

SENATE BILL NO. 329

INTRODUCED BY P. CONNELL

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A BILL FOR AN ACT ENTITLED: "AN ACT EXTENDING LIABILITY LIMITS TO AIRCRAFT ON STATE LANDS; PROVIDING THAT LANDING AN AIRCRAFT IS A METHOD OF LEGALLY ACCESSING STATE LAND; REVISING A DEFINITION OF AN AIRSTRIP; AMENDING SECTIONS 70-16-301, 70-16-302, AND 77-1-101, MCA."

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

Section 1. Section 70-16-301, MCA, is amended to read:

"70-16-301. Recreational purposes defined. "Recreational purposes", as used in this part, includes hunting, fishing, swimming, boating, waterskiing, camping, picnicking, pleasure driving, biking, winter sports, hiking, touring or viewing cultural and historical sites and monuments, spelunking, or other pleasure expeditions. The term includes the private, noncommercial flying of aircraft ~~in relation to private land~~ ON PRIVATE LAND OR WHEN USING, including use of any airstrip."

Section 2. Section 70-16-302, MCA, is amended to read:

"70-16-302. (Temporary) Restriction on liability of landowner -- definitions. (1) A person who uses property, including property owned or leased by a public entity, for recreational purposes, with or without permission, does so without any assurance from the landowner that the property is safe for any purpose if the person does not give a valuable consideration to the landowner in exchange for the recreational use of the property. The landowner owes the person no duty of care with respect to the condition of the property, except that the landowner is liable to the person for any injury to person or property for an act or omission that constitutes willful or wanton misconduct. For purposes of this section, valuable consideration does not include the state land recreational use license fee imposed under 77-1-802 or other funds provided under 77-1-815.

(2) As used in this part, the following definitions apply:

(a) (i) "Airstrip" means improved or unimproved landing areas on private land or state land used by pilots to land, park, take off, unload, load, and taxi aircraft.

(ii) The term does not include municipal airports governed under Title 67, chapter 10, part 1.



1 (b) "Flying of aircraft" means the operation of aircraft, including but not limited to landing, parking, taking
2 off, unloading, loading, and taxiing of aircraft at an airstrip.

3 (c) "Landowner" means a person or entity of any nature, whether private, governmental, or
4 quasi-governmental, and includes the landowner's agent, tenant, lessee, occupant, grantee of conservation
5 easement, water users' association, irrigation district, drainage district, and persons or entities in control of the
6 property or with an agreement to use or occupy property.

7 (d) "Property" means land, roads, airstrips, water, watercourses, and private ways. The term includes
8 any improvements, buildings, structures, machinery, and equipment on property.

9 (3) The department of fish, wildlife, and parks, when operating under an agreement with a landowner
10 or tenant to provide recreational snowmobiling opportunities, including but not limited to a snowmobile area,
11 subject to the provisions of subsection (1), on the landowner's property and when not also acting as a snowmobile
12 area operator on the property, does not extend any assurance that the property is safe for any purpose, and the
13 department, the landowner, or the landowner's tenant may not be liable to any person for any injury to person
14 or property resulting from any act or omission of the department unless the act or omission constitutes willful or
15 wanton misconduct. (Void on occurrence of contingency--sec. 8, Ch. 596, L. 2003.)

16 **70-16-302. (Effective on occurrence of contingency) Restriction on liability of landowner --**
17 **definitions.** (1) A person who uses property, including property owned or leased by a public entity, for
18 recreational purposes, with or without permission, does so without any assurance from the landowner that the
19 property is safe for any purpose if the person does not give a valuable consideration to the landowner in
20 exchange for the recreational use of the property. The landowner owes the person no duty of care with respect
21 to the condition of the property, except that the landowner is liable to the person for any injury to person or
22 property for an act or omission that constitutes willful or wanton misconduct. For purposes of this section, valuable
23 consideration does not include the state land recreational use license fee imposed under 77-1-802.

24 (2) As used in this part, the following definitions apply:

25 (a) (i) "Airstrip" means either improved or unimproved landing areas on private land or state land used
26 by pilots to land, park, take off, unload, load, and taxi aircraft.

27 (ii) The term does not include municipal airports governed under Title 67, chapter 10, part 1.

28 (b) "Flying of aircraft" means the operation of aircraft, including but not limited to landing, parking, taking
29 off, unloading, loading, and taxiing of aircraft at an airstrip.

30 (c) "Landowner" means a person or entity of any nature, whether private, governmental, or

1 quasi-governmental, and includes the landowner's agent, tenant, lessee, occupant, grantee of conservation
2 easement, water users' association, irrigation district, drainage district, and persons or entities in control of the
3 property or with an agreement to use or occupy property.

4 (d) "Property" means land, roads, airstrips, water, watercourses, and private ways. The term includes
5 any improvements, buildings, structures, machinery, and equipment on property.

6 (3) The department of fish, wildlife, and parks, when operating under an agreement with a landowner
7 or tenant to provide recreational snowmobiling opportunities, including but not limited to a snowmobile area,
8 subject to the provisions of subsection (1), on the landowner's property and when not also acting as a snowmobile
9 area operator on the property, does not extend any assurance that the property is safe for any purpose, and the
10 department, the landowner, or the landowner's tenant may not be liable to any person for any injury to person
11 or property resulting from any act or omission of the department unless the act or omission constitutes willful or
12 wanton misconduct."

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14 **Section 3.** Section 77-1-101, MCA, is amended to read:

15 **"77-1-101. Definitions.** Unless the context requires otherwise and except for the definition of state land
16 in 77-1-701, in this title, the following definitions apply:

17 (1) "Board" means the board of land commissioners provided for in Article X, section 4, of the Montana
18 constitution.

19 (2) "Commercial or concentrated recreational use" means any recreational use that is organized,
20 developed, or coordinated, whether for profit or otherwise. Commercial or concentrated recreational use includes
21 all outfitting activity and all activities not included within the definition of general recreational use.

22 (3) "Department" means the department of natural resources and conservation provided for in Title 2,
23 chapter 15, part 33.

24 (4) "Distributable revenue" applies to all land trusts managed by the board, except property held pursuant
25 to the Morrill Act of 1862, 7 U.S.C. 301 through 308, and the Morrill Act of 1890, 7 U.S.C. 321 through 329, and
26 includes:

27 (a) 95% of all revenue from the management of school trust lands and the common school permanent
28 fund, except for mineral royalties or land sale proceeds that are deposited directly in the permanent fund;

29 (b) the interest and income described in 20-9-341, less any unrealized gains or losses;

30 (c) the interest and income received from the leasing, licensing, or other use of state trust lands; and

1 (d) subject to 17-3-1003, the proceeds and income from the sale of timber from capitol building land grant
2 and university system lands.

3 (5) (a) "General recreational use" includes noncommercial and nonconcentrated hunting, fishing, and
4 other activities determined by the board to be compatible with the use of state lands.

5 (b) The term does not include the use of streams and rivers by the public under the stream access laws
6 provided in Title 23, chapter 2, part 3.

7 (6) "Legally accessible state lands" means state lands that can be accessed by:

8 (a) dedicated public road, right-of-way, or easement;

9 (b) public waters;

10 (c) landing an aircraft;

11 ~~(e)~~(d) adjacent federal, state, county, or municipal land if the land is open to public use; or

12 ~~(d)~~(e) adjacent contiguous private land if permission to cross the land has been secured from the
13 landowner. The granting of permission by a private landowner to cross private property in a particular instance
14 does not subject the state land that is accessed to general recreational use by members of the public, other than
15 those granted permission.

16 (7) "Noxious weeds" or "weeds" means any exotic plant species established or that may be introduced
17 in the state that may render land unfit for agriculture, forestry, livestock, wildlife, or other beneficial uses or that
18 may harm native plant communities and that is designated:

19 (a) as a statewide noxious weed by rule of the department of agriculture; or

20 (b) as a district noxious weed by a district weed board organized under 7-22-2103.

21 (8) (a) "State land" or "lands" means:

22 (i) lands granted to the state by the United States for any purpose, either directly or through exchange
23 for other lands;

24 (ii) lands deeded or devised to the state from any person; and

25 (iii) lands that are the property of the state through the operation of law.

26 (b) The term does not include:

27 (i) lands that the state conveys through the issuance of patent;

28 (ii) lands that are used for building sites, campus grounds, or experimental purposes by a state institution
29 and that are the property of that institution;

30 (iii) lands that the board of regents of higher education has authority to dispose of pursuant to 20-25-307;

1 or

2 (iv) lands acquired through investments under the provisions of 17-6-201.

3 (9) "State trust land" means lands or property interests held in trust by the state:

4 (a) under Article X, sections 2 and 11, of the Montana constitution;

5 (b) through The Enabling Act of Congress (approved February 22, 1889, 25 Stat. 676), as amended; and

6 (c) through the operation of law for specified trust beneficiaries.

7 (10) "Weed management" or "control" has the meaning provided in 7-22-2101."

8

9 NEW SECTION. **Section 4. Two-thirds vote required.** Because [section 2] limits governmental liability,

10 Article II, section 18, of the Montana constitution requires a vote of two-thirds of the members of each house of

11 the legislature for passage of [this act].

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