Power Co., supra, attacked the act as arbitrary, unreasonable and capricious because it discriminated between owners and licensees, favoring the former over the latter. Acting on the presumption that every legislative act is constitutional, the court found no violation of due process

least in this case where the infant's presence was reasonably foreseeable and where the condition of the land involved an unreasonable risk of harm, the statute is inapplicable. Scheck, supra, followed the O'Connell rule by refusing to apply the statute to a 14 year-old as a matter of law. Whether the minor was too old to be entitled to the protection of the infant trespasser rule was considered a jury question.

#### D. CONSTRUCTION, GENERALLY

Four states have given thought to the relationship between these statutes generally and the common law they supersede: there is a definite split in views.

Michigan, unlike most other states, does not have any provision precluding the recreational user from claiming the legal status of a licensee. In Estate of Thomas, supra, the court concluded that its statute did not change the common law duty owed to this class of guests. Indeed, the statute is a codification of those principles of law governing a landowner's duty to persons who enter the premises for their own purposes and, while there, are merely tolerated. Thus, in order not to nullify it, a liberal construction must be given to the act.

In the New York case of Rock v. Concrete Materials, Inc., supra, the court was also of the opinion that its statute (Form B) was a codification of the common law. The purpose of the statute, according to the court, was to prevent the extension of liability to licensees in accordance with the more liberal approaches found in the Restatement of Torts and in some jurisdictions. Presumably, the reference here is to that line of decisions beginning with Roland v. Christian, 69 Cal. 2d 108, 70 Cal. Rptr. 97, 443 P.2d 561 (1968) which abolished all three categories of guests and imposed a reasonable care standard towards all persons on the land of another. The court did not indicate, however, exactly what approach it would take in the future. Since it is not in derogation of the common law, a strict interpretation may not be in order. Only future cases will tell.

or equal protection. The law has always discriminated between classes of entrants on land, said the court, and, in light of the legitimate state purpose is promoting tourism and recreation, the classifications created by this statute were not unreasonably suited for that purpose. It found it unnecessary to consider the claim that the title of the act was unconstitutionally broader in scope than the body of the act.

The Wisconsin Supreme Court found, in Goodsin v. City of Racine, supra, no violation of Art. IV., Sec. 32 of the Wisconsin Constitution, which requires uniform laws for certain business transactions, and, "special law." Likewise, it found as frivolous the claim that the statute was in violation of the equal protection clause because it was limited in application to private landowners. In view of the legislative intent to open up private land for public recreational use, it was not unreasonable to limit the statute to private landowners, the court held.

#### PART IV - STATE BY STATE ANALYSIS

This final section, with a few exceptions, notably Indiana, offers very little new information. Rather, data in the preceding parts of this memorandum is condensed into outline form for each statute. The outlines contain the exact wording of the statutes where it is important for a thorough understanding. Definitions are given as they relate to the interest of motorcyclists. The phrase which would best include motorcycles is stated; if motorcycles are mentioned explicitly, this is noted. If a statute contains material not previously covered, that section will be presented here in more detail. Finally, annotations are given as they appear.

The State of Indiana is dealt with at greater length. Instead of one act, Indiana has three. The first deals with land leased to the state. A second applies primarily to snowmobiles and other forms of motorized recreation. The third deals with the more traditional outdoor activities of hunting and fishing and covers only privately held land. Despite the confusion, the protections afforded landowners and recreational users remain nearly the same as those provided by other states.

Alabama: Form B

Ala. Code tit. 47 § 281 et seq. (Supp. 1973)

1. Owner of premises has no duty to keep premises safe or give warnings. 2. An owner who gives permission for the recreational use of his land does not thereby: a) extend any assurance that premises are safe, b) constitute the user the legal status of an invitee to whom duty of care is owed, c) assume responsibility for or incur liability for any injury caused by an act of the user. 3. Exceptions: a) willful or malicious failure to guard or warn against a dangerous condition. b) where permission is granted for commercial enterprise for profit. c) third person exception (see Part II, p.25). 4. No duty of care or ground of liability for injuries created. 5. No right to continued use without permission created.

Arkansas: Form A

Ark. Stat. Ann. § 50-1101 et. seq. (1971)

1. Statement of purpose. 2. Definitions: a) "recreational purpose includes "pleasure driving", b) "charge", means "admission price or fee". 3. No duty to keep premises safe or give warning. 4. Owner who directly or indirectly invites or permits without charge the recreational use of his land does not: a) extend assurance that premises are safe, b) confer licensee or invitee status on the user, c) assume responsibility or incur liability for any injury caused by an act or omission of the user. 5. Statute applicable to land leased to the State or subdivision, unless otherwise agreed in writing. 6. Exceptions: a) willful or malicious failure to guard or warn, b) when the owner charges; consideration paid by the state for leased land not considered a "charge". 7. Construction: a) no duty of care or ground of liability created, b) recreational user not relieved from obligation to exercise care in his use of the land, or from legal consequences of failure to use such care.

California: Form B

Cal. Civ. Code § 846 (West Supp. 1976)

1. Owner of an estate in real property owes no duty of care to keep premises safe for recreational purposes and all types of vehicular riding or to give any warning of hazardous conditions. 2. Owner who

gives permission for the recreational use of his land does not: a) extend assurance that premises are safe, b) constitute the user the legal statute of an invitee or licensee, c) assume responsibility or incur liability for any injury caused by act of the user. 3. Exceptions: a) willful or malicious failure to guard or warn against a dangerous condition, b) where permission was granted for a consideration, other than a consideration paid by the state, c) persons expressly invited, rather than merely permitted, to come on the premises. 4. No duty of care or ground of liability created.

Annotations

Review of 1963 Code Legislation, 38 Cal. S. Bar J. 601,647 (1963)

Colorado: Form A

Col. Rev. Stat. § 33-41-101 et seq. (1973); § 33-41-106 (Supp. 1975)

1. Statement of purpose section. 2. Definitions: a) "charge" means a "consideration", b) "person" means "individual regardless of age, maturity or experience", c) "recreational purpose" includes "the riding of motorized recreational vehicles." 3. Owner who directly or indirectly invites or permits without charge the recreational use of his land does not: a) extend any assurance that premises are safe, b) confer invitee or licensee status on the user, c) assume responsibility or incur liability for any injury or death caused by an act or omission of the user. 4. Exceptions: a) willful or malicious failure to guard or warn, b) when the owner charges; consideration paid by the state for leased land not considered a "charge", c) maintaining an attractive nuisance, d) injury received on land incidental to the use of land on which a commercial or business enterprise of any description is being carried on. 5. Construction: statute shall not be construed to: a) create, enlarge or affect any liability for willful or malicious failure to guard or warn against known dangerous condition or for injury suffered by any person in any case where the owner of land charges, b) relieve user from obligation to exercise care in the use of the land or from the legal consequence of failure to use such care, c) limit the liability of any owner resulting from any occurrence which took place prior to January 1, 1970.

Connecticut: Form A

Conn. Gen. Stat. Ann. 852-557f et seq. (Supp. 1976)

1. Definitions: a) "recreational purpose" includes "pleasure driving", b) "charge" means "admission price or fee." 2. Owner of land owes no duty of care to keep premises safe or to give any warning. 3. Owner of land who either directly or indirectly invites or permits without charge, rent, fee, or other commercial service the recreational use of his land does not: a) make any representation that the premises are safe, b) confer invitee or licensee status on the user, c) assume responsibility or incur liability for any injury caused by an act or omission of such owner (sic). 4. Statute is applicable to land leased by the state or subdivision unless otherwise agreed in writing. 5. Exceptions: a) willful or malicious failure to guard or warn against a dangerous condition, b) where the owner charges; consideration paid by the state for land leased to the state not considered a "charge." 6. Recreational user not relieved from obligation to exercise care in his use of the land, or from legal consequences of failure to use such care. 7. No landowner shall be liable for any injury sustained by any person operating a motorcycle or by any passenger whether or not such landowner has given permission, written or oral, for such operation, unless such landowner charged a fee, or unless such injury is caused by the willful or malicious conduct of such landowner.

Delaware: Form A

Del. Code. Ann. tit 7 85901 et seq. (1975)

1. Statement of purpose. 2. Definitions: a) "recreational purpose: includes "pleasure driving", b) "charge" means the "admission price or fee." 3. Owner of land owes no duty of care to keep premises safe or to give any warning. 4. Owner who directly or indirectly invites or permits without charge the recreational use of his land does not: a) extend any assurances that premiese are safe, b) confer licensee or invitee status on the user, c) assume responsibilty or incur liability for any injury caused by an act of (sic) omission of the user. 5. Statute is applicable to land leased by the state or sub-division unless otherwise agreed in writing. 6. Exceptions: a) willful or malicious failure to guard or warn, b) when the owner charges; consideration paid by the state for leased land not considered a "charge

7. Construction: 2) no duty of care or ground of liability created, b) recreational user not relieved from obligation to exercise care in use of the land, or from the legal consequences of failure to use such care.

Florida

Fla. Stat. Ann. §375.251 (West 1974), §375.251(5) (West Supp. 1976-77)

1. Statement of purpose. 2. Owner who provides the public with a park area for outdoor recreational purpose owes no duty of care to keep that park area safe or to give warnings. 3. Owner who provides the public with a park area shall not: a) be presumed to extend any assurance that such park area is safe, b) incur any duty of care toward a person who goes on that park area, c) become liable or responsible for any injury caused by the act or omission of a person who goes on that park area. 4. Statute shall not apply if there is any charge made or usually made for entering or using such park area or if any commercial or other activity for profit is conducted. 5. Owner of land or water area leased to the state owes no duty of care to keep land safe or to given any warnings. 6. Owner who leases land or water area to the state for outdoor recreational purposes shall not by giving such lease: a) be presumed to extend any assurance that such land or water area is safe, b) incur any duty of care toward a person who goes on the leased land (or water area, c) become liable or responsible for any injury caused by the act or omission of a person who goes on the leased land or water area. 7. The foregoing applies whether the person going on the leased land or water area is an invitee, licensee, trespasser, or otherwise. 8. Statute does not relieve any liability which otherwise exists for deliberate, willful or negligent injury. 9. Definitions: "outdoor recreational purposes" includes "motorcycling."

§105-403 et seq. (1968)

purpose. 2. Definitions: a) "recreational" includes "motorcycling", b) "charge" means the "admission fee". Owner of land owes no duty of care to keep premises safe for the recreational use of land who either directly or indirectly without charge the recreational use of

his land does not: a) extend any assurance that the premises are safe, b) confer invitee or licensee status on the user, c) assume responsibility or incur liability for any injury caused by an act of (sic) omission of such user. 5. Statute is applicable to lands leased by the state or subdivision unless otherwise agreed in writing. 6. Exceptions: a) willful or malicious failure to guard or warn, b) when the owner charges; consideration paid by the state for leased land not considered a "charge." 7. Construction: a) no duty of care or ground of liability created, b) recreational user not relieved from obligation to exercise care in use of the land, or from legal consequences of failure to use such care.

#### Annotations

Herring v. Hauck, 118 Ga. App. 623, 165 S.E. 2d 198 (Ct. App. 1968)

Bourn v. Herring, 225 Ga. 67, 166 S.E.2d 89 (Sup. Ct. 1969)

Stone Mountain Memorial Association v. Herrington, 225 Ga. 746, 171 S.E.2d 521 (Sup. Ct. 1969)

Washington v. Trend Mills Inc., 121 Ga. App. 659, 175 S.E.2d 111 (Ct. App. 1970)

Shepard v. Wilson, 123 Ga. App. 74, 179 S.E.2d 550 (Ct. App. 1970)

McGruder v. Georgia Power Company, 126 Ga. App. 562, 191 S.E.2d 305 (Ct. App. 1972)

Georgia Power Company v. McGruder, 229 Ga. 811, 194 S.E.2d 441 (Sup. Ct. 1972)

Georgia Scenic Trails Act.  
Ga. Code Ann. §43-1501 et. seq. (1974)

This act also contains a section (§43-1506) that deals with land-owner liability. Although this section is a later expression of the legislature, it is not in conflict with Ga. Code Ann. §105-403 et. seq. (1968) outlined above, and should not alter that statute's operation in any significant way.

1. Any person going upon the land of another for recreational activity, "or any other purpose", without the payment of a "monetary consideration" or with the payment of such a consideration by the state or Federal government directly or indirectly on his behalf, is not entitled to any assurance that the premises are safe.
2. Owner does not assume responsibility or incur liability for any injury caused by an act or failure to act of the user.

3. This section does not affect existing Georgia case law concerning:
  - a) liability of owners of "commercial establishments" toward business invitees or invited guests;
  - b) the doctrine of attractive nuisance; or,
  - c) liability for injury caused by "malicious or illegal acts of the owner." Ga. Code Ann. §43-1506 (1974)

Hawaii: Form A

Hawaii Rev. Stat. §520 (Supp. 1975)

1. Statement of purpose. 2. Definitions: 2) "land" means land, roads, etc., "other than land owned by the government", b) "recreational purpose" includes "pleasure driving", c) "charge" means the "admission price or fee", d) "house guests" means "any person specifically invited by the owner or a member of his household to visit at the owner's home whether for a dinner, or to a party, or conversation or any other similar purposes including for recreation, and includes playmates of the owner's minor children." 3. Owner of land owes no duty of care to keep the premises safe or to give any warning. 4. Owner of land who either directly or indirectly invites or permits without charge the recreational use of his land does not:

- a) extend assurances that the premises are safe, b) confer invitee or licensee status on the user, c) assume responsibility or incur liability for any injury caused by an act of omission or commission of the user.

5. Exceptions: a) willful or malicious failure to guard or warn, b) when the owner charges; consideration paid by the state or subdivision for leased land not considered a "charge", c) for injuries suffered by a house guest while on the owner's premises, even though the injuries were incurred by the house guest while engaged in one or more activities designated in section 520-2(3) i.e., a recreational purpose. 6. Construction: a) no duty of care or ground of liability created, b) recreational user not relieved from the obligation to exercise care in the use of the land, or from the legal consequences of his failure to use such care. 7. No person shall gain any rights to any land by prescription or otherwise, as a result of any usage thereof for recreational purposes. 8. The Department of Land and Natural Resources shall make rules and regulations as it deems necessary to carry out the purposes of this statute.

Idaho: Form A

Idaho Code 536-1604 (Supp. 1976)

1. Statement of purpose. 2. Definitions: a) "land" means "private" land, roads, etc., b) "recreational purpose" includes "pleasure driving ... when done without charge of the owner." 3. Owner of land owes no duty of care to keep the premises safe or to give any warning. 4. Owner of land who either directly or indirectly invites or permits without charge the recreational use of his land does not: a) extend any assurance that premises are safe, b) confer invitee or licensee status on the user, c) assume responsibility or incur liability for any injury caused by an act of (sic) omission of such person. 5. Statute is applicable to land leased to the state or subdivision unless otherwise agreed in writing. 6. Nothing in this section shall be construed to: a) create a duty of care or ground of liability, b) relieve the recreational user from the obligation to exercise care in his use of the land, or from the legal consequences of his failure to use such care, c) apply to any person or persons who for compensation permits the land to be used for recreational purposes. 7. Any person using the land of another for recreational purposes, with or without permission, shall be liable for any damage to property, livestock or crops which he may cause while on said property.

Illinois: Form A

Ill. Ann. Stat. ch 70 531 et. seq. (Smith-Hurd Supp. 1976-77).

1. Statement of purpose. 2. Definitions: a) "land" means land located outside the corporate limits of a city, village or incorporate town and not subdivided into blocks and lots and includes roads, water, water courses, private ways and building, etc., b) "recreational purpose" specifically includes motorcycling, c) "charge" means "the admission price or fee", d) "person" includes "any person regardless of age, maturity, or experience." 3. Owner of land owes no duty of care to keep the premises safe or to give any warning. 4. Owner of land who either directly or indirectly invites or permits without charge the recreational use of his land does not: a) extend any assurance that premises are safe, b) confer invitee or licensee status on the user, c) assume responsibility or incur liability for any injury

caused by an act of (sic) omission of the user. 5. Statute is applicable to land leased by the state or subdivision unless otherwise agreed in writing. 6. Exceptions: a) willful or malicious failure to guard or warn, b) where the owner charges; consideration paid by the state or subdivision for leased land not considered a "charge." 7. Construction: a) no duty of care or ground of liability created b) recreational user not relieved from obligation to exercise care in the use of the land, or from the legal consequences of failure to use such care.

Indiana

Liability of Owner of Land Leased to the State  
Ind. Code Ann. §4-16-3-1 et. seq. (Burns 1974)

1. Any person who goes upon or through premises leased to the state or any other tax supported institution for recreational purposes (narrowly defined) is not entitled to any assurance that premises are safe. 2. Owner does not assume responsibility or incur liability for any injury caused by an act or failure of the recreational user. 3. No duty of care or ground of liability created.

Liability of Owner of Land Used by Recreational Vehicles

Ind. Code Ann. §14-1-3-18 (Burns 1973)

1. Owner of land owes no duty of care to keep premises safe for persons operating, using or riding in off-road vehicles for recreational purposes or to give any warning of a dangerous condition. 2. Owner who invites or permits any person to operate, use or ride in an off-road vehicle for recreational purposes on his property does not: a) make any representation or extend any assurance that premises are safe, b) confer licensee or invitee status on the user, c) assume responsibility or incur liability for any injury by an act or omission of the recreational user. 3. Statute is applicable to land leased to the state or Federal government or any subdivision unless otherwise agreed in writing. 4. Exceptions: a) willful or malicious failure to guard or warn, or deliberate, willful, or malicious injury to persons or property, b) where the owner charges a fee or other valuable consideration; consideration received from the state or Federal government for leased land is not considered a "charge." 5. Construction; a) no

duty of care or ground of liability created, b) person using an off-road vehicle for recreational purposes is not relieved from any obligation to exercise care in the use of the land, or from legal consequences of failure to use such care.

Liability of Owner of Land Not Leased to the State

Ind. Code Ann. §14-2-6-3 (Burns 1973)

1. Any person who goes upon or through the premises of another, with or without permission, for recreational purposes (narrowly defined), without the payment of monetary consideration, or with the payment of monetary consideration directly or indirectly on his behalf by an agency of the state or Federal government, is not entitled to any assurance that the premises are safe. 2. Owner of premises does not assume responsibility or incur liability for any injury caused by an act or failure to act of the recreational user. 3. Construction: a) statute will not affect existing case law with respect to business invitees or invited guests, b) statute shall not affect the attractive nuisance doctrine. 4. Statute shall not excuse owner from liability caused by malicious or illegal acts of the owner.

Iowa: Form A

Iowa Code Ann. §111C.1 et. seq. (Supp. 1976)

1. Statement of purpose. 2. Definitions: a) "land" means land used for agriculture purposes, including marsh lands, timber, grass lands, and the privately owned roads, water, water courses, caves, private ways and buildings, structures and machinery or equipment appurtenant thereto, b) "holder" means the possessor of a fee interest, etc., provided, however, holder shall not mean the State of Iowa, its political subdivisions, or any public body or any agencies, departments, boards or commissions thereof, c) "recreational purpose" includes motorcycling, d) "charge" means any consideration or the admission price. 3. Holder of land owes no duty of care to keep the premises safe or to give any warnings. 4. Holder of land who either directly or indirectly invites or permits without charge the recreational use of his land does not: a) extend any assurance that the premises are safe, b) confer invitee or licensee status on the user, c) assume responsibility or incur liability for any injury caused by an act or omission of the recreational user. 5. Statute is applicable to land

leased by the state or Federal government or subdivision unless otherwise agreed in writing. 6. Exceptions: a) willful or malicious failure to guard or warn, b) where the owner charges; consideration paid by the state or Federal government or subdivision for leased land is not considered a "charge." 7. Construction: a) no duty of care or ground of liability created, b) recreational user not relieved from obligation to exercise care in his use of the land, or from the legal consequences of failure to use such care, c) the doctrine of attractive nuisance is not amended, repealed or modified.

Kansas: Form A

Kan. Stat. Ann. §58-3201 et. seq. (Supp. 1975)

1. Statement of purpose. 2. Definitions: a) "recreational purpose" includes "pleasure driving" b) "charge" means the "admission price or fee." 3. Owner of land owes no duty of care to keep the premises safe or to give any warnings. 4. Owner of land who either directly or indirectly invites or permits without charge the recreational use of his land does not: a) extend any assurance that the premises are safe, b) confer invitee or licensee status on the recreational user, c) assume responsibility or incur liability for any injury caused by an act of (sic) omission of the recreational user. 5. Statute is applicable to land leased to the state or subdivision unless otherwise agreed in writing. 6. Exceptions: a) willful or malicious failure to guard or warn, b) where the owner charges; consideration paid by the state or subdivision for leased land not considered a "charge." 7. Construction: a) no duty of care or ground of liability created, b) recreational user not relieved from obligation to exercise care in his use of the land, or from the legal consequences of failure to use such care.

Kentucky: Form A

Ky. Rev. Stat. Ann. §411.190 (Baldwin 1976)

1. Definitions: a) "recreational purpose" includes "pleasure driving", b) "charge" means the "admission price or fee." 2. Statement of purpose. 3. Owner of land owes no duty of care to keep the premises safe or to give any warnings. 4. Owner of land who either directly or indirectly invites or permits without charge the recreational use of his land does not: a) extend any assurance that the premises are

safe, b) confer invitee or licensee status on the user, c) assume responsibility or incur liability for any injury caused by an act or omission of such user. 5. Statute is applicable to land leased to the state or subdivision unless otherwise agreed in writing. 6. Exceptions: a) willful or malicious failure to guard or warn, b) where the owner charges; consideration paid by the state or subdivision for leased land not considered a "charge." 7. Construction: a) no duty of care or ground of liability created, b) recreational user not relieved from obligation to exercise care in use of the land, or from legal consequences of failure to use such care.

Louisiana

La. Rev. Stat. Ann S9:2795 (West Supp. 1976)

1. Definitions: a) "recreational purpose" includes motorized vehicle operation for recreational purposes, b) "charge" means the "admission price or fee", c) "person" means individuals regardless of age. 2. Except for willful or malicious failure to warn of a dangerous condition, an owner of land, except an owner of commercial recreational developments or facilities, who permits with or without charge the recreational use of his land does not: a) extend any assurance that premises are safe, b) constitute such person an invitee or licensee, c) incur liability for any injury to person or property incurred by such person. 3. Statute is applicable to land leased for recreational purposes to the federal government or the state or subdivision unless otherwise agreed in writing. 4. Recreational user not relieved from obligation to exercise care in use of the land, or from legal consequence of failure to use such care.

Maine: Form B

Me. Rev. Stat. Ann. tit 12 S3001 et. seq. (1974)

1. Owner of premises owes no duty of care to keep the premises safe for recreational activities or to give any warning of hazardous conditions. 2. Owner who gives permission for the recreational use of his land does not: a) extend any assurance that the premises are safe, b) constitute the person to whom permission is granted an invitee. c) assume responsibility or incur liability for any injury caused by any act of the recreational user. 3. Exceptions: a) willful failure

to guard or warn, b) where permission was granted for a consideration other than a consideration, if any, paid to the landowner by the state, c) third party exception (see Part II, p.25). 4. No duty of care or ground of liability created.

Maryland: Form A

Md. Nat. Res. Code Ann. §5-1101 et. seq. (1974)

1. Definitions: a) "charge" means price or fee asked for services, entertainment, recreation performed, or products offered for sale on land or in return for an invitation or permission to enter or go upon land, b) "educational purpose" includes but is not limited to any of the following or any combination of the following: nature study, farm visitations for purposes of learning about the farming operation, practice judging of livestock, dairy cattle, poultry, etc., c) "recreational purpose" includes operating motorized recreational vehicles. 2. Statement of purpose. 3. Construction: a) no duty of care or ground of liability created, b) recreational or educational user not relieved from obligation to exercise care in use of the land, or from the legal consequences of failure to use such care. 4. Owner of land owes no duty of care to keep the premises safe or to give any warning. 5. Owner of land who either directly or indirectly invites or permits without charge the recreational or educational use of his land does not: a) extend any assurance that the premises are safe, b) confer invitee or licensee status on the recreational or educational user, c) assume responsibility or incur liability as a result of any injury caused by an act of (sic) omission of the person. 6. Statute is applicable to land leased to the state or subdivision unless otherwise agreed in writing. 7. Exceptions: a) willful or malicious failure to guard or warn, b) where the owner charges; consideration paid by the state or subdivision for leased land not considered a "charge." 8. Whenever the owner desires, he may post in conspicuous places notices informing the public that the land is private. The landowner, by written consent, may grant permission to enter on the land. 9. To facilitate a method of providing written consent, the Secretary shall distribute permission cards, to be available to the public and to

landowners, a) one side of the card shall read: "I hereby grant the person named on the reverse side permission to enter on my property, subject to the terms of the agreement, on the following date:

Signed ..... " b) the reverse side of the card to read: "In return for the privilege of entering on the private property for any recreational or educational purpose as defined in the Natural Resources Article 85-1101, I agree to adhere to every law, observe every safety precaution and practice, take every precaution against fire, and assume all responsibility and liability for my person and my property while on the landowner's property. Signed ....."

Massachusetts

Mass. Ann. Laws. ch. 21 §17C (1973)

1. Owner of land who permits the public to use such land for recreational purposes without imposing a charge or fee, or who leases his land for said purposes to the Commonwealth, shall not be liable for injuries to person or property in the absence of willful, wanton or reckless conduct of the owner, nor shall such permission be deemed to confer invitee or licensee status upon the user. 2. Liability of an owner who imposes a charge or fee shall not be limited by any provision of this act.

Michigan

Mich. Comp. Laws Ann. §300.201 (Supp. 1976-77)

1. No cause of action shall arise for injuries to any person who is on the lands of another without paying to such person a valuable consideration for recreational purposes or motorcycling or any other outdoor recreational use, with or without permission, against the owner, unless the injuries were caused by the gross negligence or willful or wanton misconduct of the owner.

Annotations

Heider v. Michigan Sugar Company, 375 Mich. 490, 134 N.W.2d 637 (Sup. Ct. 1965).

Magrowski v. Standard Oil Company, 274 F. Supp. 246 (W.D. Mich. 1967)).

Lovell v. Chesapeake & Ohio Railroad Company, 457 F.2d 1009 (6th Cir. 1972).

Taylor v. Mathews, 40 Mich. App. 74, 198 N.W.2d 843 (Ct. App. 1972).

Estate of Thomas v. Consumers Power Co., 58 Mich. App. 436,  
228 N.W.2d 786 (Ct. App. 1975).

Estate of Thomas v. Consumers Power Co., 394 Mich. 459, 231  
N.W.2d 653 (Sup. Ct. 1975).

Anderson v. Brown Bros., Inc., 65 Mich. App. 409, 237 N.W.2d  
528 (Ct. App. 1975).

Torts 19 Wayne L. Rev. 703, 724 (1973)

Torts 20 Wayne L. Rev. 648, 691 (1974)

Torts 22 Wayne L. Rev. 629, 660 (1976)

Minnesota: Form A

Minn. Stat. Ann. §87.01 et. seq. (Supp. 1977)

1. Statement of policy. 2. Definitions: a) "recreational purpose" includes the operation of any motorized vehicle in any manner whatsoever. b) "charge" means the "admission price or fee." 3. Owner of land owes no duty to render or maintain premises safe. 4. Owner of land: a) owes no duty of care to render or maintain his land safe for entry or use by persons with a motorized recreational vehicle, b) owes no duty to warn those persons, c) owes no duty of care towards those persons except to refrain from willfully taking action to cause injury, d) owes no duty to curtail his use of his land during its use for recreational purposes. 5. Owner who either directly or indirectly invites or permits without charge the recreational use of his land does not: a) extend any assurance that premises are safe, b) confer invitee or licensee status on the user, c) assume responsibility or incur liability for injury caused by an act of (sic) omission of the user. 6. Statute is applicable to land leased by the state or subdivision unless otherwise agreed in writing. 7. Exceptions: a) conduct which, at law, entitles a trespasser to maintain an action and obtain relief, b) where the owner charges; consideration paid by state or subdivision for leased land not considered a "charge." 8. Construction: a) no duty of care or ground of liability created, b) recreational user not relieved from the obligation to exercise care in use of the land, or from legal consequences of failure to use such care. 9. No dedication of any land in connection with recreational purpose shall take effect in consequence of the exercise of such use for any length of time hereafter except as expressly permitted or provided by the owner or as otherwise expressly provided by §160.05 and §160.06, or other legislative act.

Montana

Mont. Rev. Codes Ann. §67-808 et. seq. (1970)

1. Landowner who permits by act or implication the recreational use of his land without accepting a valuable consideration therefore does not: a) extend any assurance that such property is safe, b) confer upon the user the status of invitee or licensee. 2. Landowner shall not be liable for any injury resulting from any act or omission of such landowner unless such act or omission constitutes willful or wanton misconduct. 3. "Recreation purposes" includes "pleasure driving."

Annotations

State Ex Rel Tucker v. District Court, 155 Mont. 202, 468 P.2d 773 (Sup. Ct. 1970)

Nebraska: Form A

Neb. Rev. Stat. §37-1001 et. seq. (1974)

1. Statement of purpose. 2. Owner of land owes no duty to keep the premises safe or to give warning. 3. Owner who either directly or indirectly invites or permits the recreational use of his land does not: a) extend any assurance that premises are safe, b) confer invitee or licensee status upon the user, c) assume responsibility or incur liability for any injury caused by an act or omission of the user. 4. Owner of the land leased to the state owes no duty of care to keep that land safe or to give warnings. Owner who leases land to the state does not: a) extend any assurance that premises are safe, b) confer invitee or licensee status upon the user, c) assume responsibility or incur liability for any injury caused by an act or omission of the user. 5. The provisions of this section (§4) shall apply whether the person entering upon the leased land is an invitee, licensee, trespasser, or otherwise. 6. Exceptions: a) willful or malicious failure to guard or warn, b) where the owner charges; consideration paid by state for leased land not considered a "charge." 7. Constructive a) no duty of care or ground of liability created, b) statute does not limit the obligation of the recreational user to exercise due care in his use of such land. 8. Definitions: a) "recreational purposes" includes "pleasure driving or otherwise using land for purposes of the user", b) "charge" means the amount of money ask in return for an

invitation to enter or go upon the land.

Nevada: Form B

Nev. Rev. Stat. §41.510 (1975)

1. Owner of premises owes no duty to keep premises safe or to give warnings. 2. Owner of premises who gives permission for the recreational use of his property does not: a) extend any assurance that the premises are safe, b) constitute the person to whom permission is granted an invitee, c) assume responsibility or incur liability for any injury caused by any act of the user. 3. Recreational user does not thereby acquire any property rights in, or rights of easement to, such premises. 4. Exceptions: a) willful or malicious failure to guard or warn, b) injury suffered where permission was granted for a consideration other than a consideration, if any, paid to the landowner by the state or subdivision, c) third party exception (see Part II, p.25). 5. Nothing in this section creates a duty of care or ground of liability.

New Hampshire: Form B

N.H. Rev. Stat. Ann. §212:34 (Supp. 1973).

1. Owner of premises owes no duty of care to keep premises safe for hunting, fishing, etc., or off-highway recreational vehicles or to give any warning. 2. Owner who gives permission for the recreational use of his land does not: a) extend any assurance that premises are safe, b) constitute the person to whom permission has been granted the status of an invitee, c) assume responsibility or incur liability for any injury caused by any act of such user. 3. Exceptions: a) willful or malicious failure to guard or warn, b) for injury suffered in any case where permission was granted for a consideration other than the consideration, if any, paid to the landowner by the state, c) third party exception (see Part II, p.25).

New Jersey: Form B

N.J. Stat. Ann. §2A:42A-1 et. seq. (Supp. 1976-77)

1. Definitions: "sport and recreational activities" include "any other outdoor sport, game and recreational activity." 2. Owner of premises, whether or not posted, owes no duty of care to keep premises safe or to give warnings. 3. Owner of premises who gives

permission for the recreational use of his land does not: a) extend any assurance that premises are safe, b) constitute the person to whom permission is granted the status of an invitee, c) assume responsibility or incur liability for any injury caused by any act of the user. 4. Exceptions: a) willful or malicious failure to guard or warn, b) injury suffered in any case where permission was granted for consideration other than consideration, if any, paid to the landowner by the state, c) third party exception (see Part II, p.25). 5. Nothing in this act shall create a duty of care or ground of liability.

Annotations

O'Connell v. Forest Hill Field Club, 119 N.J. Super. 317, 291 A.2d 386 (Super. Ct. L. Div. 1972)

Scheck v. Houdaille Construction Materials, Inc., 121 N.J. Super. 335, 297 A.2d 17 (Super Ct. L. Div. 1972)

Villanova v. American Federation of Musicians, Local 16, 123 N.J. Super. 57, 301 A.2d 467 (Super. Ct. App. Div. 1973)

Boileau v. De Cecco, 125 N.J. Super. 263, 310 A.2d 497 (Super. Ct. App. Div. 1973)

Odar v. Chase Manhattan Bank, 138 N.J. Super. 464, 351 A.2d 389 Super. Ct. App. Div. 1976

Krevics v. Ayars, 141 N.J. Super. 511, 358 A.2d 844 (Salem County Ct. L. Div. 1975)

New Mexico

N.M. Stat. Ann. §53-4-51 (Supp. 1975)

1. Owner of lands who, without charge or other consideration, other than a consideration paid by the state, Federal government or subdivision, grants permission for the recreational use of his land does not: a) extend any assurance that the premises are safe, b) assume any duty of care to keep such lands safe, c) assume responsibility or liability for any injury caused by the recreational user, d) assume any greater responsibility, duty of care or liability to such user than if such permission had not been granted and such persons or groups were trespassers. 2. Statute does not limit the liability of any landowner which may otherwise exist to any person granted permission in exchange for a consideration, other than a consideration paid by the state, Federal government or subdivision.

New York: Form B

N.Y. Gen. Oblig. Law 59-103 (McKinney Supp. 1976-77)

1. Owner of premises owes no duty to keep premises safe for motorized vehicle operation or recreational purposes or to give any warning. 2. Owner who gives permission for recreational use of his land does not: a) extend any assurance that premises are safe, b) constitute the person to whom permission is granted the status of an invitee, c) assume responsibility or incur liability for any injury caused by any act of the user. 3. Exceptions: a) willful or malicious failure to guard or warn, b) injury suffered in any case where permission was granted for a consideration other than the consideration, if any, paid to the landowner by the state or Federal government, c) third party exception (see Part II, p. 25). 4. No duty of care or ground of liability created.

Annotations

Merriman v. Baker, 34 N.Y.2d 330, 357 N.Y.S. 2d 473 (Ct. App. 1974).

Rock v. Concrete Materials, Inc., 46 A.D.2d 300, 362 N.Y.S. 2d 258 (Sup. Ct. App. Div. 1974)

1975 Op. Att'y. Gen. 250.

North Carolina

N.C. Gen. Stat. §113-120.5 et. seq. (1975)

1. Owner of premises who gives permission for the recreational use of his land does not: a) extend any assurance that the premises are safe, b) extend any assurance that a duty of care is owed, c) assume responsibility or incur liability for any injury caused by an act of the user. 2. Statute shall not be construed as limiting or nullifying the doctrine of attractive nuisance. 3. Exceptions: a) failure to guard or to warn against a dangerous condition. b) injury suffered in any case where permission was granted for a consideration other than the consideration, if any, paid to the landowner by the state or subdivision, c) third party exception (see Part II, p. 25).

North Dakota: Form A

N.D. Cent. Code 553-08-01 et. seq. (1974).

1. Definitions: a) "recreational purpose" includes "pleasure driving", b) "charge" means the amount of money asked in return for an invitation to enter or go upon the land. 2. Owner of land owes

... duty of care to keep premises safe or to give any warning. 3. Owner of land who either directly or indirectly invites or permits without charge the recreational use of his land does not: a) extend any assurance that the premises are safe, b) confer invitee or licensee status on the user, c) assume responsibility or incur liability for any injury caused by an act or omission of the user. 4. Owner of land leased to the state or subdivision owes no duty of care to keep such land safe or to give warnings. 5. An owner who leases land to the state or subdivision for recreational purposes does not: a) extend any assurance that the premises are safe, b) confer invitee or licensee status on the user, c) assume responsibility or incur liability for any injury caused by an act or omission of the user. 6. The provisions of this section (#5) apply whether the person entering upon the leased land is an invitee, licensee, trespasser, or otherwise. 7. Exceptions: a) willful or malicious failure to guard or warn, b) when the owner charges; consideration paid by the state for leased land not considered a "charge." 8. Construction: a) no duty of care or ground of liability created, b) recreational user not relieved from obligation to exercise care in the use of the land or from the legal consequences of failure to use such care.

Ohio

Ohio Rev. Code Ann. §1533.18 (Page 1964); §1533.181 (Page Supp. 1975).

1. Definitions: a) "premises" means all privately owned lands, waters, etc., b) "recreational user" means a person to whom permission has been granted, without the payment of a fee or consideration, other than a fee or consideration paid to the state or subdivision, to enter upon premises to hunt, fish, etc., or engage in other recreational pursuits. 2. No owner of premises: a) owes any duty to a recreational user to keep the premises safe, b) extends any assurance through the act of giving permission that the premises are safe, c) assumes responsibility or incurs liability for any injury caused by any act of a recreational user.

Oklahoma: Form A

Okla. Stat. Ann. tit. 76 §10 et. seq. (1976)

1. Definitions: a) "recreational purpose" includes "pleasure driving", b) "charge" means the "admission price or fee." 2. Owner of land owes no duty of care to keep premises safe or to give any warning. 3. Owner of land who either directly or indirectly invites or permits without charge the recreational use of his land does not: a) extend any assurance that the premises are safe, b) confer invitee or licensee status on the user, c) assume responsibility or incur liability for any injury caused by an act or omission of the user. 4. Statute is applicable to land leased to the state or subdivision unless otherwise agreed in writing. 5. Exceptions: a) willful or malicious failure to guard or warn, b) where the owner charges; consideration paid by the state or subdivision for leased land not considered a "charge." 6. Construction: a) no duty of care or ground of liability created, b) recreational user not relieved from obligation to exercise care in use of the land, or from the legal consequences of failure to use such care.

Oregon: Form A

Ore. Rev. Stat. §105.655 et. seq. (1975)

1. Definitions: a) "charge" means the "admission price or fee", b) "land" means agriculture land, range land, forest land and lands adjacent or contiguous to the ocean shore, including roads, bodies of water, water courses, etc., c) "recreational purpose" (open ended definition with no residuary phrase that would include motorcycles). 2. Statement of purpose. 3. Owner of land owes no duty of care to keep land safe or to give any warning. 4. Owner of land who either directly or indirectly invites or permits the recreational use of his land without charge does not: a) extend any assurance that the land is safe, b) confer invitee or licensee status upon the user, c) assume responsibility or incur liability for any injury, death, or loss by an act or omission of the user. 5. Statute is applicable to land leased by the state or subdivision unless otherwise agreed in writing. 6. Exceptions: a) reckless failure to guard or warn, b) where the owner charges; consideration paid by the state or subdivision for leased land not considered a "charge." 7. Owner of land

who either directly or indirectly invites or permits the recreational use of his land without charge shall not thereby give to such user any right to continued use of his land without his consent. 8. The fact that a landowner allows the public to recreationally use his land without posting, fencing or otherwise restricting the use of his land shall not raise a presumption that the landowner intended to dedicate or otherwise give over to the public the right to continued use of his land. 9. Statute shall not be construed to diminish or divert any public right acquired by dedication, prescription, grant, custom or otherwise existing before October 5, 1973. 10. Construction: a) no duty of care or basis for liability created, b) recreational user not relieved from obligation to exercise care in use of the land or from the legal consequences of failure to use such care.

Annotations

Loney v. McPhillips, 268 Or. 378, 521 P.2d 340 (1974)

Tijerina v. Vornelius Christian Church, 539 P. 2d 634 (Ore. Sup. Ct. 1975)

Denton v. L.W. Vail Co., Inc., 541 P.2d 511 (Ore. Ct. App. 1975)

Pennsylvania: Form A

Pa. Stat. Ann. tit. 68 §477-1 et. seq. (Purdon Supp. 1976-77)

1. Statement of purpose. 2. Definitions: a) "recreational purpose" includes "pleasure driving", b) "charge" means the "admission price or fee." 3. Owner of land owes no duty of care to keep premises safe or to give any warning. 4. Owner of land who either directly or indirectly invites or permits without charge the recreational use of his land does not: a) extend any assurance that the premises are safe, b) confer invitee or licensee status on the user, c) assume responsibility or incur liability for any injury caused by an act of (sic) omission of the user. 5. Statute applicable to land leased to the state of subdivision unless otherwise agreed in writing. 6. Exceptions: a) willful or malicious failure to guard or warn, b) where the owner charges; consideration paid by the state or subdivision for leased land not considered a "charge." 7. Construction: a) no duty of care or ground of liability created, b) recreational user not relieved from obligation to exercise care in use of the land or from the legal consequences of failure to use such care.

South Carolina: Form A

S.C. Code §51-81 et. seq. (Supp. 1975)

1. Statement of purpose. 2. Definitions: a) "recreational purpose" includes "pleasure driving", b) "charge" means the "admission price or fee", c) "persons" means individuals regardless of age. 3. Owner of land owes no duty of care to keep premises safe or to give any warnings. 4. Owner of land who permits without charge any person having sought such permission to use such property for recreational purposes does not: a) extend any assurance that the premises are safe, b) confer invitee or licensee status on the user, c) assume responsibility or incur liability for any injury caused by an act of (sic) omission of the user. 5. Statute is applicable to land leased to the state or subdivision unless otherwise agreed in writing. 6. Exceptions: a) grossly negligent, willful or malicious failure to guard or warn, b) where the owner charges; consideration paid by the state or subdivision for leased land not considered a "charge."

7. Construction: a) no duty of care or ground of liability created, b) recreational user not relieved from obligation to exercise care in use of the land or from the legal consequences of failure to use such care.

South Dakota

S.D. Compiled Laws Ann. §20-9-5 (Supp. 1976)

1. No cause of action shall arise against the owner of any rural real estate used exclusively for agricultural purposes for any injury to any person on the lands of such owner for recreational purposes with or without permission, unless there is paid to such owner, a valuable consideration, or unless such death or injuries were caused by gross negligence or willful and wanton misconduct of such owner.

2. Any incentive payment paid to the owner by the state or Federal government for promoting free public access for recreational purposes shall not be deemed a valuable consideration. 3. Statute shall not affect: a) the doctrine of attractive nuisance b) other legal doctrines relating to liability arising from artificial conditions highly dangerous to children.

Tennessee

Land Leased to State: Form A

Tenn. Code Ann. §11-1301 et. seq. (1973)

1. Definitions: a) "recreational purpose" includes "pleasure driving", b) "charge" means the amount of money asked in return for an invitation to go upon the land. 2. Owner of land leased to, the state or subdivision owes no duty of care to keep that land safe or to give warnings. 3. Owner who leases land to the state for recreational purposes does not: a) extend any assurance that premises are safe, b) confer invitee or licensee status on the user, c) assume responsibility or incur liability for any injury caused by an act or omission of such user. 4. The provisions of this section (§3) apply whether the person entering upon the leased land is an invitee, licensee, trespasser or otherwise. 5. Exceptions: a) willful or malicious failure to guard or warn, b) where the landowner charges; consideration paid by the state or subdivision for leased land not considered a "charge". 5. Construction: a) no duty of care or ground of liability created. b) recreational user not relieved from obligation to exercise care in use of the land, or from legal consequences of failure to use such care.

Land Not Leases to State: Form B

Tenn. Code Ann. §51-801 et. seq. (1966)

1. Landowner owes no duty of care to keep premises safe or to give any warnings. 2. Landowner who gives permission for the recreational use of his land does not: a) extend any assurance that the premises are safe, b) constitute the person to whom permission has been granted the status of an invitee, c) assume responsibility or incur liability for any injury caused by any act of the user. 3. Exceptions: a) willful or malicious failure to guard or warn, b) for injuries suffered in any case where permission was granted for a consideration other than the consideration, if any, paid to the landowner by the state or Federal government or subdivision, c) third party exception (see Part II, p.25).

Texas

Tex. Civ. Stat. Ann. tit. 1 Art. 1b (Vernon 1969)

1. Owner of real property who gives permission for hunting, fishing and/or camping does not: a) extend any assurance that the premises are safe, b) constitute the person to whom permission has been granted a status to whom a greater degree of care is owed than that owed to a trespasser, c) assume responsibility or incur liability for any injury caused by the person.
2. Statute shall not limit owner's liability which would otherwise exist for deliberate, willful or malicious injury.
3. Statute does not create any liability where none now exists.
4. Statute shall not modify, extend or change the doctrine of attractive nuisance.
5. Statute shall not restrict, modify or change the liability which otherwise exists for: a) use of premises as a commercial recreational enterprise for purposes of profit, b) an owner who makes a charge for permission to enter, other than that levied against those who remove game, in such sum as may reasonably be required for the replacement of such game.

Vermont

Vt. Stat. Ann. tit. 10 §5212 (1973)

1. Definitions: a) "land" means areas which are: i) unposted, ii) more than 500 feet from any residential or commercial building, iii) outside of city limits, b) "recreational purpose" means an individual's noncommercial activities on another person's land for hunting, fishing, etc., and similiar activities.
2. Owner who gratuitously gives another permission, either actual or implied, to use his land for recreational purposes, shall owe the invitee no greater duty than is owed a trespasser except as to acts of active negligence.

Virginia: Form B

Va. Code §8-654.2 (Supp. 1976)

1. Landowner owes no duty of care to keep premises safe or to give any warning.
2. Landowner who give permission for the recreational use of his land does not: a) imply or expressly represent that the premises are safe, b) constitute the person to whom permission has been granted the status of an invitee, c) assume responsibility

or incur liability for any intentional or negligent acts of the user.

3. Exceptions: a) willful or malicious failure to guard or warn.
- b) injuries suffered in any case where permission was granted for a consideration other than a consideration, if any, paid by the state, Federal government or subdivision.

#### Annotations

Hamilton v. United States, 371 F. Supp. 230 (E.D. Virg. 1974)

#### Washington

Wash. Rev. Code Ann. §4.24.200 et. seq. (Supp. 1975)

1. Statement of purpose. 2. Any public or private landowner of agricultural or forest lands or water areas or channels and rural lands adjacent to such areas or channels who allow members of the public to use them for the purposes of outdoor recreation, which term includes the "pleasure driving of all-terrain vehicles", without charging a fee of any kind therefore, shall not be liable for unintentional injuries to such users. 3. Statute shall not prevent the liability of such a landowner for injuries sustained to users by reason of a known dangerous artificial latent condition for which warning signs have not been conspicuously posted. 4. Statute does not in any way limit or expand the doctrine of attractive nuisance.

#### West Virginia: Form A

W. Va. Code, §19-25-1 et. seq. (1971)

1. Statement of purpose. 2. Owner of land owes no duty of care to keep premises safe or to give any warning. 3. Owner of land who either directly or indirectly invites or permits without charge the recreational use of his land does not: a) extend any assurance that premises are safe, b) confer invitee or licensee status on the user, c) assume responsibility or incur liability for any injury caused by an act or omission of such person. 4. Unless otherwise agreed in writing an owner of land leased to the state or subdivision owes no duty of care to keep that land safe or to give any warnings. 5. Owner who leases land to the state or subdivision for recreational purposes does not: a) extend any assurance that the premises are safe, b) confer invitee or licensee status on the user, c) assume responsibility or

incur liability for any injury caused by an act or omission of the user. 6. The provisions of this section (#5) apply whether the person entering upon the leased land is an invitee, licensee, trespasser or otherwise. 7. Exceptions: a) willful or malicious failure to guard or warn, b) where the owner charges; consideration paid by the state or subdivision for leased land not considered a "charge." 8. Construction: a) no duty of care or ground of liability created. b) recreational user not relieved from obligation to exercise care in use of the land or from the legal consequences of failure to use such care. 9. Definitions: a) "recreational purpose" includes "pleasure driving", b) "charge" means the amount of "money" asked in return for an invitation to enter or go upon the land.

Annotations

Kenser v. Trenton, 216 S.E.2d 880 (W.Va., Sup. Ct. 1975)

Wisconsin: Form B

Wis. Stat. Ann. §29.68(1)(2) and (4) (West 1973); §29.68(3) and (5) (West. Supp. 1976-77)

1. Owner of premises owes no duty to keep premises safe or to give warning. 2. Owner of premises who gives permission for the recreational use of his land does not: a) extend any assurance that the premises are safe, b) constitute the person to whom permission is granted the status of an invitee, c) assume responsibility or incur liability for any injury caused by any act of the user. 3. Exceptions: a) willful or malicious failure to guard or warn, b) in any case where permission was granted for a valuable consideration other than the valuable consideration paid to the state or by the state, c) third party exception (see Part II, p.25). 4. Definitions: "valuable consideration" does not include contributions to the sound management and husbandry of natural and agricultural resources resulting directly from the recreational activity. 5. No duty of care or ground of liability created.

Annotations

- Copeland v. Larson, 46 Wis. 2d 337, 174 N.W.2d 745 (Sup. Ct. 1970)
- Goodson v. City of Racine, 61 Wis. 2d 554, 213 N.W.2d 16 (Sup. Ct. 1973)
- Cords v. Ehly, 62 Wis.2d 31, 214 N.W.2d 432 (Sup. Ct. 1974)
- Antoniewicz v. Reszcynski, 70 Wis.2d 36, 236 N.W.2d 1 (Sup. Ct. 1975)
- McWilliams v. Guzinski, 71 Wis.2d 57, 237 N.W.2d 437 (Sup. Ct. 1976)
- Garfield v. United States, 297 F. Supp. 891 (W.D. Wis. 1969)
- Note, Liability of Landowners to Persons Entering for Recreational Purposes, 1964 Wis. L. Rev. 705.

Wyoming: Form A

Wyo. Stat. §34-389.1 et. seq. (Supp. 1975)

1. Definitions: a) "recreational purpose" includes "pleasure driving", b) "charge" means the "admission price or fee."
2. Landowner owes no duty of care to keep the premises safe or to give any warning
3. Owner who either directly or indirectly invites or permits without charge the recreational use of his land does not: a) extend any assurance that premises are safe, b) confer the status of invitee or licensee on the user, c) assume responsibility or incur liability for any injury caused by an act of (sic) omission of the user.
4. Statute is applicable to land leased to the state or subdivision unless otherwise agreed in writing.
5. Exceptions: a) willful or malicious failure to guard or warn, b) where the owner charges; consideration paid by the state or subdivision for leased land not considered a "charge."
6. Construction: a) no duty of care or ground of liability for injuries created, b) recreational user not relieved of obligation to exercise care in use of the land or from the legal consequences of failure to use such care.

Annotations

Smith v. United States, 383 F. Supp. 1076 (D. Wyo. 1974)

H. B. 50 By Representatives Newhouse,  
R. Smith, Barr, McGinnis, Sanders,  
Schmitt, Bond, Clayton, Isaacson,  
Eberle, Dawson, Zimmerman, Galloway,  
C. P. Smith, Nisbet, Owen, McDonald,  
Wilson (By House Committee on Judiciary  
of 45th Legislature Request)

Providing for limited liability of  
landowners for recreational use of  
their land by the public.

(DIGEST AS ENACTED)

Extends landowners' immunity from  
liability for public recreational use  
of their land to include bicyclists,  
horse and other animal riders, and clam  
diggers.

Declares that such public use is  
permissive and does not support any  
claim of adverse possession.

Dec 22 Prefiled for introduction.  
Jan 8 First reading, referred to  
Judiciary.  
Jan 17 Committee report; do pass.  
Placed on second reading.  
Jan 19 Second reading.  
Jan 23 Placed on third reading.  
Jan 24 Third reading, passed; Yeas, 97;  
nays, 0; absent, 1.  
-IN THE SENATE-  
Jan 25 First reading, referred to  
Judiciary.  
Mar 1 Committee report; do pass.  
Placed on second reading.  
Mar 2 Second reading, amended.  
On motion, rules suspended,  
placed on third reading.  
Third reading, passed as  
amended; Yeas, 46; nays, 1;  
absent, 2.  
-IN THE HOUSE-  
Mar 7 House concurred in Senate  
amendments.  
Passed final passage. Yeas, 96;  
nays, 0; absent, 2.  
Mar 8 Speakers signed.  
-IN THE SENATE-  
President signed.  
-IN THE HOUSE-

Delivered to Governor.

-EXECUTIVE-

Mar 19 Governor signed.  
Chapter 53, 1979 Laws

HB 50

SPONSORS: Representatives Newhouse and Smith

COMMITTEE: Judiciary

Providing for limited liability of landowners for recreational use of their land by the public.

ANALYSIS AS OF FEBRUARY 27, 1979

ISSUE:

Owners of agricultural and forest lands who allow the public to enter their property (without charging a fee) for the purpose of engaging in certain outdoor recreational activities are immune from liability for "unintentional" injuries sustained by such users. Numerous recreational activities are listed but bicycling and horseback riding are not presently included.

SUMMARY:

The bill modifies the present landowner immunity statute to apply to all lands whether rural or urban and to expressly cover the recreational activities of bicycling and horseback riding. Finally, the bill provides such usage by the public cannot be used to establish a claim of adverse possession against the owner.

State of Washington  
46th Legislature  
Regular Session

by Representatives Newhouse, Smith,  
Barr, McGinnis, Sanders, Schmitt,  
Bond, Clayton, Isaacson, Eberle,  
Dawson, Zimmerman, Galloway,  
Smith (C), Nisbet, Owen, McDonald  
and Wilson (by Committee on  
Judiciary of the 45th Legislature  
request)

Filed with the Chief Clerk of the House of Representatives  
December 22, 1978, for introduction January 8, 1979. Referred  
to Committee on Judiciary.

1 AN ACT Relating to liability of landowners or others in  
2 possession or control; and amending section 2, chapter  
3 216, Laws of 1967 as last amended by section 17, chapter  
4 153, Laws of 1972 ex. sess. and RCW 4.24.210.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

6 Section 1. Section 2, chapter 216, Laws of 1967 as last  
7 amended by section 17, chapter 153, Laws of 1972 ex. sess. and  
8 RCW 4.24.210 are each amended to read as follows:

9 Any public or private landowners or others in lawful  
10 possession and control of (~~agricultural-or-forest~~) any lands  
11 whether rural or urban, or water areas or channels and (~~rural~~)  
12 lands adjacent to such areas or channels, who allow members of  
13 the public to use them for the purposes of outdoor recreation,  
14 which term includes, but is not limited to, hunting, fishing,  
15 camping, picnicking, swimming, hiking, bicycling, the riding of  
16 horses or other animals, pleasure driving of (~~all-terrain~~)  
17 off-road vehicles, snowmobiles, and other vehicles, boating,  
18 nature study, winter or water sports, viewing or enjoying  
19 historical, archaeological, scenic, or scientific sites, without  
20 charging a fee of any kind therefor, shall not be liable for  
21 unintentional injuries to such users: PROVIDED, That nothing in  
22 this section shall prevent the liability of such a landowner or  
23 others in lawful possession and control for injuries sustained  
24 to users by reason of a known dangerous artificial latent  
25 condition for which warning signs have not been conspicuously  
26 posted: PROVIDED FURTHER, That nothing in RCW 4.24.200 and  
27 4.24.210 limits or expands in any way the doctrine of attractive  
28 nuisance: AND PROVIDED FURTHER, That the usage by members of  
29 the public is permissive and does not support any claim of  
30 adverse possession.

H. B. 50 By Representatives Newhouse,  
R. Smith (By House Committee on  
Judiciary of 45th Legislature Request)

Providing for limited liability of  
landowners for recreational use of  
their land by the public.

Extends landowners' immunity from  
liability for public recreational use  
of their land to include bicyclists and  
horse and other animal riders.

Declares that such public use is  
permissive and does not support any  
claim of adverse possession.

Dec 22 Prefiled for introduction.

Jan 8 First reading, referred to  
Judiciary.

The State Auditor's Office has suggested changes be made in the irrigation district law.

**SUMMARY:**

The irrigation district statute on beneficial interests in contracts is repealed. Irrigation districts now come under the provisions of the general statute concerning municipal officers' interests in contracts. Small irrigation districts with 50,000 or fewer acres are exempt from the general prohibition against municipal officers having an interest in contracts. This brings small irrigation districts in line with smaller counties, cities and school districts. Irrigation districts with 50,000 or more acres are covered in the same manner as larger counties and first and second class cities and school districts.

House: 98 0 Effective: Sept. 1, 1979  
Senate: 40 0 C 4 L 79 1st ex. sess.

**HB 50**

**SPONSORS:** Representatives Newhouse, Smith (R.), Barr, McGinnis, Sanders, Schmitt, Bond, Clayton, Isaacson, Eberle, Dawson, Zimmerman, Galloway, Smith (C.), Nisbet, Owen, McDonald, and Wilson  
(By House Committee on Judiciary of the 45th Legislature Request)

**COMMITTEE:** Judiciary

Providing for limited liability of landowners for recreational use of their land by the public.

**ISSUE:**

Private landowners should have clear protection from liability when they allow their land to be used for recreational purposes. Immunity may need to be extremely clear if landowners are to be encouraged to allow the public to use their land for recreational purposes.

**SUMMARY:**

Landowners' common law immunity from liability for unintentional injury to persons who are allowed to use the landowner's property for outdoor recreational purposes is further clarified by express reference to urban as well as rural land, and by indicating that such usage cannot support a claim for adverse possession. The definition of "outdoor recreation" is expanded to expressly include the activities of horseback riding, bicycling and clam digging.

House: 97 0 Effective: June 7, 1979  
Senate: (a) 46 1 C 53 L 79  
H. Concur: 96 0

**SHB 56**

**SPONSORS:** Committee on Local Government  
(Originally Sponsored by Representatives Charnley, Whiteside, Zimmerman, Rohrbach, North, Owen, Sanders, Fuller, Flanagan, Knowles, Smith (C.), Nisbet and Amen)  
(By Request of the House Committee on Local Government of the 45th Legislature)

**COMMITTEE:** Local Government

Authorizing local governments to enter programs for self-insurance, risk management, and joint insurance.

**ISSUE:**

In recent years, local governments have been required to pay vastly increased insurance premiums. These governments are not currently authorized to employ risk management personnel or to enter pooling arrangements with other local entities to provide liability coverage.

**SUMMARY:**

Counties, cities, towns, and special purpose districts are permitted to individually or jointly: (1) Hire risk managers; (2) Purchase insurance coverage; and/or (3) Self-insure: Provided that joint self-insuring is only for the purpose of providing liability insurance. Whenever two or more local governments join together for such purposes, their organization must be pursuant to the Interlocal Cooperation Act.

Any pool or organization of local governments made under this act is subject to audit by the State Auditor.

Prior to the establishment of a joint self-insurance pool, approval of a proposed plan of organization and operation must be granted by the State Risk Manager. Criteria and procedural requirements for such approval are specified.

Any organization formed under this bill may invest its assets directly or through the County Treasurer. Classes of investments or securities in which an organization may invest include those investments and securities in which public agencies are otherwise permitted to invest. Requirements that the organizations must satisfy are specified and the organizations are granted certain powers in order to function.

An exemption from the Open Meetings Act is granted to consider litigation and settlement claims. An exemption from the Public Disclosure Act is granted to keep certain records and documents concerning claims and anticipated settlements from public view. (However, the State Auditor always has access to these records and documents.) App-107

*Washington State Senate*



from the desk of—  
JOHN PAUL JONES III  
Administrative Assistant to  
Senate Majority Leader



RECEIVED

JAN 8 1979

SEN. JUDICIARY COMM.

BILL GALES  
Sen. JUDICIARY COMM  
4TH FLOOR PUBLIC LANDS

file - HB 50

ROOM 404 SENATE, LEGISLATIVE BUILDING (AS-32), OLYMPIA, WA 98504  
AREA CODE 206, 753-7570 or 7644 (SCAN 8 - 234 - 7570 or 7644)

COOPERATIVE EXTENSION SERVICE  
WASHINGTON STATE UNIVERSITY

HB 50

PULLMAN, WASHINGTON 99163

131 Johnson Hall  
May 5, 1978

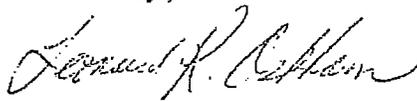
Greg Lovelady  
IAC  
4800 Capitol Blvd.  
Tumwater, WA 98504

Dear Greg:

Last week I sent you a copy of the report I received from the American Motorcycle Association, P.O. Box 141 Westerville, OH 43081, of a landowner liability study for recreation purposes. Here is the letter to go with it.

I thought you might be interested in this broad review of the laws and in particular some of the discussion about Washington State. It is my opinion that law in Washington State could be reinforced and brought up to standards, as in the Georgia study, to protect those individuals wishing to provide a public service. Would appreciate it if you would pass this along to Jerry and Bob.

Sincerely,



Leonard R. Askham  
Outdoor Recreation Specialist

LRA:sdp



P.O. Box 141, Westerville, Ohio 43081

Telephone (614) 691-2425  
Telex: 245392

February 21, 1978

Mr. Leonard R. Askham  
Outdoor Recreation Specialist  
Cooperative Extension Service  
Washington State University  
131 Johnson Hall  
Pullman, Washington 99163

Dear Mr. Askham:

As a member of Task Force V - The Private Sector, we appreciate your interest in the association's land owner liability study.

As you requested, in response to our letter of February 8, we are enclosing a copy of that study for your review. Please feel free to contact me if you have any questions.

Sincerely yours,

Robert Rasor  
Associate Director  
Legislative Department

RR/tl  
Enclosure

cc: Gene Wirwahn

COLLEGE OF AGRICULTURE  
COOPERATIVE EXTENSION SERVICE  
WASHINGTON STATE UNIVERSITY

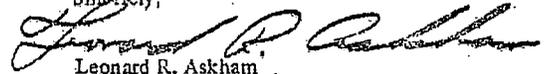
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PULLMAN, WASHINGTON 99163

It is a pleasure to send the enclosed material to you. We hope it meets your needs. The Cooperative Extension Service conducts educational programs in agriculture, human resources (including home economics and youth) and community resource development. These programs strive to provide the people of Washington with the latest and most accurate scientific information available. Extension information and programs are available to all citizens of the state without discrimination regarding race, color or national origin. This is a joint educational effort of your county, state and federal governments.

County Extension agents are representatives of the Cooperative Extension Service and Washington State University. They can advise you about the educational services available from Washington State University. We hope you will visit or call your County Extension office. The offices and their locations are listed on the reverse side of this note.

Sincerely,



Leonard R. Askham  
Extension Outdoor Recreation Specialist

Enclosure

EXTENSION WORK IN AGRICULTURE AND HOME ECONOMICS IN COOPERATION WITH U.S. DEPARTMENT OF AGRICULTURE

---

MINUTES

COMMITTEE: Senate Judiciary DATE: Wednesday, February 28, 19

LOCATION: Senate Hearing Room 2 Public Lands TIME: 4:00 p.m.

TYPE: PUBLIC HEARING/EXECUTIVE SESSION CHAIRMAN: Senator Dan Marsh

MEMBERS PRESENT: Senators Marsh, Talmadge, Bottiger, Clarke, Gallagher,  
Hayner, Jones and Woody

STAFF PRESENT: Bill Gales, Kathryn Fewell, Judy Barry, Lorna Paull and John Ennis

OTHER ATTENDANCE: Representative Rick Smith

- AGENDA:
1. HB 18 - ENACTING THE UNIFORM CHILD CUSTODY JURISDICTION ACT
  2. HB 307 - REVISING THE CRIMINAL CODE
  3. EHB 149 - RELATING TO COUNTY LAW LIBRARIES
  4. HB 50 - PROVIDING FOR LIMITED LIABILITY OF LANDOWNERS FOR RECREATIONAL USE OF THEIR LAND BY THE PUBLIC
  5. EHB 279 - EXCLUDING SMALL CIVIL CLAIMS FROM THE COURT OF APPEALS
  6. HB 52 - PERMITTING MUNICIPAL COURTS TO BE TERMINATED BY CITY ORDINANCE AT ANY TIME
  7. HB 66 - CORRECTING A MISTAKE
  8. SHB 99 - MODIFYING THE PROCEDURE FOR THE SELECTION OF PROSPECTIVE JURORS
  9. HB 155 - REPEALING A PROVISION OF THE FINANCIAL RESPONSIBILITY LAW PREVENTING DISCHARGE IN BANKRUPTCY
  10. SHB 704 - MODIFYING THE LAWS REGULATING DRIVING WHILE UNDER THE INFLUENCE OF INTOXICATING LIQUOR
  11. SHB 425 - PERMITTING EACH COUNTY'S SUPERIOR COURT TO AUTHORIZE MANDATORY ARBITRATION FOR CIVIL ACTIONS LESS THAN TEN THOUSAND DOLLARS
  12. EHB 424 - ALLOWING NEGOTIATION OF COURT FILING FEES BETWEEN CITIES AND COUNTIES
  13. HB 668 - MODIFYING RESTRICTIONS ON GOVERNMENTAL ACCESS TO RECORDS OF THE EMPLOYMENT SECURITY DEPARTMENT

PERSONS APPEARING BEFORE THE COMMITTEE (in order of appearance):

- HB 18: 1. Kathryn Fewell, Counsel, Senate Judiciary Committee  
2. Dale Sawyer, Auburn attorney
- HB 307: 1. Bill Gissberg, Washington State Bar Association
- EHB 149: 1. Gary Lowe, Washington State Association of Counties  
2. Bob Freudenstein, Washington Association of County Clerks  
3. C. E. Bolden, State Law Librarian  
4. George Bovington, King County Law Library  
5. James McArdle, King County Law Library  
6. Graham Tollefson, Yakima County Board of County Commissioners
- HB 50: 1. Loretta Slater, Voluntary Chairman, Washington State Trails Council [advisory to the Interagency Committee] and Board member of the National Trails Council
- EHB 279: 1. Bill Gissberg, Washington State Bar Association
- HB 52: 1. Bill Gales, Senior Counsel, Senate Judiciary Committee
- HB 66: 1. Bill Gales, Senior Counsel, Senate Judiciary Committee
- SHB 99: 1. Bob Freudenstein, Washington Association of County Clerks  
2. Karl Tegland, Washington Judicial Council
- HB 155: 1. Jack Nelson, Department of Licensing
- SHB 704: 1. Representative Rick Smith, prime sponsor
- SHB 425: 1. Wayne Blair, Seattle-King County Bar Association  
2. Mike Ryherd, Washington Trial Lawyers Association  
3. Noel Bickham, Farmers Insurance Company

EHB 424: 1. Jim Metcalf, King County Council  
HB 668: 1. Eudora Peters, Department of Employment Security

SUMMARY OF COMMITTEE ACTION:

HB 18 - Do Pass  
HB 50 - Do Pass  
HB 52 - Do Pass  
HB 66 - Do Pass  
SHB 99 - Do Pass as Amended  
EHB 149 - Do Pass as Amended  
HB 155 - Do Pass as Amended  
EHB 279 - Do Pass as Amended  
HB 307 - Do Pass as Amended  
EHB 424 - Do Pass  
SHB 425 - Do Pass  
HB 668 - Do Pass  
SHB 704 - Do Pass

REPORT OF STANDING COMMITTEE

February 28, 1979.

HOUSE BILL NO. 50

Providing for limited liability of landowners for recreational  
(Type in brief title exactly as it appears on back cover of original bill)  
use of their land by the public.

(reported by Committee on Judiciary): (9)

Recommendation - Majority

- Do Pass
- Do Pass as Amended
- That Substitute \_\_\_\_\_  
be substituted therefor, and  
that Substitute \_\_\_\_\_  
Do Pass
- Other \_\_\_\_\_

Marsh, Chairman
Talmadge, Vice Chm.
Bottiger
Clarke
Gallaghan
Hayner
Jones
Van Hollebeke
Woody

*Dan Marsh*  
Dan Marsh, Chairman

*Phil Talmadge*  
Phil Talmadge, Vice Chairman

\_\_\_\_\_  
R. Ted Bottiger

*John D. Jones*  
John D. Jones

\_\_\_\_\_  
George W. Clarke

\_\_\_\_\_  
Ray Van Hollebeke

\_\_\_\_\_  
Art Gallaghan

*Chianne Woody*  
Chianne Woody

*Jeannette Hayner*  
Jeannette Hayner

Distribution Regarding:

HB 50

At Committee Meeting Held:

2-28-79

ATTENDANCE ROSTER

SHORT TITLE: Providing for limited liability of landowners for recreational use of their land by the public

PLEASE PRINT NAME	ORGANIZATION	MAILING ADDRESS	PHONE	WISH TO TESTIFY? (YES/NO)	IF SO, PRO/CON
Loretta Slater	Voluntary Chairman, Washington State Trails Council [advisory to the Interagency Committee] & Bd. member of the National Trails Council	STREET 2835-60th Avenue S. E. CITY Mercer Island ZIP 98040	232-0456	YES	PRO
Bob Matthews	Washington Forest Protection Assn	STREET 711 Capitol Way, #608 CITY Olympia ZIP 98501	352-1500	Yes	Pro
Keith Thomas	Backcountry Horseman of Washington	STREET Rt 5 Box 432-B CITY Olympia Wash ZIP 98501	491 5342	yes	Pro
		STREET CITY ZIP			

**BILL NUMBER** House Bill No. 50

**SHORT TITLE:** Providing for limited liability of landowners for  
recreational use of their land by the public

**SPONSORED BY:** Representatives Newhouse and Smith

**COMMITTEE:** Senate Judiciary

**ANALYSIS AS OF:** February 27, 1979

ISSUE:

Owners of agricultural and forest lands who allow the public to enter their property (without charging a fee) for the purpose of engaging in certain outdoor recreational activities are immune from liability for "unintentional" injuries sustained by such users. Numerous recreational activities are listed but bicycling and horseback riding are not presently included.

SUMMARY:

The bill modifies the present landowner immunity statute to apply to all lands whether rural or urban and to expressly cover the recreational activities of bicycling and horseback riding. Finally, the bill provides such useage by the public cannot be used to establish a claim of adverse possession against the owner.

SPONSORS: Representatives Newhouse and Smith

COMMITTEE: Judiciary

Providing for limited liability of landowners for recreational use of their land by the public.

ANALYSIS AS PASSED THE LEGISLATURE

ISSUE:

Private landowners should have clear protection from liability when they allow their land to be used for recreational purposes. Proponents believe immunity needs to be extremely clear if landowners are to be encouraged to allow the public to use their land for recreational purposes.

SUMMARY:

Landowners' common law immunity from liability for unintentional injury to persons who are allowed to use the landowner's property for outdoor recreational purposes is further clarified by express reference to urban as well as rural land, and by indicating that such usage cannot support a claim for adverse possession. The definition of "outdoor recreation" is expanded to expressly include the activities of horseback riding, bicycling and clam digging.

House:	97	0
Senate: (a)	46	1
H. Concur:	96	0

HB 50

SPONSORS: Representatives Newhouse and Smith

COMMITTEE: Judiciary

Providing for limited liability of landowners for recreational use of their land by the public.

ANALYSIS AS OF FEBRUARY 27, 1979

ISSUE:

Owners of agricultural and forest lands who allow the public to enter their property (without charging a fee) for the purpose of engaging in certain outdoor recreational activities are immune from liability for "unintentional" injuries sustained by such users. Numerous recreational activities are listed but bicycling and horseback riding are not presently included.

SUMMARY:

The bill modifies the present landowner immunity statute to apply to all lands whether rural or urban and to expressly cover the recreational activities of bicycling and horseback riding. Finally, the bill provides such usage by the public cannot be used to establish a claim of adverse possession against the owner.

HB 50

SPONSORS: Representatives Newhouse and Smith

COMMITTEE: Judiciary

Providing for limited liability of landowners for recreational use of their land by the public.

ANALYSIS AS OF MARCH 7, 1979

ISSUE:

Owners of agricultural and forest lands who allow the public to enter their property (without charging a fee) for the purpose of engaging in certain outdoor recreational activities are immune from liability for "unintentional" injuries sustained by such users. Numerous recreational activities are listed but bicycling and horseback riding are not presently included.

SUMMARY:

The bill modifies the present landowner immunity statute to apply to all lands whether rural or urban and to expressly cover the recreational activities of bicycling, horseback riding and clam digging. Finally, the bill provides such usage by the public cannot be used to establish a claim of adverse possession against the owner.

State of Washington  
46th Legislature  
Regular Session

by Representatives Newhouse, Smith,  
Barr, McGinnis, Sanders, Schmitt, ~~en~~,  
Bond, Clayton, Isaacson, Eberle,  
Dawson, Zimmerman, Galloway,  
Smith (C), Nisbet, Owen, McDonald  
and Wilson (by Committee on  
Judiciary of the 45th Legislature  
request)

Filed with the Chief Clerk of the House of Representatives  
December 22, 1978, for introduction January 8, 1979. Referred  
to Committee on Judiciary.

1 AN ACT Relating to liability of landowners or others in  
2 possession or control; and amending section 2, chapter  
3 216, Laws of 1967 as last amended by section 17, chapter  
4 153, Laws of 1972 ex. sess. and RCW 4.24.210.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

6 Section 1. Section 2, chapter 216, Laws of 1967 as last  
7 amended by section 17, chapter 153, Laws of 1972 ex. sess. and  
8 RCW 4.24.210 are each amended to read as follows:

9 Any public or private landowners or others in lawful  
10 possession and control of (~~agricultural-or-forest~~) any lands  
11 whether rural or urban, or water areas or channels and (~~rural~~)  
12 lands adjacent to such areas or channels, who allow members of  
13 the public to use them for the purposes of outdoor recreation,  
14 which term includes, but is not limited to, hunting, fishing,  
15 camping, picnicking, swimming, hiking, bicycling, the riding of  
16 horses or other animals, pleasure driving of (~~all-terrain~~)  
17 off-road vehicles, snowmobiles, and other vehicles, boating,  
18 nature study, winter or water sports, viewing or enjoying  
19 historical, archaeological, scenic, or scientific sites, without  
20 charging a fee of any kind therefor, shall not be liable for  
21 unintentional injuries to such users: PROVIDED, That nothing in  
22 this section shall prevent the liability of such a landowner or  
23 others in lawful possession and control for injuries sustained  
24 to users by reason of a known dangerous artificial latent  
25 condition for which warning signs have not been conspicuously  
26 posted: PROVIDED FURTHER, That nothing in RCW 4.24.200 and  
27 4.24.210 limits or expands in any way the doctrine of attractive  
28 nuisance: AND PROVIDED FURTHER, That the usage by members of  
29 the public is permissive and does not support any claim of  
30 adverse possession.

H. B. 50 By Representatives Newhouse,  
R. Smith, Barr, McGinnis, Sanders,  
Schmitt, Bond, Clayton, Isaacson,  
Eberle, Dawson, Zimmerman, Galloway,  
C. P. Smith, Nisbet, Owen, McDonald,  
Wilson (By House Committee on Judiciary  
of 45th Legislature Request)

Providing for limited liability of  
landowners for recreational use of  
their land by the public.

(DIGEST AS ENACTED)

Extends landowners' immunity from  
liability for public recreational use  
of their land to include bicyclists,  
horse and other animal riders, and clam  
diggers.

Declares that such public use is  
permissive and does not support any  
claim of adverse possession.

Dec 22 Prefiled for introduction.

Jan 8 First reading, referred to  
Judiciary.

Jan 17 Committee report; do pass.  
Placed on second reading.

Jan 19 Second reading.

Jan 23 Placed on third reading.

Jan 24 Third reading, passed; Yeas, 97;  
nays, 0; absent, 1.

-IN THE SENATE-

Jan 25 First reading, referred to  
Judiciary.

Mar 1 Committee report; do pass.  
Placed on second reading.

Mar 2 Second reading, amended.  
On motion, rules suspended,  
placed on third reading.  
Third reading, passed as  
amended; Yeas, 46; nays, 1;  
absent, 2.

-IN THE HOUSE-

Mar 7 House concurred in Senate  
amendments.  
Passed final passage. Yeas, 96;  
nays, 0; absent, 2.

Mar 8 Speakers signed.

-IN THE SENATE-

President signed.

-IN THE HOUSE-

Delivered to Governor.

-EXECUTIVE-

Mar 19 Governor signed.  
Chapter 53, 1979 Laws

State of Washington  
46th Legislature  
Regular Session

by Representatives Newhouse, Smith,  
Barr, McGinnis, Sanders, Schmitt,  
Bond, Clayton, Isaacson, Eberle,  
Dawson, Zimmerman, Galloway,  
Smith (C), Nisbet, Owen, McDonald  
and Wilson (by Committee on  
Judiciary of the 45th Legislature  
request).

Filed with the Chief Clerk of the House of Representatives  
December 22, 1978, for introduction January 8, 1979. Referred  
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1 AN ACT Relating to liability of landowners or others in  
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8 RCW 4.24.210 are each amended to read as follows:

9 Any public or private landowners or others in lawful  
10 possession and control of ~~((agricultural-or-forest))~~ any lands  
11 whether rural or urban, or water areas or channels and ~~((rural))~~  
12 lands adjacent to such areas or channels, who allow members of  
13 the public to use them for the purposes of outdoor recreation,  
14 which term includes, but is not limited to, hunting, fishing,  
15 camping, picnicking, swimming, hiking, bicycling, the riding of  
16 horses or other animals, pleasure driving of ~~((all-terrain))~~  
17 off-road vehicles, snowmobiles, and other vehicles, boating,  
18 nature study, winter or water sports, viewing or enjoying  
19 historical, archaeological, scenic, or scientific sites, without  
20 charging a fee of any kind therefor, shall not be liable for  
21 unintentional injuries to such users: PROVIDED, That nothing in  
22 this section shall prevent the liability of such a landowner or  
23 others in lawful possession and control for injuries sustained  
24 to users by reason of a known dangerous artificial latent  
25 condition for which warning signs have not been conspicuously  
26 posted: PROVIDED FURTHER, That nothing in RCW 4.24.200 and  
27 4.24.210 limits or expands in any way the doctrine of attractive  
28 nuisance: AND PROVIDED FURTHER, That the usage by members of  
29 the public is permissive and does not support any claim of  
30 adverse possession.

Senate Amendment to House Bill No. 50  
By Senator Lysen  
On page 1, line 16, after "animals," insert  
"clam digging,"  
ADOPTED March 2, 1979

FORTY-SIXTH LEGISLATURE  
1979-81

SESSIONS SERVED:

HOUSE: 1967, '67 EX.  
SENATE: 1969, '69 EX., '70 EX., '71,  
1971 EX., '72 EX., '73, '73 EX.,  
1974 EX., '75, '75 EX., '75-'76,  
2ND EX., '77, '77 EX., '79

COMMITTEES

RULES  
WAYS AND MEANS  
FINANCIAL INSTITUTIONS AND  
INSURANCE



*Washington State Senate*

February 26, 1979

SENATOR  
GORDON L. WALGREN  
MAJORITY LEADER

TWENTY-THIRD DISTRICT ADDRESS  
5/10 Building  
510 Washington  
Bremerton, Washington 98310

LEGISLATIVE ADDRESS  
3-Majority Caucus  
Legislative Building  
Olympia, Washington 98504

RECEIVED

FEB 28 1979

SEN. JUDICIARY COMM.

The Honorable Dan Marsh  
Chairman, Judiciary Committee  
Washington State Senate  
Room 408-B Legislative Building  
Olympia, WA 98504

Dear Senator Marsh,

House Bill 50, relating to limiting liability of landowners who give easements for recreational purposes, is presently before your committee. I have not written previously as I knew your attention was centered on important Senate bills.

I support this legislation. It would limit the liability of persons who give easements for trails and recreational purposes. It extends a present law to cover most recreational purposes. It will reduce the cost of government acquiring trail facilities by using private property through an easement between the agency (providing recreational opportunities) and the private landowner.

At the beginning of this legislative session my staff sent to your Bill Gales a copy of a study which compares this type of legislation throughout the country. I hope this study has been of assistance to the committee.

The legislation passed from committee on 1977, but at such a late date that it died on the floor calendar. Enactment of this legislation would lessen costs to taxpayers, allow large landowners, such as timber companies, to open some of their properties for recreation, and will provide all recreational users with the same opportunity now afforded only to a few group of persons.

Thank you for your interest in this matter.

Very truly yours,

GORDON L. WALGREN  
Majority Leader

GLW:cj

cc: Members, Judiciary Committee



*Rec'd*  
BACKCOUNTRY HORSEMEN OF WASHINGTON, Inc,  
20617 Poplar Way  
Alderwood Manor, Wa. 98036

Phone 206 775 2603

Feb. 19, 1979

Senator Marsh, Chairman  
Senate Judiciary Committee  
Room 408#B, Legislative Bldg.  
Olympia, WA 98504

Re: H.B. #50

Dear Senator Marsh:

As a leader in the recreational trails movement in the State of Washington, I ask that you schedule a Judiciary Committee hearing on House Bill No. 50.

In my 6 years of efforts to promote trails, including several years on the IAC Trails Advisory Council, on both public and private lands, I have seen many planning efforts fail because of concerns over liability.

House Bill # 50, would do much to overcome these concerns by relieving land owners and managers of much of their liability when they open their lands for recreational easements or rights-of-way.

If, and when, your committee schedules such a hearing, I would like to appear before it, in support of this legislation.

Sincerely,

*Ken Wilcox*

Ken Wilcox, Executive Director

*called 2-23-79  
& informed him  
of meeting. jb*

# **App. 13**

shall authorize a port district to engage in the transportation of commodities by motor vehicle for compensation outside the boundaries of the port district. A port district may, by itself or in conjunction with public or private entities, acquire, construct, purchase, lease, contract for, provide, and operate rail services, equipment, and facilities: **PROVIDED**, That no port district shall engage in the manufacture of rail cars for use off port property.

**NEW SECTION.** Sec. 3. There is added to chapter 53.08 RCW a new section to read as follows:

A port district may acquire, lease, construct, purchase, maintain, and operate passenger carrying vessels on interstate navigable rivers of the state and intrastate waters of adjoining states. Service provided shall be under terms, conditions, and rates to be fixed and approved by the port commission. Operation of such vessels shall be subject to applicable state and federal laws pertaining to such service.

Passed the Senate February 22, 1980.

Passed the House February 18, 1980.

Approved by the Governor March 10, 1980.

Filed in Office of Secretary of State March 10, 1980.

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## CHAPTER 111

[Senate Bill No. 3474]

### LANDOWNERS' LIABILITY—INJURIES TO FIREWOOD CUTTERS

AN ACT Relating to natural resources; and amending section 2, chapter 216, Laws of 1967 as last amended by section 1, chapter 53, Laws of 1979 and RCW 4.24.210.

Be it enacted by the Legislature of the State of Washington:

Section 1. Section 2, chapter 216, Laws of 1967 as last amended by section 1, chapter 53, Laws of 1979 and RCW 4.24.210 are each amended to read as follows:

Any public or private landowners or others in lawful possession and control of any lands whether rural or urban, or water areas or channels and lands adjacent to such areas or channels, who allow members of the public to use them for the purposes of outdoor recreation, which term includes, but is not limited to, the cutting, gathering, and removing of firewood by private persons for their personal use without purchasing the firewood from the landowner, hunting, fishing, camping, picnicking, swimming, hiking, bicycling, the riding of horses or other animals, clam digging, pleasure driving of off-road vehicles, snowmobiles, and other vehicles, boating, nature study, winter or water sports, viewing or enjoying historical, archaeological, scenic, or scientific sites, without charging a fee of any kind therefor, shall not be liable for unintentional injuries to such users: **PROVIDED**, That any public or private landowner, or others in lawful possession and control of the land,

may charge an administrative fee of up to ten dollars for the cutting, gathering, and removing of firewood from the land: PROVIDED FURTHER, That nothing in this section shall prevent the liability of such a landowner or others in lawful possession and control for injuries sustained to users by reason of a known dangerous artificial latent condition for which warning signs have not been conspicuously posted: PROVIDED FURTHER, That nothing in RCW 4.24.200 and 4.24.210 limits or expands in any way the doctrine of attractive nuisance: AND PROVIDED FURTHER, That the usage by members of the public is permissive and does not support any claim of adverse possession.

Passed the Senate February 22, 1980.

Passed the House February 18, 1980.

Approved by the Governor March 10, 1980.

Filed in Office of Secretary of State March 10, 1980.

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## CHAPTER 112

[Senate Bill No. 3487]

### RETIREMENT SYSTEMS SERVICE CREDITS—TRANSFERS—ELIGIBILITY

AN ACT Relating to retirement; and adding a new section to chapter 41.40 RCW.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. Section 1. There is added to chapter 41.40 RCW a new section to read as follows:

Any former classified employee of Washington State University, who (1) was a member of the Retirement Plan as defined in RCW 41.40.500(2), and (2) is now employed by the University of Washington, having transferred employment to said university during 1966, and is a member of the Washington public employees retirement system, may transfer his or her former membership credit from the Retirement Plan to the Washington public employees retirement system created by this chapter by filing a written request therefor with the director of the department of retirement systems within thirty days after the effective date of this act; the director, with the cooperation of the proper authorities at Washington State University, shall transfer from the contract(s) issued under the retirement plan to the Washington public employees' retirement system the amount which would have been paid at the rates and on the applicable income (as defined in RCW 41.40.500(5)) as provided by law and regulations promulgated pursuant thereto had the person been a member of the Washington public employees' retirement system during each month of service at Washington State University: PROVIDED, That any person so transferring may elect to eliminate from the membership service credit to be transferred the period of service at Washington State University prior to entering contributory membership in the retirement plan.

# **App. 14**

CHAPTER 49

[Senate Bill 5434]

RAILROADS—REPEAL OF STATE REGULATIONS

Effective Date: 7/28/91

AN ACT Relating to state and federal regulation of railroads; repealing RCW 81.34.010, 81.34.020, 81.34.030, 81.34.040, 81.34.050, 81.34.060, 81.34.070, 81.34.080, 81.34.090, 81.34.100, and 81.34.110; and decodifying RCW 81.34.900.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. Sec. 1. The following acts or parts of acts are each repealed:

- (1) RCW 81.34.010 and 1984 c 143 s 10;
- (2) RCW 81.34.020 and 1984 c 143 s 11;
- (3) RCW 81.34.030 and 1984 c 143 s 12;
- (4) RCW 81.34.040 and 1984 c 143 s 13;
- (5) RCW 81.34.050 and 1984 c 143 s 14;
- (6) RCW 81.34.060 and 1984 c 143 s 15;
- (7) RCW 81.34.070 and 1984 c 143 s 16;
- (8) RCW 81.34.080 and 1984 c 143 s 17;
- (9) RCW 81.34.090 and 1984 c 143 s 18;
- (10) RCW 81.34.100 and 1984 c 143 s 19; and
- (11) RCW 81.34.110 and 1984 c 143 s 20.

NEW SECTION. Sec. 2. RCW 81.34.900 is decodified.

Passed the Senate March 13, 1991.

Passed the House April 11, 1991.

Approved by the Governor April 24, 1991.

Filed in Office of Secretary of State April 24, 1991.

CHAPTER 50

[Senate Bill 5630]

LICENSES AND PERMITS ISSUED BY WILDLIFE AND FISHERIES DEPARTMENTS AND BY PARKS AND RECREATION COMMISSION ARE NOT FEES

Effective Date: 7/28/91

AN ACT Relating to permits or licenses issued by the department of wildlife, department of fisheries, or the state parks and recreation commission; and amending RCW 4.24.210.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 4.24.210 and 1980 c 111 s 1 are each amended to read as follows:

- (1) Any public or private landowners or others in lawful possession and control of any lands whether rural or urban, or water areas or channels and

lands adjacent to such areas or channels, who allow members of the public to use them for the purposes of outdoor recreation, which term includes, but is not limited to, the cutting, gathering, and removing of firewood by private persons for their personal use without purchasing the firewood from the landowner, hunting, fishing, camping, picnicking, swimming, hiking, bicycling, the riding of horses or other animals, clam digging, pleasure driving of off-road vehicles, snowmobiles, and other vehicles, boating, nature study, winter or water sports, viewing or enjoying historical, archaeological, scenic, or scientific sites, without charging a fee of any kind therefor, shall not be liable for unintentional injuries to such users: PROVIDED, That any public or private landowner, or others in lawful possession and control of the land, may charge an administrative fee of up to ten dollars for the cutting, gathering, and removing of firewood from the land: PROVIDED FURTHER, That nothing in this section shall prevent the liability of such a landowner or others in lawful possession and control for injuries sustained to users by reason of a known dangerous artificial latent condition for which warning signs have not been conspicuously posted: PROVIDED FURTHER, That nothing in RCW 4.24.200 and 4.24.210 limits or expands in any way the doctrine of attractive nuisance: AND PROVIDED FURTHER, That the usage by members of the public is permissive and does not support any claim of adverse possession.

(2) For purposes of this section, a license or permit issued for state-wide use under authority of chapter 43.51 RCW, Title 75, or Title 77 RCW is not a fee.

Passed the Senate March 13, 1991.

Passed the House April 10, 1991.

Approved by the Governor April 24, 1991.

Filed in Office of Secretary of State April 24, 1991.

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## CHAPTER 51

[Substitute House Bill 2187]

### BUSINESS AND OCCUPATION TAX AND SALES TAX EXEMPTIONS FOR AUCTIONS CONDUCTED BY NONPROFIT ORGANIZATIONS

Effective Date: 4/26/91

AN ACT Relating to auctions conducted by nonprofit organizations; adding a new section to chapter 82.04 RCW; adding a new section to chapter 82.08 RCW; and declaring an emergency.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. Sec. 1. A new section is added to chapter 82.04 RCW to read as follows:

# **App. 15**

(2) The board of pharmacy shall report to the legislature by December 1, 1993, regarding the progress made by the nonprescription drug industry with respect to the readability and clarity of labeling information.

(3) This section shall expire on March 31, 1994.

Passed the House March 19, 1991.

Passed the Senate April 10, 1991.

Approved by the Governor May 3, 1991.

Filed in Office of Secretary of State May 3, 1991.

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## CHAPTER 69

[Senate Bill 5015]

### VOLUNTEER COOPERATIVE PROJECTS—IMMUNITY FOR LANDOWNERS ALLOWING USE OF LAND FOR PROJECTS

Effective Date: 7/28/91

AN ACT Relating to volunteer cooperative projects; and amending RCW 4.24.210.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 4.24.210 and 1980 c 111 s 1 are each amended to read as follows:

(1) Except as otherwise provided in subsection (3) of this section, any public or private landowners or others in lawful possession and control of any lands whether rural or urban, or water areas or channels and lands adjacent to such areas or channels, who allow members of the public to use them for the purposes of outdoor recreation, which term includes, but is not limited to, the cutting, gathering, and removing of firewood by private persons for their personal use without purchasing the firewood from the landowner, hunting, fishing, camping, picnicking, swimming, hiking, bicycling, the riding of horses or other animals, clam digging, pleasure driving of off-road vehicles, snowmobiles, and other vehicles, boating, nature study, winter or water sports, viewing or enjoying historical, archaeological, scenic, or scientific sites, without charging a fee of any kind therefor, shall not be liable for unintentional injuries to such users(~~(-PROVIDED, That))~~.

(2) Except as otherwise provided in subsection (3) of this section, any public or private landowner or others in lawful possession and control of any lands whether rural or urban, or water areas or channels and lands adjacent to such areas or channels, who offer or allow such land to be used for purposes of a fish or wildlife cooperative project, or allow access to such land for cleanup of litter or other solid waste, shall not be liable for unintentional injuries to any volunteer group or to any other users.

(3) Any public or private landowner, or others in lawful possession and control of the land, may charge an administrative fee of up to ten dollars for the cutting, gathering, and removing of firewood from the land(~~(-PROVIDED FURTHER, That))~~. Nothing in this section shall prevent the liability of such a landowner or others in lawful possession and control for

injuries sustained to users by reason of a known dangerous artificial latent condition for which warning signs have not been conspicuously posted(~~(: PROVIDED FURTHER, That))~~). Nothing in RCW 4.24.200 and 4.24.210 limits or expands in any way the doctrine of attractive nuisance(~~(-AND PROVIDED FURTHER, That the))~~). Usage by members of the public, volunteer groups, or other users is permissive and does not support any claim of adverse possession.

Passed the Senate February 22, 1991.

Passed the House April 18, 1991.

Approved by the Governor May 3, 1991.

Filed in Office of Secretary of State May 3, 1991.

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## CHAPTER 70

[Senate Bill 5023]

### FRIVOLOUS LAWSUITS—RECOVERY OF DEFENSE EXPENSES

Effective Date: 7/28/91

AN ACT Relating to the expense of defending against frivolous court actions; and amending RCW 4.84.185.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 4.84.185 and 1987 c 212 s 201 are each amended to read as follows:

In any civil action, the court having jurisdiction may, upon written findings by the judge that the action, counterclaim, cross-claim, third party claim, or defense was frivolous and advanced without reasonable cause, require the nonprevailing party to pay the prevailing party the reasonable expenses, including fees of attorneys, incurred in opposing such action, counterclaim, cross-claim, third party claim, or defense. This determination shall be made upon motion by the prevailing party after ~~((an))~~ a voluntary or involuntary order of dismissal, order on summary judgment, ((or)) final judgment after trial, or other final order terminating the action as to the prevailing party. The judge shall consider all evidence presented at the time of the motion to determine whether the position of the nonprevailing party was frivolous and advanced without reasonable cause. In no event may such motion be filed more than thirty days after entry of the order. ~~((The judge shall consider the action, counterclaim, cross-claim, third party claim, or defense as a whole.))~~

The provisions of this section apply unless otherwise specifically provided by statute.

Passed the Senate February 13, 1991.

Passed the House April 18, 1991.

Approved by the Governor May 3, 1991.

Filed in Office of Secretary of State May 3, 1991.

# **App. 16**

(a) Standards for full and fair disclosure that set forth the manner, content, and required disclosure for the sale of life insurance issued under subsection (3)(e) of this section; and

(b) For joint applications, a grace period of thirty days during which the insured person may direct the nonprofit organization to return the policy and the insurer to refund any premium paid to the party that, directly or indirectly, paid the premium; and

(c) Standards for granting an exemption from the five-year existence requirement of subsection (3)(e)(ii)(A) of this section to a private foundation that files with the insurance commissioner documents, stipulations, and information as the insurance commissioner may require to carry out the purpose of subsection (3)(e) of this section.

(5) Nothing in this section permits the personal representative of the insured's estate to recover the proceeds of a policy on the life of a deceased insured person that was applied for jointly by, or transferred to, an organization covered by subsection (3)(e) of this section, where the organization was named owner and beneficiary of the policy.

This subsection applies to all life insurance policies applied for by, or transferred to, an organization covered by subsection (3)(e) of this section, regardless of the time of application or transfer and regardless of whether the organization would have been covered at the time of application or transfer.

Passed the Senate February 12, 1992.

Passed the House March 4, 1992.

Approved by the Governor March 26, 1992.

Filed in Office of Secretary of State March 26, 1992.

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## CHAPTER 52

{Substitute House Bill 2330}

### FOREST LAND BASE RETENTION INCENTIVES

Effective Date: 6/1/92 - Except Section 22 which becomes effective on 8/1/92.

AN ACT Relating to incentives to maintain the productive forest land base; amending RCW 7.48.300, 7.48.305, 7.48.310, 76.09.330, 84.33.100, 84.34.300, 84.34.310, 84.34.320, 84.34.330, 84.34.340, 84.34.360, 84.34.370, 84.34.380, 76.09.060, 76.09.230, and 76.04.005; reenacting and amending RCW 4.24.210; adding new sections to chapter 84.33 RCW; creating a new section; and providing an effective date.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 4.24.210 and 1991 c 69 s 1 and 1991 c 50 s 1 are each reenacted and amended to read as follows:

(1) Except as otherwise provided in subsection (3) of this section, any public or private landowners or others in lawful possession and control of any lands whether designated resource, rural, or urban, or water areas or channels and lands adjacent to such areas or channels, who allow members of the public to use them for the purposes of outdoor recreation, which term includes, but is not limited to,

the cutting, gathering, and removing of firewood by private persons for their personal use without purchasing the firewood from the landowner, hunting, fishing, camping, picnicking, swimming, hiking, bicycling, the riding of horses or other animals, clam digging, pleasure driving of off-road vehicles, snowmobiles, and other vehicles, boating, nature study, winter or water sports, viewing or enjoying historical, archaeological, scenic, or scientific sites, without charging a fee of any kind therefor, shall not be liable for unintentional injuries to such users.

(2) Except as otherwise provided in subsection (3) of this section, any public or private landowner or others in lawful possession and control of any lands whether rural or urban, or water areas or channels and lands adjacent to such areas or channels, who offer or allow such land to be used for purposes of a fish or wildlife cooperative project, or allow access to such land for cleanup of litter or other solid waste, shall not be liable for unintentional injuries to any volunteer group or to any other users.

(3) Any public or private landowner, or others in lawful possession and control of the land, may charge an administrative fee of up to ~~((ten))~~ twenty-five dollars for the cutting, gathering, and removing of firewood from the land. Nothing in this section shall prevent the liability of such a landowner or others in lawful possession and control for injuries sustained to users by reason of a known dangerous artificial latent condition for which warning signs have not been conspicuously posted. Nothing in RCW 4.24.200 and 4.24.210 limits or expands in any way the doctrine of attractive nuisance. Usage by members of the public, volunteer groups, or other users is permissive and does not support any claim of adverse possession.

(4) For purposes of this section, a license or permit issued for state-wide use under authority of chapter 43.51 RCW, Title 75, or Title 77 RCW is not a fee.

**Sec. 2.** RCW 7.48.300 and 1979 c 122 s 1 are each amended to read as follows:

The legislature finds that agricultural activities conducted on farmland and forest practices in urbanizing areas are often subjected to nuisance lawsuits, and that such suits encourage and even force the premature removal of the lands from agricultural uses and timber production. It is therefore the purpose of RCW 7.48.300 through 7.48.310 and 7.48.905 to provide that agricultural activities conducted on farmland and forest practices be protected from nuisance lawsuits.

**Sec. 3.** RCW 7.48.305 and 1979 c 122 s 2 are each amended to read as follows:

Notwithstanding any other provision of this chapter, agricultural activities conducted on farmland and forest practices, if consistent with good agricultural and forest practices and established prior to surrounding nonagricultural and nonforestry activities, are presumed to be reasonable and do not constitute a nuisance unless the activity has a substantial adverse effect on the public health and safety.

# **App. 17**

There shall be three departments of the municipal court, which shall be designated as Department Nos. 1, 2 and 3(~~(-PROVIDED, That))~~. However, when the administration of justice and the accomplishment of the work of the court make additional departments necessary, the legislative body of the city may create additional departments as they are needed. The departments shall be established in such places as may be provided by the legislative body of the city, and each department shall be presided over by a municipal judge. However, notwithstanding the priority of action rule, for a defendant incarcerated at a jail facility outside the city limits but within the county in which the city is located, the city may, pursuant to an interlocal agreement under chapter 39.34 RCW, contract with the county to transfer jurisdiction and venue over the defendant to a district court and to provide all judicial services at the district court as would be provided by a department of the municipal court. The judges shall select, by majority vote, one of their number to act as presiding judge of the municipal court for a term of one year, and he or she shall be responsible for administration of the court and assignment of calendars to all departments. A change of venue from one department of the municipal court to another department shall be allowed in accordance with the provisions of RCW 3.66.090 in all civil and criminal proceedings. The city shall assume the costs of the elections of the municipal judges in accordance with the provisions of RCW 29.13.045.

NEW SECTION. Sec. 2. This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately.

Passed the Senate March 7, 1997.

Passed the House April 8, 1997.

Approved by the Governor April 15, 1997.

Filed in Office of Secretary of State April 15, 1997.

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## CHAPTER 26

[Substitute Senate Bill 5254]

### LIMITING LIABILITY OF LANDOWNERS FOR INJURIES TO RECREATIONAL USERS

AN ACT Relating to the limitation of liability of owners or others in possession of land and water areas for injuries to recreational users; and amending RCW 4.24.210.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 4.24.210 and 1992 c 52 s 1 are each amended to read as follows:

(1) Except as otherwise provided in subsection (3) of this section, any public or private landowners or others in lawful possession and control of any lands whether designated resource, rural, or urban, or water areas or channels and lands adjacent to such areas or channels, who allow members of the public to use them for the purposes of outdoor recreation, which term includes, but is not limited to, the cutting, gathering, and removing of firewood by private persons for their personal use without purchasing the firewood from the landowner, hunting,

fishing, camping, picnicking, swimming, hiking, bicycling, skateboarding or other nonmotorized wheel-based activities, hanggliding, paragliding, the riding of horses or other animals, clam digging, pleasure driving of off-road vehicles, snowmobiles, and other vehicles, boating, nature study, winter or water sports, viewing or enjoying historical, archaeological, scenic, or scientific sites, without charging a fee of any kind therefor, shall not be liable for unintentional injuries to such users.

(2) Except as otherwise provided in subsection (3) of this section, any public or private landowner or others in lawful possession and control of any lands whether rural or urban, or water areas or channels and lands adjacent to such areas or channels, who offer or allow such land to be used for purposes of a fish or wildlife cooperative project, or allow access to such land for cleanup of litter or other solid waste, shall not be liable for unintentional injuries to any volunteer group or to any other users.

(3) Any public or private landowner, or others in lawful possession and control of the land, may charge an administrative fee of up to twenty-five dollars for the cutting, gathering, and removing of firewood from the land. Nothing in this section shall prevent the liability of such a landowner or others in lawful possession and control for injuries sustained to users by reason of a known dangerous artificial latent condition for which warning signs have not been conspicuously posted. Nothing in RCW 4.24.200 and 4.24.210 limits or expands in any way the doctrine of attractive nuisance. Usage by members of the public, volunteer groups, or other users is permissive and does not support any claim of adverse possession.

(4) For purposes of this section, a license or permit issued for state-wide use under authority of chapter 43.51 RCW, Title 75, or Title 77 RCW is not a fee.

Passed the Senate March 12, 1997.

Passed the House April 8, 1997.

Approved by the Governor April 15, 1997.

Filed in Office of Secretary of State April 15, 1997.

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## CHAPTER 27

[Substitute Senate Bill 5308]

### ELECTRONIC SIGNATURES

AN ACT Relating to electronic signatures; amending RCW 19.34.030, 19.34.040, 19.34.100, 19.34.110, 19.34.120, 19.34.200, 19.34.210, 19.34.240, 19.34.250, 19.34.260, 19.34.280, 19.34.300, 19.34.310, 19.34.320, 19.34.340, 19.34.350, 19.34.400, 19.34.500, 19.34.901, 19.34.020, 19.34.220, and 19.34.410; adding new sections to chapter 19.34 RCW; adding a new section to chapter 43.105 RCW; prescribing penalties; and providing an effective date.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 19.34.030 and 1996 c 250 s 104 are each amended to read as follows:

(1) ~~(If six months elapse during which time no certification authority is licensed in this state, then the secretary shall be a certification authority, and may~~

# **App. 18**

Locator (URL) internet address where data regarding the metals content of the product is located; and

(g) Other information as required by the department by rule.

(2) If a commercial fertilizer is distributed in bulk, a written or printed statement of the information required by subsection (1) of this section shall accompany delivery and be supplied to the purchaser at the time of delivery.

(3) Each delivery of a customer-formula fertilizer shall be subject to containing those ingredients specified by the purchaser, which ingredients shall be shown on the statement or invoice with the amount contained therein, and a record of all invoices of customer-formula grade mixes shall be kept by the registrant or licensee for a period of twelve months and shall be available to the department upon request: PROVIDED, That each such delivery shall be accompanied by either a statement, invoice, a delivery slip, or a label if bagged, containing the following information: The net weight; the brand; the guaranteed analysis which may be stated to the nearest tenth of a percent or to the next lower whole number; the name and address of the registrant or licensee, or manufacturer, or both; and the name and address of the purchaser.

**NEW SECTION. Sec. 2.** Section 1 of this act takes effect January 1, 2004.

Passed by the House February 10, 2003.

Passed by the Senate April 8, 2003.

Approved by the Governor April 16, 2003.

Filed in Office of Secretary of State April 16, 2003.

## CHAPTER 16

[Substitute House Bill 1195]

### ROCK CLIMBING

AN ACT Relating to rock climbing; amending RCW 4.24.210; and creating a new section.

Be it enacted by the Legislature of the State of Washington:

**NEW SECTION. Sec. 1.** The legislature finds that some property owners in Washington are concerned about the possibility of liability arising when individuals are permitted to engage in potentially dangerous outdoor recreational activities, such as rock climbing. Although RCW 4.24.210 provides property owners with immunity from legal claims for any unintentional injuries suffered by certain individuals recreating on their land, the legislature finds that it is important to the promotion of rock climbing opportunities to specifically include rock climbing as one of the recreational activities that are included in RCW 4.24.210. By including rock climbing in RCW 4.24.210, the legislature intends merely to provide assurance to the owners of property suitable for this type of recreation, and does not intend to limit the application of RCW 4.24.210 to other types of recreation. By providing that a landowner shall not be liable for any unintentional injuries resulting from the condition or use of a fixed anchor used in rock climbing, the legislature recognizes that such fixed anchors are recreational equipment used by climbers for which a landowner has no duty of care.

**Sec. 2.** RCW 4.24.210 and 1997 c 26 s 1 are each amended to read as follows:

(1) Except as otherwise provided in subsection (3) or (4) of this section, any public or private landowners or others in lawful possession and control of any lands whether designated resource, rural, or urban, or water areas or channels and lands adjacent to such areas or channels, who allow members of the public to use them for the purposes of outdoor recreation, which term includes, but is not limited to, the cutting, gathering, and removing of firewood by private persons for their personal use without purchasing the firewood from the landowner, hunting, fishing, camping, picnicking, swimming, hiking, bicycling, skateboarding or other nonmotorized wheel-based activities, hanggliding, paragliding, rock climbing, the riding of horses or other animals, clam digging, pleasure driving of off-road vehicles, snowmobiles, and other vehicles, boating, nature study, winter or water sports, viewing or enjoying historical, archaeological, scenic, or scientific sites, without charging a fee of any kind therefor, shall not be liable for unintentional injuries to such users.

(2) Except as otherwise provided in subsection (3) or (4) of this section, any public or private landowner or others in lawful possession and control of any lands whether rural or urban, or water areas or channels and lands adjacent to such areas or channels, who offer or allow such land to be used for purposes of a fish or wildlife cooperative project, or allow access to such land for cleanup of litter or other solid waste, shall not be liable for unintentional injuries to any volunteer group or to any other users.

(3) Any public or private landowner, or others in lawful possession and control of the land, may charge an administrative fee of up to twenty-five dollars for the cutting, gathering, and removing of firewood from the land.

(4) Nothing in this section shall prevent the liability of ~~((sueh))~~ a landowner or others in lawful possession and control for injuries sustained to users by reason of a known dangerous artificial latent condition for which warning signs have not been conspicuously posted. A fixed anchor used in rock climbing and put in place by someone other than a landowner is not a known dangerous artificial latent condition and a landowner under subsection (1) of this section shall not be liable for unintentional injuries resulting from the condition or use of such an anchor. Nothing in RCW 4.24.200 and 4.24.210 limits or expands in any way the doctrine of attractive nuisance. Usage by members of the public, volunteer groups, or other users is permissive and does not support any claim of adverse possession.

~~(((4)))~~ (5) For purposes of this section, a license or permit issued for statewide use under authority of chapter ~~((43.51))~~ 79A.05 RCW ~~((, Title 75,))~~ or Title 77 RCW is not a fee.

Passed by the House March 6, 2003.

Passed by the Senate April 8, 2003.

Approved by the Governor April 16, 2003.

Filed in Office of Secretary of State April 16, 2003.

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## CHAPTER 17

[Engrossed Substitute House Bill 1242]

### BIODIESEL

AN ACT Relating to the use of biodiesel; and adding new sections to chapter 43.19 RCW.

# **App. 19**

(3) The provisions of the chapter and the state patrol's regulations with respect to equipment on vehicles shall not apply to implements of husbandry, road machinery, road rollers, or farm tractors except as herein made applicable.

(4) No owner or operator of a farm tractor, self-propelled unit of farm equipment, or implement of husbandry shall be guilty of a crime or subject to penalty for violation of RCW 46.37.160 as now or hereafter amended unless such violation occurs on a public highway.

(5) It is a traffic infraction for any person to sell or offer for sale vehicle equipment which is required to be approved by the state patrol as prescribed in RCW 46.37.005 unless it has been approved by the state patrol.

(6) The provisions of this chapter with respect to equipment required on vehicles shall not apply to motorcycles or motor-driven cycles except as herein made applicable.

(7) This chapter does not apply to off-road vehicles used on nonhighway roads or used on streets, roads, or highways as authorized under RCW 46.09.180.

(8) This chapter does not apply to vehicles used by the state parks and recreation commission exclusively for park maintenance and operations upon public highways within state parks.

(9) Notices of traffic infraction issued to commercial drivers under the provisions of this chapter with respect to equipment required on commercial motor vehicles shall not be considered for driver improvement purposes under chapter 46.20 RCW.

(10) Whenever a traffic infraction is chargeable to the owner or lessee of a vehicle under subsection (1) of this section, the driver shall not be arrested or issued a notice of traffic infraction unless the vehicle is registered in a jurisdiction other than Washington state, or unless the infraction is for an offense that is clearly within the responsibility of the driver.

(11) Whenever the owner or lessee is issued a notice of traffic infraction under this section the court may, on the request of the owner or lessee, take appropriate steps to make the driver of the vehicle, or any other person who directs the loading, maintenance, or operation of the vehicle, a codefendant. If the codefendant is held solely responsible and is found to have committed the traffic infraction, the court may dismiss the notice against the owner or lessee.

**Sec. 6.** RCW 4.24.210 and 2003 c 39 s 2 and 2003 c 16 s 2 are each reenacted and amended to read as follows:

(1) Except as otherwise provided in subsection (3) or (4) of this section, any public or private landowners or others in lawful possession and control of any lands whether designated resource, rural, or urban, or water areas or channels and lands adjacent to such areas or channels, who allow members of the public to use them for the purposes of outdoor recreation, which term includes, but is not limited to, the cutting, gathering, and removing of firewood by private persons for their personal use without purchasing the firewood from the landowner, hunting, fishing, camping, picnicking, swimming, hiking, bicycling, skateboarding or other nonmotorized wheel-based activities, hanggliding, paragliding, rock climbing, the riding of horses or other animals, clam digging, pleasure driving of off-road vehicles, snowmobiles, and other vehicles, boating, nature study, winter or water sports, viewing or enjoying historical,

archaeological, scenic, or scientific sites, without charging a fee of any kind therefor, shall not be liable for unintentional injuries to such users.

(2) Except as otherwise provided in subsection (3) or (4) of this section, any public or private landowner or others in lawful possession and control of any lands whether rural or urban, or water areas or channels and lands adjacent to such areas or channels, who offer or allow such land to be used for purposes of a fish or wildlife cooperative project, or allow access to such land for cleanup of litter or other solid waste, shall not be liable for unintentional injuries to any volunteer group or to any other users.

(3) Any public or private landowner, or others in lawful possession and control of the land, may charge an administrative fee of up to twenty-five dollars for the cutting, gathering, and removing of firewood from the land.

(4) Nothing in this section shall prevent the liability of a landowner or others in lawful possession and control for injuries sustained to users by reason of a known dangerous artificial latent condition for which warning signs have not been conspicuously posted. A fixed anchor used in rock climbing and put in place by someone other than a landowner is not a known dangerous artificial latent condition and a landowner under subsection (1) of this section shall not be liable for unintentional injuries resulting from the condition or use of such an anchor. Nothing in RCW 4.24.200 and ~~((4.24.210))~~ this section limits or expands in any way the doctrine of attractive nuisance. Usage by members of the public, volunteer groups, or other users is permissive and does not support any claim of adverse possession.

(5) For purposes of this section, the following are not fees:

(a) A license or permit issued for statewide use under authority of chapter 79A.05 RCW or Title 77 RCW ((is not a fee)); and

(b) A daily charge not to exceed twenty dollars per person, per day, for access to a publicly owned ORV sports park, as defined in RCW 46.09.020, or other public facility accessed by a highway, street, or nonhighway road for the purposes of off-road vehicle use.

Passed by the House March 4, 2006.

Passed by the Senate March 1, 2006.

Approved by the Governor March 24, 2006.

Filed in Office of Secretary of State March 24, 2006.

## CHAPTER 213

[House Bill 2644]

### PUBLIC UTILITY TAX CREDIT

AN ACT Relating to temporarily increasing the statewide cap for the public utility tax credit provided by RCW 82.16.0497; amending RCW 82.16.0497; and providing an effective date.

Be it enacted by the Legislature of the State of Washington:

**Sec. 1.** RCW 82.16.0497 and 2001 c 214 s 13 are each amended to read as follows:

(1) Unless the context clearly requires otherwise, the definitions in this subsection apply throughout this section.

(a) "Base credit" means the maximum amount of credit against the tax imposed by this chapter that each light and power business or gas distribution

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(iii) Other person who has, with respect to the bank, trust company, or holding company described in subsection (1) of this section, authority substantially similar to that of a director of a corporation;

(f) "Dividend" includes distributions made by a limited liability company under RCW 25.15.215;

(g) "Incorporator" includes the person or persons executing the certificate of formation as provided in RCW 25.15.085(1);

(h) "Officer" includes any of the following of a bank, trust company, or holding company:

(i) An officer; or

(ii) Other person who has, with respect to the bank, trust company, or holding company, authority substantially similar to that of an officer of a corporation;

(i) "Security," "shares," or "stock" of a corporation includes a membership interest in a limited liability company and any certificate or other evidence of an ownership interest in a limited liability company; and

(j) "Stockholder" or "shareholder" includes an owner of an equity interest in a bank, trust company, or holding company, including a member as defined in RCW 25.15.005(8) and 25.15.115.

Passed by the Senate February 28, 2011.

Passed by the House April 1, 2011.

Approved by the Governor April 13, 2011.

Filed in Office of Secretary of State April 13, 2011.

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## CHAPTER 53

[Senate Bill 5388]

### LANDOWNER LIABILITY—RECREATIONAL AREAS

AN ACT Relating to the liability of owners of recreational land and water areas; and amending RCW 4.24.210.

Be it enacted by the Legislature of the State of Washington:

**Sec. 1.** RCW 4.24.210 and 2006 c 212 s 6 are each amended to read as follows:

(1) Except as otherwise provided in subsection (3) or (4) of this section, any public or private landowners, hydroelectric project owners, or others in lawful possession and control of any lands whether designated resource, rural, or urban, or water areas or channels and lands adjacent to such areas or channels, who allow members of the public to use them for the purposes of outdoor recreation, which term includes, but is not limited to, the cutting, gathering, and removing of firewood by private persons for their personal use without purchasing the firewood from the landowner, hunting, fishing, camping, picnicking, swimming, hiking, bicycling, skateboarding or other nonmotorized wheel-based activities, hanggliding, paragliding, rock climbing, the riding of horses or other animals, clam digging, pleasure driving of off-road vehicles, snowmobiles, and other vehicles, boating, kayaking, canoeing, rafting, nature study, winter or water sports, viewing or enjoying historical, archaeological, scenic, or scientific sites, without charging a fee of any kind therefor, shall not be liable for unintentional injuries to such users.

(2) Except as otherwise provided in subsection (3) or (4) of this section, any public or private landowner or others in lawful possession and control of any lands whether rural or urban, or water areas or channels and lands adjacent to such areas or channels, who offer or allow such land to be used for purposes of a fish or wildlife cooperative project, or allow access to such land for cleanup of litter or other solid waste, shall not be liable for unintentional injuries to any volunteer group or to any other users.

(3) Any public or private landowner, or others in lawful possession and control of the land, may charge an administrative fee of up to twenty-five dollars for the cutting, gathering, and removing of firewood from the land.

(4)(a) Nothing in this section shall prevent the liability of a landowner or others in lawful possession and control for injuries sustained to users by reason of a known dangerous artificial latent condition for which warning signs have not been conspicuously posted.

(i) A fixed anchor used in rock climbing and put in place by someone other than a landowner is not a known dangerous artificial latent condition and a landowner under subsection (1) of this section shall not be liable for unintentional injuries resulting from the condition or use of such an anchor.

(ii) Releasing water or flows and making waterways or channels available for kayaking, canoeing, or rafting purposes pursuant to and in substantial compliance with a hydroelectric license issued by the federal energy regulatory commission, and making adjacent lands available for purposes of allowing viewing of such activities, does not create a known dangerous artificial latent condition and hydroelectric project owners under subsection (1) of this section shall not be liable for unintentional injuries to the recreational users and observers resulting from such releases and activities.

(b) Nothing in RCW 4.24.200 and this section limits or expands in any way the doctrine of attractive nuisance.

(c) Usage by members of the public, volunteer groups, or other users is permissive and does not support any claim of adverse possession.

(5) For purposes of this section, the following are not fees:

(a) A license or permit issued for statewide use under authority of chapter 79A.05 RCW or Title 77 RCW; and

(b) A daily charge not to exceed twenty dollars per person, per day, for access to a publicly owned ORV sports park, as defined in RCW ((46.09.020)) 46.09.310, or other public facility accessed by a highway, street, or nonhighway road for the purposes of off-road vehicle use.

Passed by the Senate March 1, 2011.

Passed by the House April 1, 2011.

Approved by the Governor April 13, 2011.

Filed in Office of Secretary of State April 13, 2011.

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#### CHAPTER 54

[Senate Bill 5492]

#### WASHINGTON BEER COMMISSION

AN ACT Relating to the Washington beer commission; and amending RCW 15.89.020, 15.89.040, 15.89.050, 15.89.100, and 15.89.110.

Be it enacted by the Legislature of the State of Washington:

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## CHAPTER 15

[House Bill 2244]

LIABILITY—RECREATIONAL USE OF PUBLIC OR PRIVATE LAND—  
AVIATION ACTIVITIES

AN ACT Relating to aircraft and ultra-light operations on public or private airstrips; and reenacting and amending RCW 4.24.210.

Be it enacted by the Legislature of the State of Washington:

**Sec. 1.** RCW 4.24.210 and 2011 c 320 s 11, 2011 c 171 s 2, and 2011 c 53 s 1 are each reenacted and amended to read as follows:

(1) Except as otherwise provided in subsection (3) or (4) of this section, any public or private landowners, hydroelectric project owners, or others in lawful possession and control of any lands whether designated resource, rural, or urban, or water areas or channels and lands adjacent to such areas or channels, who allow members of the public to use them for the purposes of outdoor recreation, which term includes, but is not limited to, the cutting, gathering, and removing of firewood by private persons for their personal use without purchasing the firewood from the landowner, hunting, fishing, camping, picnicking, swimming, hiking, bicycling, skateboarding or other nonmotorized wheel-based activities, ~~((hanggliding, paragliding))~~ aviation activities including, but not limited to, the operation of airplanes, ultra-light airplanes, hanggliders, parachutes, and paragliders, rock climbing, the riding of horses or other animals, clam digging, pleasure driving of off-road vehicles, snowmobiles, and other vehicles, boating, kayaking, canoeing, rafting, nature study, winter or water sports, viewing or enjoying historical, archaeological, scenic, or scientific sites, without charging a fee of any kind therefor, shall not be liable for unintentional injuries to such users.

(2) Except as otherwise provided in subsection (3) or (4) of this section, any public or private landowner or others in lawful possession and control of any lands whether rural or urban, or water areas or channels and lands adjacent to such areas or channels, who offer or allow such land to be used for purposes of a fish or wildlife cooperative project, or allow access to such land for cleanup of litter or other solid waste, shall not be liable for unintentional injuries to any volunteer group or to any other users.

(3) Any public or private landowner, or others in lawful possession and control of the land, may charge an administrative fee of up to twenty-five dollars for the cutting, gathering, and removing of firewood from the land.

(4)(a) Nothing in this section shall prevent the liability of a landowner or others in lawful possession and control for injuries sustained to users by reason of a known dangerous artificial latent condition for which warning signs have not been conspicuously posted.

(i) A fixed anchor used in rock climbing and put in place by someone other than a landowner is not a known dangerous artificial latent condition and a landowner under subsection (1) of this section shall not be liable for unintentional injuries resulting from the condition or use of such an anchor.

(ii) Releasing water or flows and making waterways or channels available for kayaking, canoeing, or rafting purposes pursuant to and in substantial compliance with a hydroelectric license issued by the federal energy regulatory commission, and making adjacent lands available for purposes of allowing

viewing of such activities, does not create a known dangerous artificial latent condition and hydroelectric project owners under subsection (1) of this section shall not be liable for unintentional injuries to the recreational users and observers resulting from such releases and activities.

(b) Nothing in RCW 4.24.200 and this section limits or expands in any way the doctrine of attractive nuisance.

(c) Usage by members of the public, volunteer groups, or other users is permissive and does not support any claim of adverse possession.

(5) For purposes of this section, the following are not fees:

(a) A license or permit issued for statewide use under authority of chapter 79A.05 RCW or Title 77 RCW;

(b) A pass or permit issued under RCW 79A.80.020, 79A.80.030, or 79A.80.040; and

(c) A daily charge not to exceed twenty dollars per person, per day, for access to a publicly owned ORV sports park, as defined in RCW 46.09.310, or other public facility accessed by a highway, street, or nonhighway road for the purposes of off-road vehicle use.

Passed by the House February 9, 2012.

Passed by the Senate February 27, 2012.

Approved by the Governor March 7, 2012.

Filed in Office of Secretary of State March 7, 2012.

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## CHAPTER 16

[House Bill 2247]

### K-12 SCHOOLS—MEDICATION ADMINISTRATION

AN ACT Relating to expanding the types of medications that a public or private school employee may administer to include topical medication, eye drops, and ear drops; and amending RCW 28A.210.260 and 28A.210.270.

Be it enacted by the Legislature of the State of Washington:

**Sec. 1.** RCW 28A.210.260 and 2000 c 63 s 1 are each amended to read as follows:

Public school districts and private schools which conduct any of grades kindergarten through the twelfth grade may provide for the administration of oral medication, topical medication, eye drops, or ear drops of any nature to students who are in the custody of the school district or school at the time of administration, but are not required to do so by this section, subject to the following conditions:

(1) The board of directors of the public school district or the governing board of the private school or, if none, the chief administrator of the private school shall adopt policies which address the designation of employees who may administer oral medications, topical medications, eye drops, or ear drops to students, the acquisition of parent requests and instructions, and the acquisition of requests from licensed health professionals prescribing within the scope of their prescriptive authority and instructions regarding students who require medication for more than fifteen consecutive school days, the identification of the medication to be administered, the means of safekeeping medications with special attention given to the safeguarding of legend drugs as defined in chapter