H B 494

HOUSE COMMITTEE REPORT

(9)
Date Referred: February 9, 1990 FURTHER REFERRALS:

JUDICIARY

Date of Committee Action: 4/18/90

The RESOURCES Committee considered: HB 494

HOUSE BILL NO. 494 IMMUNITY: RECREATIONAL LAND USE INJURIES

"An Act relating to civil liability for injuries resulting from recreational use of land."

RECOMMENDATIONS:

[ ] be replaced with _____ [ ] the same title
[ ] a new title

[ ] have attached amendment(s)

[✓] do pass

[ ] do not pass

[ ] no recommendation

[ ] individual recommendations

[ ] additional referral to the _____ Committee

ADOPTS: _____ letter of intent

ATTACHES NEW FISCAL NOTE(s): (Dept)

[ ] fiscal impact_____
[ ] zero fiscal note_____
[ ] zero with analysis_____

APPROVES PREVIOUS: (Date/Dept)

[ ] fiscal note(s) _____
[ ] zero fiscal note(s)_____
[ ] zero fn/analysis _____

SIGNING DO PASS:

SIGNING: (Check approp. column)

	Do Not Pass	No Rec	Amend
		X	
		X	

Chairman's Signature

STATE OF ALASKA
1989 LEGISLATIVE SESSION

BILL VERSION: HB 494
PUBLISH DATE: _____

FISCAL NOTE

REQUEST:

Revision Date: 4/18/90
Title: IMMUNITY: RECREATIONAL LAND USE INJURIES
Sponsor: Rep. Menard
Requestor: House Resources Committee

Agency Affected: All Agencies
BRU: _____
Components: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
PERSONAL SERVICES	-0-	-0-	-0-	-0-	-0-	-0-
TRAVEL	-0-	-0-	-0-	-0-	-0-	-0-
CONTRACTUAL	-0-	-0-	-0-	-0-	-0-	-0-
SUPPLIES	-0-	-0-	-0-	-0-	-0-	-0-
EQUIPMENT	-0-	-0-	-0-	-0-	-0-	-0-
LAND & STRUCTURES	-0-	-0-	-0-	-0-	-0-	-0-
GRANTS, CLAIMS	-0-	-0-	-0-	-0-	-0-	-0-
MISCELLANEOUS	-0-	-0-	-0-	-0-	-0-	-0-
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL	-0-	-0-	-0-	-0-	-0-	-0-
REVENUE	-0-	-0-	-0-	-0-	-0-	-0-

FUNDING: (Thousands of Dollars)

GENERAL FUND	-0-	-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS	-0-	-0-	-0-	-0-	-0-	-0-
OTHER	-0-	-0-	-0-	-0-	-0-	-0-
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS:

FULL-TIME	-0-	-0-	-0-	-0-	-0-	-0-
PART-TIME	-0-	-0-	-0-	-0-	-0-	-0-
TEMPORARY	-0-	-0-	-0-	-0-	-0-	-0-

ANALYSIS: (Attach a separate page if necessary)

Prepared by: House Resources Committee
Division: Representative Curt Menard
Phone: 4944
Date: 4/19/90

Approved by Commissioner: _____ Date: _____
Agency: _____

Distribution (by preparer):
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

STATE OF ALASKA
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

POUCH V STATE CAPITOL
JUNEAU ALASKA 99811
907 465 3800

New not yet
1/30/90
deadline
for other states
statutes

MEMORANDUM November 24, 1989

SUBJECT: Immunity for recreational land use (Work Order No. 6-1747)

TO: Representative Curt Menard

FROM: Michael F. Ford MF
Legislative Counsel

Enclosed is a draft bill granting immunity to landowners for certain recreational activities. The law is patterned after a Washington law as you requested.

This kind of immunity law raises numerous issues. After discussion of some of these issues with Bill Siedler of your staff, I thought it best to discuss some of these issues by memo. Under existing law, a landowner has a duty to exercise reasonable care to prevent harm to anyone who enters the owner's land, whether invited or not. Assuming a person has been injured while on another's property, most lawsuits revolve around whether the owner exercised the requisite reasonable care. Depending on the facts in each case, liability may or may not attach to the property owner.

Basically the draft you now have narrows the liability of a landowner who is not charging a fee for recreational use of the land. Liability exists only if the owner intentionally caused the injury, or when a latent artificial condition caused the injury and the owner failed to post warning signs. I noticed that considerable litigation occurred over the Washington law, particularly over what is a "latent artificial condition, known to the landowner." There are other examples currently in the Alaska statutes of this kind of immunity, but the scope of the immunity is much narrower. For example AS 09.65.135 limits liability arising from accidents on ski slopes, AS 09.65.090 limits liability for rendering emergency aid, and AS 09.65.097 limits liability for emergency veterinary care. Also there are a number of bills presently pending before the legislature that would

extend immunity for civil liability to specific groups or in specific situations. Two may be of particular interest, SB 69, limiting the liability of zoos and zoo operators, and SB 229, limiting the liability of the state and municipalities for hazardous recreational activities.

It is very difficult to predict the practical effect of a bill granting immunity from civil liability. You can be sure that there will be substantial litigation over the scope of the immunity, by those persons who seek to recover compensation for their injuries. Please contact me if you have further questions.

MFF:lmb:mi
L8/063

Enclosure

Alaska State Legislature

Legislative Research Agency

P.O. Box Y
Juneau, AK 99811-3100
Phone: (907) 465-3991
Fax: (907) 463-3351

February 2, 1990

MEMORANDUM

TO: Representative Curt Menard

ATTN: Johanna Munson

FROM: Glenn Gray GG
Legislative Analyst

RE: Recreational Liability Laws
Research Request 90.187

You asked for a review of laws in other states which limit the liability of public or private landowners for recreational accidents. You also requested a review of case law regarding these statutes.

Every state, including Alaska, has some kind of legislation limiting liability regarding recreational use of public or private land. The first section of this memorandum provides background information on this topic. The second section summarizes the similarities and differences among these statutes. The third section addresses recent case law. The last section of this memorandum includes a summary of problems concerning recreational use statutes and a brief discussion of model legislation intended to alleviate these problems.

Background

Recreational use statutes were first adopted in the 1960s to respond to a growing trend of landowners closing their land to recreational use. The purpose of the laws was to reduce liability of these landowners and thereby encourage them to keep their property open to hunters, hikers and other recreational users. The Outdoor Recreation Review Commission promoted the concept of limited liability for recreational use of private land, and in 1965 the Council of State Governments supported model legislation (see Attachment A). Thirty states responded by passing legislation. During the 1970s the National Rifle Association and the National Association of Conservation Districts recommended that more states adopt similar statutes. Eighteen additional states passed recreational use legislation during the 1970s and one more state passed legislation during the 1980s.

Several groups have supported model legislation to respond to problems raised by recent civil suits. The American Motorcyclist Association (AMA), the American Forestry Association and the American Legislative Exchange Council (ALEC) have recommended that states amend their current laws to provide more

consistency and to deal with issues raised by case law. This will be explained further at the end of this memorandum.

Comparison of Recreational User Laws

While recreational use statutes have some basic similarities, they differ in some respects and in interpretation by the courts. Recreational use statutes usually apply to general recreational uses, but some states also have additional laws relating to specific kinds of recreation such as snowmobiling, skiing and motorcycling. This portion of the memorandum will address general similarities and differences among the statutes. A more detailed analysis was commissioned by the AMA in 1988 (see Attachment B). The AMA study also includes legislation from all states except Alaska. Attachment C contains recreation liability statutes from Alaska.

There are three basic similarities among recreational liability legislation. First, the statutes usually apply to private landowners who do not levy a fee for use of their land. Second, the use must be recreational in nature and; third, limits to liability are generally only for normal negligence and do not cover the landowner for willful and malicious acts or gross negligence. These common components will be discussed separately below.

Most of the recreational use statutes target private landowners who do not operate commercial recreational facilities. Income derived from concessions often bars the landowner from immunity. Although certain kinds of income are permitted in some states without jeopardizing coverage by recreational use laws, states such as Alabama, Louisiana, Minnesota and Texas clearly exclude landowners who receive a profit.[1] Although in the past these statutes were rarely applicable to state and local entities, this appears to be changing. Through legislative provisions and case law, protection has sometimes been extended to state and local governments, non-profit groups and utility companies provided that the use of the land is free. The Federal Tort Claims Act permits state laws to be applied to federal land and therefore state recreational use laws are generally recognized in federal courts. Thus, the concept of a landowner now tends to be interpreted broadly, in some cases even to include those who lease land or possess easements. Some exceptions to this generalization will be noted in the next section.

Recreational liability statutes are generally applicable to outdoor recreation users in a natural setting. The laws in some states, however, have been

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[1]The New Hampshire recreational use statute applies to agricultural landowners who charge a fee for people to pick their own produce. Washington law allows landowners to collect a fee of no more than ten dollars for cutting firewood, and Wisconsin law allows the landowners to derive an income of up to $500 annually and retain the liability protection.

applied to developed parks and indoor recreational facilities. Most states define recreation broadly, but some name specific types of recreation covered by the law. Michigan broadened its statute in 1971 by deleting "outdoor" before "recreation." The extent of a landowner's liability depends on whether the entrant is an invitee, licensee or trespasser. While a landowner is responsible for most kinds of hazards for an invitee, recreational use laws permit more limited liability when the land is open to general recreational users free of charge.

Most statutes absolve the landowner from normal negligence. Unless there is willful, wanton or malicious misconduct, the landowner is not liable for accidents which occur on his or her land. Prior knowledge of a hazard without sufficient action to warn recreational users or prohibit an activity can be construed as exceeding normal negligence.

Case Law Relating to Recreational Liability Statutes

An increasing number of civil suits have challenged the recreational use statutes during the past five years. The courts have generally upheld the major provisions of state recreational use laws but have changed interpretations of how these laws are applied.

Constitutional questions regarding limitation of a recreational user's right for redress have been posed. Laws in at least ten states have been upheld.[2] Only one state, North Carolina, has repealed a recreation liability law because of its constitutional flaws. North Carolina now has recreational liability laws only for trespassing hunters and trail users.

A brief discussion of case law follows. A more detailed analysis may be found in the 1988 AMA study (see Attachment B). Specific cases relating to recreational liability laws are discussed in the *Recreation and Parks Law Reporter*. Attachment D contains a summary and individual synopses of these cases.

Case law has interpreted recreational liability laws to clarify what kinds of landowners are covered, what kinds of uses are covered and the kinds of fees that can be levied. Whether a defendant is guilty of willful or wanton misconduct is decided on a case-by-case basis.

Although recreational liability laws are almost always applicable to private landowners, coverage for other types of landowners vary from state to state.

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[2]California, Connecticut, Idaho, Indiana, Kentucky, Louisiana, Michigan, Minnesota, North Dakota, and Wisconsin have all upheld the constitutionality of their recreational liability laws.

Case law has been used to determine if governmental entities are covered by recreational liability laws. As a result of court decisions, these statutes are not applicable to state lands in Florida and Indiana but are applicable on state lands in states such as Idaho, Ohio and Pennsylvania. Courts have determined that local governments do not enjoy the protection of state recreational use laws in California, Florida, Minnesota, New Jersey, Washington, and Wisconsin. Courts have also found that state recreational use laws are applicable to lands or waters managed by specific federal agencies in Alabama, Arkansas, California, Colorado, Connecticut, Florida, Illinois, Indiana, Kentucky, Nevada, North Dakota, Oregon, Pennsylvania, South Carolina, Virginia, Washington, Wisconsin, and Wyoming. The recreational use statute in Idaho was found to be applicable on Indian reservation lands.

Recreational liability laws are generally applicable to natural undeveloped lands, but case law has extended this coverage to other types of areas. These statutes have been found to be germane in developed recreation areas in such states as California, Connecticut, Illinois, Kansas, Kentucky, Nebraska, Michigan, Virginia, and Washington. A New York court found that the state recreational liability statute was not applicable to a developed and supervised city park. Recreational use statutes have also been utilized during court cases concerning accidents on roadways. A North Dakota U.S. Court of Appeals found that the federal government's failure to post a sign warning about a dangerous curve could be considered willful misconduct under the state recreational use statute. The Louisiana statute was found applicable to boat ramps and in one case, playground bleachers, even though the act specifically mentions only outdoor recreation. A 1985 appeals court in Michigan extended limited liability protection to homeowners' backyards.

The question of what fees may be levied by a landowner before he surrenders protection from the law has also been addressed in case law. The general rule regarding prohibition of collecting fees has a few exceptions. A Georgia appeals court found that revenues generated by a non-profit organization did not preclude the landowner from using the recreational use statute. Fees for services are permitted according to Ohio case law but entrance fees are not. A Washington State court found that the fact a concessionaire was renting equipment in a national park did not preclude use of the state's recreational use statute.

Recent Model Legislation

Several problems with existing recreational use statutes have prompted an effort to encourage states to amend their current statutes. These problems include: exclusion of some recreational activities because of an overly restrictive definition of recreation in the statutes; differences in applicability to private and public landowners; inapplicability of laws to those who receive compensation to maintain trails and improve access; and costs associated with defense by landowners to frivolous claims.

Model legislation has been drafted by the American Motorcyclist Association (AMA) and the American Legislative Exchange Council (ALEC) to address these problems and to provide more uniformity between laws in the various states. Broadening the recreation definition would enable statutes to apply to new types of recreation not yet popular. Uniform application of laws to all landowners including public and private entities would provide more equitable treatment. The model legislation would also permit landowners to accept compensation for maintenance or to permit other kinds of agreements.[3] The model legislation would also permit landowners to collect court fees in the event of frivolous or groundless claims against them. Attachment E contains model legislation recommended by AMA and ALEC.

I hope that this memorandum answers your questions. Please contact me should you desire additional information.

Attachments

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[3]New Hampshire currently permits a lower property tax assessment to landowners who agree to open their land to recreational users.

CITY OF VALDEZ, ALASKA

RESOLUTION NO. 9004

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF VALDEZ, ALASKA, RECOMMENDING ADOPTION OF SENATE BILL 229 AN ACT RELATING TO GOVERNMENT LIABILITY FOR DAMAGE OR INJURY RESULTING FROM HAZARDOUS RECREATIONAL ACTIVITIES.

WHEREAS, the City of Valdez urges the State to exercise its responsibility to provide a broad spectrum of recreation opportunities for all Alaskans; and

WHEREAS, certain common recreational activities have an inherent risk of injury which under current state statutes limit the State and its local governments in their ability to provide recreational opportunities to its citizens; and

WHEREAS, municipalities are having to reduce or close recreational services because liability insurance is either unavailable or too expensive; and

WHEREAS, voluntary organizations help provide communities with a broad spectrum of recreational activities not being offered by the public sector, and establishing a cooperative relationsh' o under the local government would enable them to provide progr s they might not otherwise be able to provide; and

WHEREAS, the President's Commission on Americans Outdoors has recommended that the standard of care for which an organization or government should be responsible in providing recreational opportunity be shifted from "mere negligence" to "gross negligence."

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF VALDEZ, ALASKA, that the City of Valdez urges the Alaska State Legislature to adopt an act relating to government liability for damage or injury resulting from hazardous recreational activities.

PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF VALDEZ, ALASKA, this 16th day of January, 1990.

CITY OF VALDEZ, ALASKA

Dennis Holtz, Mayor Pro Tem

ATTEST:

Jeanne Donald, City Clerk

Victory

Alpine Camp . Teepee Camp . Ranch Camp . Wilderness Camp
Conference Center

November 10, 1989

Rep. Curt Menard
351 W. Swanson Ave., Ste. 1
Wasilla, Alaska 99687

Dear Curt:

Enclosed you will find a copy of a Washington State law that we feel would be extremely effective here in Alaska if made a part of our statutes.

This law would be especially helpful for guides and camps such as ourselves that have horse arenas and riding clubs. We know there are many people in Alaska who own and maintain horses expressly for the purpose of being used by other people.

We appreciate your consideration in proposing such a bill for Alaska in the days to come.

Sincerely,

Stan Gillespie
Camps Director

SG:cr

Enclosure

cc: Jalmer Kertula
Ronald Larson
Loren Leman

SRC, Box 8392, Palmer, Alaska 99645 Phone: (907)745-4203

A Ministry of Arctic Missions, Inc.

AMERICAN MOTORCYCLIST ASSOCIATION

P.O. Box 6114, Westerville, Ohio 43081-6114

Telephone (614) 891-2425
Telex: 245392; Fax: (614) 891-5012

March 8, 1990

The Honorable Curt Menard
Alaska House of Representatives
Chairman, Resources Committee
State Capitol
Juneau, AK 99811

Dear Representative Menard:

Many members of the American Motorcyclist Association (AMA) depend upon accessibility to land for their recreation. We were therefore pleased to see the introduction of House Bill 494, dealing with civil liability for recreational injury. Alaska is one of only two states in the nation which does not now have such a statute.

It is our understanding that due to other pressing concerns, the legislature probably will not have the opportunity to review the bill this year. We are sympathetic to the factors which have caused the Resources Committee much overtime work this session. However, we do believe that a landowner hold-harmless statute would benefit the state.

The aspects of such legislation are varied. To assist the work of the committee when considering this bill, or a similar bill in a subsequent session, please find enclosed the following:

- A compilation of national hold-harmless statutes by AMA. This contains statutes and innovations current through 1988.
- An article I wrote for AMERICAN FORESTS magazine.
- A copy of our model statute.

If I can be of any assistance in this process, please feel free to contact me.

Sincerely,

Eric Lundquist
Legislative Affairs Specialist
Government Relations

EL/ts

REVISION OF SEPTEMBER, 1988

Suggested Legislation

(Title, enacting clause, etc.)

Section 1. (Legislative Purpose.)
The purpose of this act is to encourage owners of land to make land and water areas available to the public for educational and recreational purposes by limiting their liability toward persons entering thereon for such purposes; by ensuring that through making one's land available for such purposes an owner need not be subjected to waste or a financial burden thereby and to provide a mechanism whereby owners of land may be compensated for expenditures incurred in defense against frivolous or purposeless suits arising under this act.

Section 2. (Definitions.)
In this act, the following words have the meanings indicated:

(a) "Charge" means price or fee asked for services, entertainment, recreation performed or products offered for sale on land or in return for invitation or permission to go upon land, except as excluded herein.

(b) "Educational Purpose" means any activity undertaken as part of a formal or informal educational program, and viewing historical, natural, archeological or scientific sights.

(c) "Land" means all real property, land and water, and all structures, fixtures, equipment and machinery thereon.

(d) "Owner" means any individual, legal entity or governmental entity and any employee or agent thereof, that has any fee, security, leasehold or possessory interest in land, or in control of the premises.

(e) "Recreational Purpose" means any activity undertaken for recreation, exercise, education, relaxation, refreshment, diversion or pleasure.

Section 3. (Exclusions.)
As used in this Act, the word "charge" shall not mean:

(a) Unless otherwise agreed in writing, any lease, dedication, license or easement, or the proceeds thereof, by an owner of land to a non-profit organization or governmental entity for educational or recreational purposes.

(b) Any action taken by a person, legal entity, non-profit organization or governmental entity other than the owner, or any monetary contribution made, in either event whether or not sanctioned or solicited by the owner, the purpose of which is

to (1) improve access to land for educational or recreational purposes, (2) remedy damage to land caused by educational or recreational use, or (3) provide warning of hazards on, or remove hazards from, land used for educational or recreational purposes.

(c) Unless otherwise agreed in writing or otherwise provided in the tax code, any property tax abatement or relief received by the owner from the state or local taxing authority in exchange for the owner's agreement to open the land for educational or recreational purposes.

(d) Unless otherwise agreed in writing, any contribution in kind, services or cash paid to reduce or offset costs and eliminate losses from educational or recreational use.

Section 4. (Duty of Care of Landowner.)
Except as specifically recognized by or provided in this Act, an owner of land owes no duty of care to keep the premises safe for entry or use by others for educational or recreational purposes, or to give any warning of a dangerous condition, use, structure or activity on such premises to persons entering for such purposes.

Section 5. (Limitation of Liability.)
Except as specifically recognized by or provided in this Act, an owner of land who either directly or indirectly invites or permits without charge any person to use such land for educational or recreational purposes does not thereby:

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

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

(c) Assume responsibility for or incur liability for any personal injuries, deaths or property damages caused by an act or omission of such persons, or

(d) Assume responsibility for or incur liability for injury to such person or property caused by any natural or artificial condition, structure or personal property on the land.

Section 6. (Warning Signs.)
None of the following shall create liability on the part of an owner of land where there is no other basis for such liability:

(a) The installation of a sign or other form of warning to guard or warn against a dangerous condition, use, structure or activity,

(b) Any modification made for the purpose of improving the safety of others, or

(c) The failure to maintain or keep in place any sign, other form of warning or modification made to improve safety.

Section 7. (Willful or Malicious Conduct.)
Nothing in this Act limits in any way any liability which otherwise exists:

(a) For willful or malicious, but not mere negligent, failure to guard or warn against an ultrahazardous condition, structure, personal property, use or activity, actually known to such owner to be dangerous, or

(b) For injury suffered in any case where the land is used principally for a commercial, for-profit, educational or recreational enterprise, existing law governing such use is not changed by this Act except as provided herein.

Section 8. (Construction.)
This Act does not:

(a) Grant or create a right for any person to go on the lands of another without the direct or indirect permission of the landowner,

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

(c) Relieve any person using the land of another for educational or recreational purposes from any obligation which he may have in the absence of this Act to exercise care in the persons use of such land and in the persons' activity thereon or from the of the legal consequences of failure to employ such care, or

(d) Prevent an owner of land from placing reasonable restrictions on the time, place and manner of educational or recreational purposes for which the land may be used.

Section 9. (Complaint - Form.)
A cause of action, the defense for which may lie within this Act, shall, in one of its counts, state that the cause of action is not within this Act.

Section 10. (Answer - Form.)
An answer to a cause of action, one defense for which lies within this Act, shall, in one of its counts, state that the cause of action is within this Act.

Section 11. (Required Joinder.)

(a) Except as otherwise provided by law, any cause of action, the defense for which may lie within this Act, shall join as defendants, all those who may be considered as an "owner", under this Act, of the land in which the cause of action arose,

Landowners Grapple with Liability Questions

A third generation of state statutes might finally convince forest owners to open more land to American recreationists.

By ERIC J. LUNDQUIST

The fondest memories of our youth usually conjure up carefree outdoor adventures. Mine are of a stream that led to Marley Creek near Baltimore—gathering fossils on a secluded Calvert Cliffs beach, bushwhacking down an old fire trail, and learning to ride a motorcycle in an old quarry. There was camping with my scout troop at Broad Creek, building forts in a small grove of trees near home, and later on, moonlight walks in nearby fields with my girlfriend.

It didn't occur to me then, but now I realize that those pleasures were possible only because of the tolerance or graciousness of a benevolent landowner. Very few of my outdoor pursuits occurred in public parks or other places set aside by the government for recreation.

We want our children to enjoy some of the same activities we so fondly recall. But today most private lands are posted with NO TRESPASSING signs and are no longer available to adventuresome youth.

Michael Eth

Signs barring access to private property are ubiquitous, but laws guarding against liability may eliminate one of the reasons.

Not all loss of access to private land has resulted from the incessant onslaught of tract homes across the landscape. We have traditionally been a litigious society, and the fear of lawsuits has gone a long way in convincing landowners to post their property.

The states have recognized this problem as well as their own inability to provide lands for recreational use. Therefore, most states have passed so-called "hold-harmless" laws in order to provide some protection to landowners from suits arising out of injuries received by recreational users of their land. Much like a contract, hold-harmless agreements arrange for one party to assume the liability inherent to a situation, relieving the other party of that risk.

The laws have been passed in two major pushes. The first of these occurred in the mid-60s and was based upon a model act written by the Council of State Governments. Thirty states responded and enacted hold-harmless laws.

The second generation of laws occurred in the '70s, when an additional 18 states passed bills in response to efforts by various sporting groups. Since that time, our nation has had an absolute explosion of civil suits—many arising from recreational use of private lands. There has also been a perceived rise in the amount of damages awarded.

At the American Motorcyclist Association (AMA), barely a day goes by when we don't hear from landowners who want to let people use their land but are afraid of liability.

Liability is also a concern of the American Forestry Association, because many of its members are forest landowners. Two years ago, liability was one reason AFA's Trail Riders of the Wilderness program (*now renamed American Forest Adventures; see page 50*) was disbanded for a year.

Every day at AMA we get calls from recreationists. Areas they once were able to use are now closed off or posted, and they don't know where else to go. In many cases, we find that knowledge of the state's hold-harmless laws can go a long way in solving the problem.

It's unfortunate, but hold-harmless laws are a well-kept secret.

For some reason, the existing hold-harmless statutes have never been publicized and are used mainly as court-

Eric J. Lundquist is a legislative affairs specialist for the American Motorcyclist Association.

room maneuvering tools rather than for their original purpose of convincing property owners to make land available for recreation. Most landowners don't know about them. From our contacts and research, it would appear that their lawyers and insurance agents don't know about the laws either. Their advice to landowners most often is to post land to keep people away.

The AMA therefore commissioned a study on the hold-harmless laws by noted recreation law expert Betty van der Smissen. The study, published last June, contains a compilation of all current landowner hold-harmless laws.

It also contains commentary on the basic clauses of most of the laws as well as several helpful charts noting each state's coverages. The chart on this page reviews several of the basic requirements and conditions of the state acts.

We are well aware that AMA members are not the only recreational users facing the problem. As a charter member of the American Recreation Coalition (ARC), a network of recreation-oriented groups, we've found that horse owners, anglers, hikers, campers—in short, almost every recreational group—are running into shrinking land access. The dark cloud of lawsuit anxiety hovers over all.

A report to the President's Domestic Policy Council by the Task Force on Outdoor Recreation Resources and Opportunities in March 1988 underscored the problems that fear of lawsuit imposes upon landowners who might otherwise provide access to land.

As a result of this report, and at the urging of the ARC, a loose coalition of associations of owners and users of land has been formed. This coalition, the Landowner and Recreationist Alliance (LRA), met formally for the first time last June 14 at the Washing-

CURRENT LIABILITY LAWS AND COVERAGES

State	Year Enacted	Covers Public Lands	Covers Landowners Leasing Land for Government	Other Charges (i.e. firewood charge, parking fees) Allowed	Landowner Consent Required
Alabama	1965	X		X	
Alaska	None				
Arizona	1983				
Arkansas	1965		X	X	
California	1963	X			
Colorado	1963	X			
Connecticut	1971		X		X
Delaware	1953		X		
DC	None				
Florida	1963				
Georgia	1965				X
Hawaii	1969		X		
Idaho	1976	X	X		X
Illinois	1965		X		
Indiana	1969				
Iowa	1967		X		
Kansas	1965		X		
Kentucky	1968	X	X		
Louisiana	1964	X			
Maine	1979		X		
Maryland	1957		X		X
Massachusetts	1972		X		
Michigan	1974	X			X
Minnesota	1961	X			
Mississippi	1978				X
Missouri	1983	X			
Montana	1965				
Nebraska	1965	X	X		
New Hampshire	1961	X	X		
New Jersey	1968	X	X		
New Mexico	1967				X
New York	1963	X			
North Carolina	None				
North Dakota	1965				
Ohio	1963	X			
Oklahoma	1965		X		
Oregon	1971	X	X		
Pennsylvania	1965	X	X		
Rhode Island	1978		X		X
South Carolina	1962		X		
South Dakota	1966/67		X		
Tennessee	1963	X	X		
Texas	1965			X	
Utah	1979	X	X		
Vermont	1967				
Virginia	1950		X	X	
Washington	1967			X	
West Virginia	1965		X		
Wyoming	1965	X	X		

ton Press Club in our nation's capital.

The meeting emphasized the severity of the problem. Bob Brantley, the immediate past president of the International Association of Fish and Wildlife Agencies, related that Florida lost 10 percent of private lands open to the general public last year alone.

Roy Muth of the International Snowmobile Industry Association stressed that the continued integrity of its private-land-dependent 200,000-mile trail system was in doubt. Dennis Stolte of the American Farm Bureau Federation added that, "Neither love nor money can get insurance policies anywhere to protect the small landowner from injuries to recreational users."

Though AFA is not a member of the newly formed coalition, Executive Vice President Neil Sampson said that the Association is following the work of the coalition with great interest, since its topic is of primary concern to forest landowners.

The alliance determined that the solution to this problem must take two directions. First, knowledge of the existing hold-harmless laws must be more broadly disseminated. Second, the current laws must be strengthened to provide greater protections.

The American Motorcyclist Association is at the forefront of both prongs of this attack. We have published our study of the existing hold-harmless laws and made it available to the public.

We are also working to strengthen the existing laws. Our review of these existing laws has pointed out many of their deficiencies. I was given the task of translating the solutions into a third generation of hold-harmless legislation.

A revised model act will embrace the best of old and new.

Model legislation has been developed for several purposes. One is to provide greater uniformity among the states for economic, social, or political reasons. Other considerations are avoiding conflicts when the laws of several states are involved in a single case and providing reciprocal rights and remedies between the citizens of different states.

Most model legislation is drafted in response to emerging social needs by an individual or group with an interest in the matter. The model is then presented to one or more organizations that develop model laws.

These organizations, such as the National Conference of Commissioners on Uniform State Laws and the American Legislative Exchange Council, further research the proposed model and refine it in such areas as need, content, and constitutionality. With their approval, the model is then presented to state legislators for action. The individual states are, of course, free to approve or disapprove use of the act.

Many of the more modern types of recreational activities are not included in existing statutes. As new modes of recreation become popular, coverage either remains non-existent or has to wait for the vagaries of the legislative process.

For example, the New York statute includes such activities as canoeing, hanggliding, and snowmobiling. The law did not include ice-sailboating, and a suit against a lakeside landowner was allowed to proceed. The first proposed change in the law would therefore broaden the definition of recreational use. Instead of the current lists of permitted uses, the new model law would broadly include any conceivable recreational activity.

Government entities are not provided coverage under many existing statutes. We have come a long way since the end of government immunity to lawsuits. However, we believe that in the interest of fairness, and to encourage governments to explore appropriate recreational activities, governments should be treated under the statutes in the same manner as the individual. Therefore, the proposed act would extend protection to state, local, and federal governments.

Opening land to the

Barry Nehr

Established recreational activities may be more difficult to pursue on private property with loss of habitat from development and land indiscriminately posted against trespassers.

The stuff memories are made of—exploring the wonders of nature through the eyes of a child—need not end with our generation.

recreational user is not always without expense to the landowner. Often provision must prudently be made for parking, erosion control, fencing, and trail maintenance. Unfortunately, most current laws provide protection only when nothing is given to the landowner for use of the land.

Some of the states extend protection to landowners when land is leased to the government for recreational purposes, and one or two states provide for some tax relief in exchange for public hunting and fishing access.

The LRA does not believe that this goes far enough. The new model act would extend recreational lease coverage to nonprofit organizations and allow tax abatement as an incentive.

The New Hampshire "Current Use" statute is a good example of a tax-incentive program. Lands open for gratuitous recreational uses are assessed at lower values than similar lands held for speculation.

In addition, the new act would allow provision for fees to be dedicated to improving access, preventing or correcting damage caused by recreational uses, and warning about or removing user hazards in the land. Still excluded from the model act are commercial or other operations intended to generate a profit.

Many of the state laws include some provision requiring the expressed permission of the landowner, sometimes in writing, before coverage is granted. This may have the effect of requiring the landowner to act as a permanent gatekeeper, thereby discouraging recreational uses.

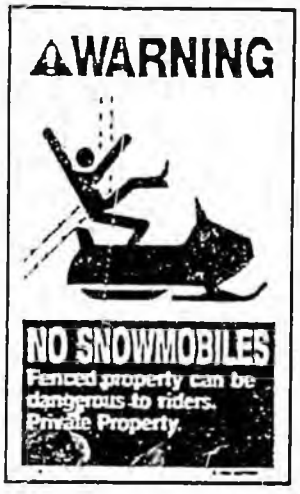
Permission need not always be so formal. The old model act did not require such stringent wordings, and the new act will maintain the old provision regarding landowner permission.

Landowners covered under the old act are not required to erect warning signs or to otherwise protect users from injury. However, if they do, the courts may impose liability upon the landowner.

This is an old common-law anomaly and has resulted in the enactment in many states of "Good Samaritan" laws, which encourage medical personnel to help any injured person they may encounter.

Similarly, we believe that warning of danger or trying to otherwise protect users from injury should be encouraged. Idaho has successfully made a recent amendment to its law allowing the use of warning signs or other safety measures without fear of liability. The Idaho provision will be included in the new model act.

The current laws have been successful in protecting some landowners. Published case citations involving private landowners are rare because many never get to the point of trial.



Some sign companies, such as Nutron Nameplate Inc. (Box 477, N. Olmsted, OH 44070-0477), help the landowner regulate land use without complete restriction. The Landowner and Recreationist Alliance encourages the use of such warning and safety signs.

Among the more successful recorded users of the statutes is the Tennessee Valley Authority. With holdings in several states, TVA has achieved a very good track record of successful defenses using the current statutes in actions ranging from injuries received in a fall while fishing to an automobile collision.

However, even successful defense can impose great costs. In many states, the courts are reluctant to award costs to defendants, and in others the court may not award costs unless provided by statute. The new model act includes a provision to award costs to successful defendants when suit has been brought for frivolous purposes.

Access to land for recreational purposes continues to be a growing need. Many opportunities are continuously lost due to the expansion of our cities and the prohibition of uses on some government lands. Private lands are necessary to fill the gaps.

It is hoped that greater dissemination of information on current hold-harmless laws as well as the passage by the states of statutes based on the new model act will provide landowners some added incentive to open their land to users.

The American Legislative Exchange Council has included the Landowner Recreationist Alliance act in its approved list of model acts for consideration by the states. I hope it helps to make for more fond memories of recreational adventure. AF

nature. Expanding the enumerated list of recreational activities to include sports, hobbies, diversions, and any other recreational activity with language from the Colorado effectively rejects this narrow construction of the statute.

Entrance Fees not a "Charge": Ordinarily, recreational use immunity is lost if a fee is charged for the use of the premises. Including language from the Wisconsin statute, expressly excludes entrance fees from this statutory definition of "charge" as an exception to recreational use immunity.

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

Section 7. Nothing in this act shall be construed to:

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

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

Section 8. [Insert effective date.]

Remove Ambiguity from Statute

It has been said that no one should witness how laws or hot dogs are made. Because if you do, you will not be able to stomach either. One of the ways laws are made is to adopt language from similar statutes in other jurisdictions. This is the approach taken in the "cut and paste" public immunity statute described above. In determining whether a particular recreational use statute applies to public entities in a given jurisdiction, state courts will look primarily to the expressed language of the statute. Consequently, the modifications described above are intended to remove any uncertainty or ambiguity that the state legislature intended to confer broad public immunity under an existing recreational use statute.

Expand "Land" definition: Expanding the definition of land to expressly include public land effectively rebuts the original presumption of the model statute that such statutory immunity was intended for private landowners, not governmental units. In addition, the inclusion of references to urban and improved land would reverse the interpretation by some state courts (e.g. New York, New Jersey, Louisiana) that this statutory immunity is limited to rural or unimproved land. Further, the statutory definitions of "owner" and "person" have been modified with language from recreational use laws in Wisconsin and Colorado to expressly include governmental units.

Expand Scope of "Recreational Purpose": Some jurisdictions, most notably Louisiana, have limited the scope of recreational use immunity to activities traditionally conducted in the "true outdoors," i.e. primarily rural in

HOBBY, DIVERSION, OR OTHER SPORTS OR OTHER RECREATIONAL ACTIVITY SUCH (Colorado) the following, or any combination thereof: hunting, fishing, CAMPING (Colorado), swimming, boating, camping, picnicking, hiking, HORSEBACK RIDING, SNOWSHOEING, CROSS COUNTRY SKIING, BICYCLING, RIDING OR DRIVING MOTORIZED RECREATIONAL VEHICLES, SWIMMING, ROCK CLIMBING... OR ENGAGING IN ANY OTHER FORM OF SPORTS OR OTHER RECREATIONAL ACTIVITY (Colorado), INCLUDING PRACTICE AND INSTRUCTION IN ANY THEREOF (New Jersey), pleasure driving, nature study, water skiing, winter sports, and viewing or enjoying historical, archaeological, scenic, or scientific sites, OR OTHER SIMILAR ACTIVITIES UNDERTAKEN FOR RECREATION, EXERCISE, EDUCATION, RELAXATION, OR PLEASURE ON LAND OWNED BY ANOTHER (Missouri). IT SHALL INCLUDE ENTRY, USE OF AND PASSAGE OVER PREMISES IN ORDER TO PURSUE THESE ACTIVITIES. (Maine).

(d) "Charge" means the admission price or fee asked in return for invitation or permission to enter or go upon the land. However, charge or consideration DOES NOT INCLUDE... THOSE ENTRANCE FEES PAID TO THE STATE, ITS AGENCIES OR DEPARTMENTS, MUNICIPALITIES, OR THE U.S. GOVERNMENT. (Wisconsin)

Section 3. Except as specifically recognized by or provided in Section 6 of this act, an owner of land owes no duty of care to keep the premises safe for entry or use by 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.

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

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

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

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

Section 5. Unless otherwise agreed in writing, the provisions of Section 3 and 4 of this act shall be deemed applicable to the duties and liability of an owner leases to the state or any subdivision thereof for recreational purposes.

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

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

to illustrate the manner in which minor modifications to the 1965 modal statute can broaden the immunity of this legislation to expressly include most public entities. Further, these suggested modifications would extend such immunity to most lands and activities involving public park and recreation agencies. (Modifications to the 1965 model statute appear in italicized capital letters. The state statutes from which this language is derived are also noted in parentheses.)

1965 Model Act as Modified

[Title should conform to state requirements. The following is a suggestion: "An act to encourage landowners to make land and water areas available to the public by limiting liability in connection therewith."]

(Be it enacted, etc.)

Section 1. The purpose of this act is to encourage owners of land to make the land and water areas available to the public for recreational purposes by limiting their liability toward persons entering thereon for such purposes.

Section 2. An used in this act:

(a) "Land" means PRIVATE OR PUBLIC, (Idaho, Washington) land, IMPROVED OR UNIMPROVED (Maine), WHETHER URBAN OR RURAL, (Washington), [including] roads, water, watercourses, private ways and buildings, structures, and machinery or equipment when attached to the realty.

(b) "Owner" means the possessor of a fee interest, a tenant, lessee, occupant or person in control of the premises ,including ANY PRIVATE CITIZEN, A MUNICIPALITY, THE STATE OR THE FEDERAL GOVERNMENT, AND ANY EMPLOYEE OR AGENT OF THE FOREGOING, (Wisconsin).

,OR ANY PUBLIC ENTITY AS DEFINED IN THE (applicable provision of the state code) WHICH HAS AN INTEREST IN LAND, (Colorado).

"PERSON" INCLUDES ANY INDIVIDUAL REGARDLESS OF AGE, MATURITY OR EXPERIENCE, OR ANY CORPORATION, GOVERNMENT OR GOVERNMENTAL SUBDIVISION OR AGENCY, BUSINESS TRUST, ESTATE, TRUST, PARTNERSHIP, OR ASSOCIATION, OR ANY OTHER LEGAL ENTITY, (Colorado).

(c) "Recreational Purpose" includes, but is not limited to, any SPORTS OR RECREATIONAL ACTIVITY OF WHATEVER NATURE UNDERTAKEN BY A PERSON WHILE USING THE LAND, INCLUDING PONDS, LAKES, RESERVOIRS, STREAMS, PATHS, AND TRAILS APPURTENANT THERETO, OF ANOTHER AND INCLUDES, BUT IS NOT LIMITED TO, ANY

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Minnesota:	Minn. Stat. Ann. §§ 87.01-87-026 (1977).
Mississippi:	Miss. Code Ann. § 89-2-1 et seq. (1985).
Missouri:	Mo. Stat. Ann. §§ 537.345-537.347.
Montana:	Mont. Code Ann. §§ 70-16-301-302.
Nebraska:	Neb. Rev. Stat. §§ 37-1001-1008 (1978).
Nevada:	Nev. Rev. Stat. § 41.510 (1979).
New Hampshire:	N.H. Rev. Stat. Ann. § 212:34 (1978).
New Jersey:	N.J. Stat. Ann. §§ 2A:42A-2-42A-5 (West Supp. 1981).
New Mexico:	N.M. Stat. Ann. § 17-4-7 (1978).
New York:	N.Y. Gen. Oblig. Law § 9-103 (McKinney Supp. 1981).
North Carolina:	N.C. Gen. Stat. §§ 113-120.5-120.6 (1975).
North Dakota:	N.D. Cent. Code §§ 53-08-01-06 (1974).
Ohio:	Ohio Rev. Code Ann. 1533.181 (Page 1978).
Oklahoma:	Okla. Stat. Ann. 76, §§ 10-15 (West 1976).
Oregon:	Ore. Rev. Stat. §§ 105.655-105.680 (1979).
Pennsylvania:	Pa. Stat. Ann. tit. 68, §§ 477-1-477-8 (Purdon Supp. 1981).
Rhode Island:	R.I. Gen. Laws §, 32-6-1 to -7.
South Carolina:	S.C. Code §§ 27-3-10-70 (1977).
South Dakota:	S.D. Comp. Laws Ann. § 20-9-5 (Supp. 1979).
Tennessee:	Tenn. Code Ann. §§ 51-801-805 (1977).
Texas:	Tex. Rev. Civ. Stat. Ann. art. 16 (Vernon 1969).
Utah:	Utah Code Ann. §§ 5714-1 to -7.
Vermont:	Vt. Stat. Ann. tit. 10 § 5212 (1973).
Virginia:	Va. Code § 29-130.2 (Supp. 1981).
Washington:	Wash. Rev. Code Ann. §§ 4.24.200-210 (Supp. 1981)
West Virginia:	W. Va. Code §§ 19-25-25-6 (1977).
Wisconsin:	Wis. Stat. Ann. § 2968 (West 1973).
Wyoming:	Wyo. Stat. § 34-19-101-106 (1977).

With minor variations, many of the above cited forty-nine laws adhere to the format of a model statute described below. This model statute, entitled "Public Recreation on Private Lands: Limitations on Liability," appeared in the 1965 edition of Suggested State Legislation from the Council State Governments. To date, state courts in only nineteen jurisdictions have considered directly or indirectly the applicability of these statutes to public entities. Of this number, twelve jurisdictions have extended limited recreational use immunity to public entities. Under the terms of the Federal Tort Claims Act, these statutes are uniformly held applicable to the federal government. (For a further discussion of the applicability of recreational use statutes to public entities, see the "NRPA Law Review" for October and November 1986, and February 1987.)

Perhaps the real policy issue before the National Recreation and Park Association is, therefore, to encourage and help promote the modification of existing recreational use statutes to broaden existing immunity to include public park and recreation agencies. With this objective in mind, I have superimposed language from existing recreational use statutes in various jurisdictions. The purpose of this rather crude "cut and paste" endeavor is

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A "CUT AND PASTE" OF MODEL REC USE LAW TO INCLUDE PUBLIC

James C. Kozlowski, J.D., Ph.D.

At its meeting in Anaheim, California on October 21, 1986, the Board of Trustees of the National Recreation and Park Association endorsed the following policy: "It is the policy of the Trustees of the National Recreation and Park Association to encourage and help promote the enactment of state recreational use statutes." This policy was one of several statements adopted regarding the perceived "liability crisis." Under a recreational use statute, the landowner owes no duty of care to a recreational user on the premises free of charge. Although there is no liability for ordinary negligence, liability will be imposed for willful or wanton misconduct. Willful or wanton misconduct, unlike ordinary negligence, goes beyond mere carelessness; it is more outrageous behavior which demonstrates an utter disregard for the physical well being of others.

Despite the NRPA policy statement, enactment of recreational use statutes is not the real issue. Forty-nine jurisdictions have already enacted recreational use statutes. My research on this topic identified the following state code citations for existing recreational use statutes. To the best of my knowledge, each of these statutes is still good law.

Alabama:	Ala. Code § 15-1.
Arizona:	Ariz. Rev. Stat. Ann. § 3351.
Arkansas:	Ark. Stat. Ann. §§ 50-1101-1107 (1971).
California:	Cal. Civil Code § 846 (West Supp. 1981).
Colorado:	Col. Rev. Stat. §§ 33-41-101-105 (1974).
Connecticut:	Conn. Gen. Stat. Ann. §§ 52-557f - 557i (Supp 1981).
Delaware:	Del. Code Ann. tit. 7, §§ 5901-5907 (1975).
Florida:	Fla. Stat. Ann. § 375.251 (West 1974).
Georgia:	Ga. Code Ann. §§ 105-403-409 (1968).
Hawaii:	Haw. Rev. Stat. §§ 520-1 to -8.
Idaho:	Idaho Code § 36-1604 (Supp. 1981).
Illinois:	Ill. Ann. Stat. ch. 70 §§ 31-37 (Smith-Hurd Supp. 1981).
Indiana:	Ind. Code Ann. § 14-2-6-3.
Iowa:	Iowa Code Ann. §§ 111C.1-111C.7 (West Supp. 1981).
Kansas:	Kan. Stat. Ann. §§ 58-3201-3207 (1976).
Kentucky:	Ky. Rev. Stat. Ann. § 150.645 (Baldwin Supp. 1980).
Louisiana:	La. Rev. Stat. Ann. § 9:2795 (West Supp. 1981).
Maine:	Me. Rev. Stat. Ann. tit. 12, §§ 3001-3005 (Supp. 1981).
Maryland:	Md. Nat. Res. Code Ann. §§ 5-1102-1108 (1974).
Massachusetts:	Mass. Gen. Laws Ann. ch. 21 § 17C (West 1973).
Michigan:	Mich. Comp. Laws Ann § 300.201 (1967).

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Recreational Injury Law
Recreation and Parks Law Reporter

(703) 455-8474
Licensed in VA, MD & DC

January 12, 1990

Charles F. Kaucic, CLP
Chief, Parks and Recreation
Matanuska - Susitna Borough
P.O. Box 1608
Palmer, Alaska 99645-1608

Dear Mr. Kaucic,

First, let me apologize for not responding sooner to your correspondence of December 8. I get to NRPA rather infrequently and did not pick up your letter until January. I would be happy to review any proposed immunity legislation being considered for Alaska. At present, I do not have a FAX machine; therefore, it would be best to forward any materials to the above address. I have enclosed a copy of an article I did a few years ago for Parks & Recreation magazine which suggested modifications to the model recreational use statute to increase the availability of immunity to public entities.

Sincerely,

James C. Kozlowski, Jr., Ph.D.

Alaska Recreation and Park Association

P.O. Box 102664
Anchorage, Alaska 99510-2664

RESOLUTION NO. 89-3

A RESOLUTION RECOMMENDING ADOPTION OF AN ACT LIMITING THE LIABILITY OF A REAL PROPERTY OWNER FOR DAMAGE OR INJURY TO A PERSON RESULTING FROM RECREATIONAL USE OF REAL PROPERTY

WHEREAS, the Alaska Recreation and Park Association urges the State to exercise its responsibility to provide a broad spectrum of recreation opportunities for all Alaskans, and

WHEREAS, private lands constitute a large percentage of our State's land base, and host many recreational opportunities; and

WHEREAS, the potential for private lands to provide recreational opportunities is great; and

WHEREAS, local owners lacking protection under the law for land which could be defined as being improved under current state statutes by having a foot bridge or trail on it, put personal assets at risk when they allow their land to be used for recreational purposes; and

WHEREAS, the report by the President's Commission on Americans Outdoors recommends that "Local, State and Federal governments consider incentives to private land owners to increase public access, and review existing statutes, policies, regulations, and practices to assure that impediments providing public recreation on private lands are removed", and

WHEREAS, 48 states excluding Alaska have recreational use statutes which provide protection for private landowners when the public uses their land for recreation; and

WHEREAS, the report by the President's Commission on Americans Outdoors recommends further that "Federal and State governments enact or improve recreational use statutes to provide greater protection to governmental entities and private providers who allow the public to use their land for recreation."

NOW THEREFORE, BE IT RESOLVED that the Alaska Recreation and Park Association urges the Alaska State Legislature adopt an act limiting the liability of a real property owner for damage or injury to a person resulting from recreational use of real property.

CITY OF VALDEZ, ALASKA

RESOLUTION NO. 9005

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF VALDEZ, ALASKA, RECOMMENDING ADOPTION OF AN ACT LIMITING THE LIABILITY OF A REAL PROPERTY OWNER FOR DAMAGE OR INJURY TO A PERSON RESULTING FROM RECREATIONAL USE OF REAL PROPERTY.

WHEREAS, the City of Valdez urges the State to exercise its responsibility to provide a broad spectrum of recreation opportunities for all Alaskans; and

WHEREAS, private lands constitute a large percentage of our State's land base and host many recreational opportunities; and

WHEREAS, the potential for private lands to provide recreational opportunities is great; and

WHEREAS, local owners lacking protection under the law for land which could be defined as being improved under current state statutes by having a foot bridge or trail on it, put personal assets at risk when they allow their land to be used for recreational purposes; and

WHEREAS, the report by the President's Commission on Americans Outdoors recommends that "Local, State and Federal governments consider incentives to private land owners to increase public access, and review existing statutes, policies, regulations, and practices to assure that impediments providing public recreation on private lands are removed;" and

WHEREAS, 48 states excluding Alaska have recreational use statutes which provide protection for private landowners when the public uses their land for recreation; and

WHEREAS, the report by the President's Commission on Americans Outdoors recommends further that "Federal and State governments enact or improve recreational use statutes to provide greater protection to governmental entities and private providers who allow the public to use their land for recreation."

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF VALDEZ, ALASKA, that the City of Valdez urges that the Alaska State Legislature adopt an act limiting the liability of a real property owner for damage or injury to a person resulting from recreational use of real property.

CITY OF VALDEZ, ALASKA

Dennis Holtz, Mayor Pro Tem

ATTEST:

Jeanne Donald

Jeanne Donald, City Clerk

January 11,1990

James G. Dumont, Legislative Committee Chair
Alaska Recreation and Park Association

Dear Mr. Dumont,

The Kodiak State Parks Citizens Advisory Board has reviewed the following Senate bills and proposed act:

- Senate Bill 228: An Act Relating to Civil Liability of Certain Volunteers.
- Senate Bill 229: An Act Relating to Government Liability for Damage or Injury Resulting From Hazardous Recreational Activities.
- Recommended Adoption of An Act Limiting the Liability of a Real Property Owner for Damage or Injury to a Person Resulting from Recreational Use of Real Property.

The Advisory Board passed a motion favoring such legislation as far as the concept is concerned. The majority of the advisory board favored the concept as it relates to providing for a more prudent liability insurance environment for those engaged in the type of activities expressed in the above-mentioned bills and proposal.

Sincerely,

Tom Watson

Tom Watson, Chair
Kodiak State Parks Advisory Board
c/o POB 228
Kodiak, AK 99615

cc: Scott Burgess

Alaska Municipal League

Policy Statement

1990

Alaska MUNICIPAL League

Adopted at the Business Meeting
of the 39th Annual Local Government Conference
of the
ALASKA MUNICIPAL LEAGUE
Juneau, Alaska
November 17, 1989

put personal assets at risk due to that lack of protection. To promote and support volunteering, the League supports efforts to remove barriers to encourage volunteers in outdoor recreation activities.

3. Liability of Property Owner: The League supports legislation that would limit the liability of a real property owner for damage or injury to a person resulting from recreational use of real property.

The potential for private lands to provide recreational opportunities is great. Under current statute, landowners are liable for damage or injury to a person resulting from recreational use of their "improved" property. "Improvements" include such things as bridges and trails. Alaska is one of only two states that do not have recreational use statutes that give protection for private landowners when the public uses their land for recreation.

4. Liability for Failure to Take an Incapacitated Person into Custody: The League supports legislation removing any implied liability of a municipality for failing to take a person incapacitated by alcohol into custody.

The decision of the Alaska Supreme Court in *Busby v. Municipality of Anchorage*, which interpreted the intent of the Alaska Legislature in enacting AS 47.37.170 (b), judicially created a duty to take persons incapacitated by alcohol into custody. The effect of this decision has been that municipalities with police powers have been forced to pick up all persons who appear to be incapacitated and put them in a treatment facility, where possible, or in state or municipal correctional facilities. This has been quite expensive for local governments and has required a commitment of already limited public safety resources that Alaska's municipalities can ill afford. The League believes the legislative intent was not to create such a duty for municipalities in enforcing state law, a duty which burdens municipalities with an obligation they are neither equipped nor fairly required to meet. Therefore, the League supports legislation that would remove any such implied liability.

F. STATE POLICIES AFFECTING LOCAL COMMUNITIES

1. State Public Safety Responsibility:

a. The League strongly urges the Legislature to provide funding for the Department of Public Safety so that an adequate level of services can be maintained statewide.

b. The League recognizes the critical need for mandatory certification, training, and background verification for village police officers in the State of Alaska.

Alaska MUNICIPAL League

TELEPHONE
(907) 586-1325
FAX 463-5480

217 SECOND STREET, SUITE 200
JUNEAU, ALASKA 99801

April 18, 1990

TO: Representative Curt Menard, Co-Chair
Representative Cliff Davidson, Co-Chair
Members, House Resources Committee

FROM: Scott A. Burgess, Executive Director

SUBJECT: HB 494 - Relating to civil liability for injuries resulting from recreational use of land

The Alaska Municipal League supports HB 494, which would provide protection for public or private landowners by limiting the ability of persons injured in outdoor recreational activities to recover civil damages from the landowner.

The *Alaska Municipal League Policy Statement - 1990* includes the following statement (p. 25): "The League supports legislation that would limit the liability of a real property owner for damage or injury to a person resulting from recreational use of real property," and HB 494 does just that.

The potential for private or public lands to provide recreational opportunities is great. Under current statutes, however, landowners are liable for damage or injury to a person resulting from recreational use of their "improved" property. "Improvements" include such things as bridges and trails.

Alaska is one of only two states that do not have recreational use statutes that give protection for private landowners when the public uses their land for recreation. The League supports HB 494, which would provide such protection for both private and public landowners, except under the conditions specified in the bill, and urges its passage.

C/LEG2:hb494.418