LANDOWNER LIABILITY AMENDMENTS

2013 GENERAL SESSION

STATE OF UTAH

Chief Sponsor:  Brad R. Wilson

Senate Sponsor:  J. Stuart Adams

LONG TITLE

General Description:

This bill amends provisions of Title 57, Chapter 14, relating to landowner liability.

Highlighted Provisions:

This bill:

- defines terms;
- recodifies Title 57, Chapter 14, Limitation of Landowner Liability - Public Recreation, and renames it "Limitations on Landowner Liability";
- describes a landowner's liability, and limitations on liability, in relation to a trespasser; and
- makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

- 23-23-14, as last amended by Laws of Utah 1997, Chapter 258

ENACTS:

- 57-14-301, Utah Code Annotated 1953
- 57-14-401, Utah Code Annotated 1953

RENUMBERS AND AMENDS:

- 57-14-101, (Renumbered from 57-14-1, as repealed and reenacted by Laws of Utah
Be it enacted by the Legislature of the state of Utah:

Section 1. Section 23-23-14 is amended to read:


Landowners who participate in cooperative wildlife management units shall have the full protection afforded under Title 57, Chapter 14, Limitations on Landowner Liability.

Section 2. Section 57-14-101, which is renumbered from Section 57-14-1 is renumbered and amended to read:

CHAPTER 14. LIMITATIONS ON LANDOWNER LIABILITY

57-14-101. Title -- Purpose.

(1) This chapter is known as "Limitations on Landowner Liability."

(2) The purpose of this chapter is to limit the liability of public and private land owners toward a person entering the owner's land as a trespasser or for recreational purposes, whether by permission or by operation of Title 73, Chapter 29, Public Waters Access
Enrolled Copy

Act.

Section 3. Section 57-14-102, which is renumbered from Section 57-14-2 is renumbered and amended to read:

57-14-102. Definitions.

As used in this chapter:

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

(2) "Child" means an individual who is 16 years of age or younger.

(3) "Inherent risks" means those dangers, conditions, and potentials for personal injury or property damage that are an integral and natural part of participating in an activity for a recreational purpose.

(4) (a) "Land" means any land within the territorial limits of Utah.

(b) "Land" includes roads, railway corridors, water, water courses, private ways and buildings, structures, and machinery or equipment when attached to the realty.

(5) "Owner" means the possessor of any interest in the land, whether public or private land, including a tenant, a lessee, a lessee, an occupant, or person in control of the premises.

(6) "Person" includes any person, regardless of age, maturity, or experience, who enters upon or uses land for recreational purposes.

(7) "Recreational purpose" includes, but is not limited to, any of the following or any combination thereof:

(a) hunting;

(b) fishing;

(c) swimming;

(d) skiing;

(e) snowshoeing;

(f) camping;
(g) picnicking;
(h) hiking;
(i) studying nature;
(j) waterskiing;
(k) engaging in water sports;
(l) engaging in equestrian activities;
(m) using boats;
(n) mountain biking;
(o) riding narrow gauge rail cars on a narrow gauge track that does not exceed 24 inch
gauge;
(p) using off-highway vehicles or recreational vehicles;
(q) viewing or enjoying historical, archaeological, scenic, or scientific sites; [and]
(r) aircraft operations[;]; and
(s) equestrian activity, skateboarding, skydiving, paragliding, hang gliding, roller
skating, ice skating, walking, running, jogging, bike riding, or in-line skating.

(8) "Serious physical injury" means any physical injury or set of physical injuries that:
(a) seriously impairs a person's health;
(b) was caused by use of a dangerous weapon as defined in Section 76-1-601;
(c) involves physical torture or causes serious emotional harm to a person; or
(d) creates a reasonable risk of death.

(9) "Trespasser" means a person who enters on the land of another without:
(a) express or implied permission; or
(b) invitation.

Section 4. Section 57-14-201, which is renumbered from Section 57-14-3 is
renumbered and amended to read:

Part 2. Liability Relating to Recreational Use

[57-14-3]. 57-14-201. Owner owes no duty of care or duty to give warning --

Exceptions.
Except as provided in Subsections [57-14-6] 57-14-204(1) and (2), an owner of land owes no duty of care to keep the premises land safe for entry or use by any person entering or using the premises land for any recreational purpose or to give any warning of a dangerous condition, use, structure, or activity on those premises to that person the land.

Section 5. Section 57-14-202, which is renumbered from Section 57-14-4 is renumbered and amended to read:


Except as provided in Subsection [57-14-6] 57-14-204(1), an owner of land who either directly or indirectly invites or permits without charge or for a nominal fee of not more than $1 per year any person to use the owner's land for any recreational purpose, or an owner of a public access area open to public recreational access under Title 73, Chapter 29, Public Waters Access Act, does not thereby:

(a) (1) make any representation or extend any assurance that the premises are land is safe for any purpose;

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

(c) (3) assume responsibility for or incur liability for any injury to persons or property caused by an act or omission of the person or any other person who enters upon the land; or

(d) (4) owe any duty to curtail the owner's use of his the land during its use for recreational purposes.

This section applies to the relationship between an owner of land and a trespasser.

Section 6. Section 57-14-203, which is renumbered from Section 57-14-5 is renumbered and amended to read:

57-14-203. Land leased to state or political subdivision for recreational purposes.

Unless otherwise agreed in writing, Sections 57-14-3 57-14-201 and 57-14-4 57-14-202 are applicable to the duties and liability of an owner of land leased to the state or any subdivision of the state for recreational purposes.
Section 7. Section 57-14-204, which is renumbered from Section 57-14-6 is
renumbered and amended to read:

[57-14-6].  57-14-204. Liability not limited where willful or malicious conduct
involved or admission fee charged.

(1) Nothing in this [chapter shall limit] part limits any liability [which] that otherwise
exists for:

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

(b) deliberate, willful, or malicious injury to persons or property; or

(c) an injury suffered where the owner of land charges a person to enter or go on the
land or use the land for any recreational purpose.

(2) For purposes of Subsection (1)(c), if the land is leased to the state or a subdivision
of the state, any consideration received by the owner for the lease is not a charge within the
meaning of this section.

(3) Any person who hunts upon a cooperative wildlife management unit, as authorized
by Title 23, Chapter 23, Cooperative Wildlife Management Units, is not considered to have
paid a fee within the meaning of this section.

(4) Owners of a dam or reservoir who allow recreational use of the dam or reservoir
and its surrounding area and do not themselves charge a fee for that use, are considered not to
have charged for that use within the meaning of Subsection (1)(c), even if the user pays a fee to
the Division of Parks and Recreation for the use of the services and facilities at that dam or
reservoir.

(5) The state or a subdivision of the state that owns property purchased for a railway
corridor is considered not to have charged for use of the railway corridor within the meaning of
Subsection (1)(c), even if the user pays a fee for travel on a privately owned rail car that crosses
or travels over the railway corridor [if] of the state or a subdivision of the state:

(a) allows recreational use of the railway corridor and its surrounding area; and

(b) does not charge a fee for that use.
Section 8. Section 57-14-205, which is renumbered from Section 57-14-7 is renumbered and amended to read:

57-14-205. Person using land of another not relieved from duty to exercise care.

This [chapter] part may not be construed to relieve any person, using the land of another for recreational purposes, from any obligation which the person may have in the absence of this [act] chapter to exercise care in use of the land and in activities [thereon] on the land, or from the legal consequences of failure to employ care.

Section 9. Section 57-14-301 is enacted to read:

Part 3. Liability Relating to Trespassers

57-14-301. Owner liability to trespasser.

(1) Except as provided in Subsection (2), with respect to a trespasser, an owner does not:

(a) make any representation or extend any assurance that the land is safe for any purpose;

(b) owe any duty of care to the trespasser;

(c) assume responsibility for or incur liability for any injury to, the death of, or damage to property of, a trespasser; or

(d) owe any duty to curtail the owner's use of the land.

(2) Notwithstanding Subsection (1) and except as provided in Subsection (3), an owner may be subject to liability for serious physical injury or death to a trespasser if:

(a) (i) the trespasser is a child;

(ii) the serious physical injury or death is caused by an artificial condition on the land;

(iii) the owner knows or reasonably should know that:

(A) the artificial condition exists;

(B) the artificial condition poses an unreasonable risk of serious physical injury or death to a child; and

(C) a child is likely to trespass at the location of the artificial condition;
(iv) the artificial condition is not of a type that a child, because of the child's youth, would discover exists or would not realize that the artificial condition poses a risk of serious physical injury or death; and
(v) the owner fails to take reasonable measures to eliminate, or to protect against serious physical injury or death from, the artificial condition;

(b) (i) the serious physical injury or death:

(A) occurs on a limited area of the land that the owner knows, or reasonably should know, is constantly intruded upon by trespassers; and

(B) is caused by an activity conducted by the owner that poses a risk of serious physical injury or death to a trespasser; and

(ii) the owner fails to conduct the activity described in Subsection (2)(b)(i)(B) with reasonable care for a trespasser's safety.

(3) (a) An owner is not subject to liability for serious physical injury or death to a trespasser if the conduct of the owner that results in serious physical injury or death is permitted or justified under Title 76, Chapter 2, Part 4, Justification Excluding Criminal Responsibility, or any other provision of law.

(b) An owner is not subject to liability for serious physical injury or death to a trespasser under Subsection (2) if the burden on the owner to eliminate, or to protect against serious physical injury or death from, the artificial condition outweighs the risk of serious physical injury or death posed by the artificial condition.

(c) An owner is not subject to liability for serious physical injury or death to a trespasser under Subsection (2) if the serious injury or death is caused by an irrigation canal or ditch.

(d) A public transit district is not subject to liability for a serious physical injury or death to a trespasser under Subsection (2) if the serious injury or death is caused by a trespasser entering into a fixed guideway, railroad right-of-way, or on transit facilities or premises in violation of Section 56-1-18.5 or Section 41-6a-1005.

(4) Nothing in this chapter shall impose liability on an owner except to the extent
Section 10. Section 57-14-401 is enacted to read:

Part 4. Inherent Risks of Certain Activities

57-14-401. Inherent risks of activities with a recreational purpose on certain lands.

(1) Notwithstanding Section 57-14-202 to the contrary, a person may not make a claim against or recover from an owner of any land, as defined in this chapter, including land in developed or improved, urban or semi-rural areas opened to the general public without charge, such as a lake, pond, park, trail, waterway, or other recreation site, for personal injury or property damage caused by the inherent risks of participating in an activity with a recreational purpose on the land.

(2) Nothing in this section may be construed to relieve a person participating in a recreational purpose from an obligation that the person would have in the absence of this section to exercise due care or from the legal consequences of a failure to exercise due care.