

Chapter XIV:
Liability Insurance

Chapter XIV: Liability Insurance

Note: Several types of information are needed to develop a business plan. To keep the volume of information in a manageable form, the material has been divided into Chapter XII-Decision Making and Business Planning; Chapter XIII- Regulations and Legal Concerns; Chapter XIV-Liability Insurance; Chapter XV-Marketing; and Chapter XVI-Funding and Assistance Programs. It is necessary to review all of the chapters when developing a comprehensive business and marketing plan.

The Legal Guide for Direct Farm Marketing

Neil Hamilton, Drake Agricultural Law Center.

This book is intended for use as educational material to assist farmers, USDA employees, and other advisors in understanding the effect of various laws and regulations on direct farm marketing. The book is intended to provide general information and advice to help direct farm marketers and their advisors understand how the laws might apply to a particular situation. It also addresses liability insurance questions. See Chapter 13 for table of contents.

Available at:

Drake University Law Center

Des Moines, IA 50311

Ph: 515-271-2065

In The EYES of the LAW: Legal Issues Associated with Direct Farm Marketing

By UMN Extension Service

This publication has been developed to respond to producer concerns about the liability issue and steps they can take to reduce the risks. More information about the study can be obtained from Kent Gustafson at 612-624-4947.

Additional copies can be ordered through:

Minnesota Extension Service Distribution Center

405 Coffey Hall

1420 Eckles Avenue

St. Paul, MN 55108

Ph: 612-625-2207

Liability insurance: How much coverage do you really need?

Growing For Market, October 1995, Vol 4, No. 10

Available in Resource Manual.

Liability for Recreational Injuries on Private Lands: A National Assessment of Rural Landowners' Risk Exposure.

Ronald Kaiser, J.D., Department of Recreation, Parks and Tourism Sciences, Texas A&M University and Brett Wright, Center for Recreation Resources Policy, George Mason University. This study purpose was to establish the reality of the liability problem of letting the public on your land for recreation purposes. A review state by state cases

was completed and the type of insurance carried by landowners was studied. Complete 150- page report is available or summary of the study as noted next:
Contacting Jim Maetzold, 202-720-0132 or email at jim.maetzold@usda.gov

Rural landowner liability for recreational injuries: Myths, perceptions, and realities

B.A. Wright, R. A. Kaiser, and S. Nicholls

This article reports the results of a survey of 637 appellate court cases heard since 1965. Landowners' perceptions of liability are not commensurate with the reality of legal risks. Available in Resource Manual, Journal of Soil and Water Conservation, May, June, July 2002 Volume 57, Number 3, pp183-191 or

Available online at: www.swcs.org/t_pubs_journals_archives_MayJune2002.htm

Understanding Farmers Comprehensive Personal Liability Policy: A Guide for Farmers, Attorneys and Insurance Agents.

By John D. Copeland

National Center for Agricultural Law Research and Information

This book, written in question and answer format, contains information about how the common farm liability policy is interpreted.

Available from the National Center for Agricultural Law:

University of Arkansas, School of Law

Fayetteville, AR 72701

Ph: (501) 575-7646

Eight Strategies for Avoiding Liability: Understanding the Causes of Liability Can Help Avoid It

By Julie Fershtman

This article discusses eight strategies for avoiding liability.

Available online at: <http://horses.about.com/cs/management/a/eqliabilit367.htm>

Recreational Access To Private Lands: Liability Problems and Solutions (2nd ed.)

By John D. Copeland

National Center for Agricultural Law Research and Information August 1998

ISBN: 1882461029

This publication addresses the complex liability issues that arise from permitting recreational activities on private lands.

Available from NCALRI:

147 Waterman Hall

University of Arkansas

Fayetteville, AR 72701

Ph: (501) 575-7646

Email: swillia@comp.uark.edu

Liability/Insurance Protection-Rural Recreation Enterprises

By Louis Twardzik and Richard Cary

Michigan State University

ID: E0580

Available online at: www.msue.msu.edu/imp/modtd/33139716.html

Alternative Enterprises For Farm and Forest: Risk Recreation

Natural Resources Management And Income Opportunity Series

By Steven J. Hollenhorst

West Virginia University Extension Service

R.D. No. 765

Available online at: www.msue.msu.edu/imp/modtd/33130042.html

The Great Outdoors Insurance Program

Website: <http://www.outdoorinsurance.com/>

8461 Turnpike Drive

Suite 110

Westminster, CO 80030

Ph: (303) 428-5400

Email: tom@outdoorinsurance.com

Safety and Risk Management

Small Farm Center, UC, Davis

This publication is a fact sheet on risk management that includes information on reducing risks.

Available online at: www.sfc.ucdavis.edu/agritourism/factsheet3.html

Hardcopies available by calling, (530) 752-8136

Agricultural Safety Website

National Safety Council

This website provides articles, fact sheets, tips, resources and links that deal with agricultural safety issues.

<http://www.nsc.org/issues/agrisafe.htm>

National Ag Safety Database

This website contains a database of national ag safety information. The website also provides links and contains information in Spanish.

<http://www.cdc.gov/nasd/>

Montana International, Inc

Insurance and Bonds

Montana International specializes in business & professional insurance. Information on this company is available online at: <http://www.businessmt.com/MontanaInternational/>

Ph: (406) 442-536

Markel Insurance Company

This company provides equine insurance.

Website: www.horseinsurance.com

4600 Cox Road
Glen Allen, Virginia 23060
Ph: (800) 842-5017
Email: horseinsurance@markelcorp.com

Gray's Insurance Team

Gray's Insurance Team provides professional information for persons or properties in, or planning to become involved in, the personal hospitality industry.
3002 W. Elizabeth St., #7D, Fort Collins, Colorado 80521.
Ph: (970) 484-9690 or (719) 444-8940
Email: grubbs@frii.com

15 Common Myths about Equine Insurance

by Julie Fershtman, Attorney at Law
Available by calling, 1-800-662-2210

American Agricultural Law Association (AALA)

The AALA is the only national professional organization that focuses on the legal needs of the agricultural community. The Association offers information on legal issues to farmers, publishes a monthly newsletter, and hosts annual conferences. Their website contains a searchable database.

Website: www.aglaw-assn.org

Ph: (501) 575-7389

Insurance for the Home-Based Entrepreneur: How to Make Sure You Are Covered

By Richard Albert

Available online at: www.bizoffice.com/library/files/insuranc.txt

Small Business Health Insurance

U.S. Small Business Administration in cooperation with The Travelers Companies

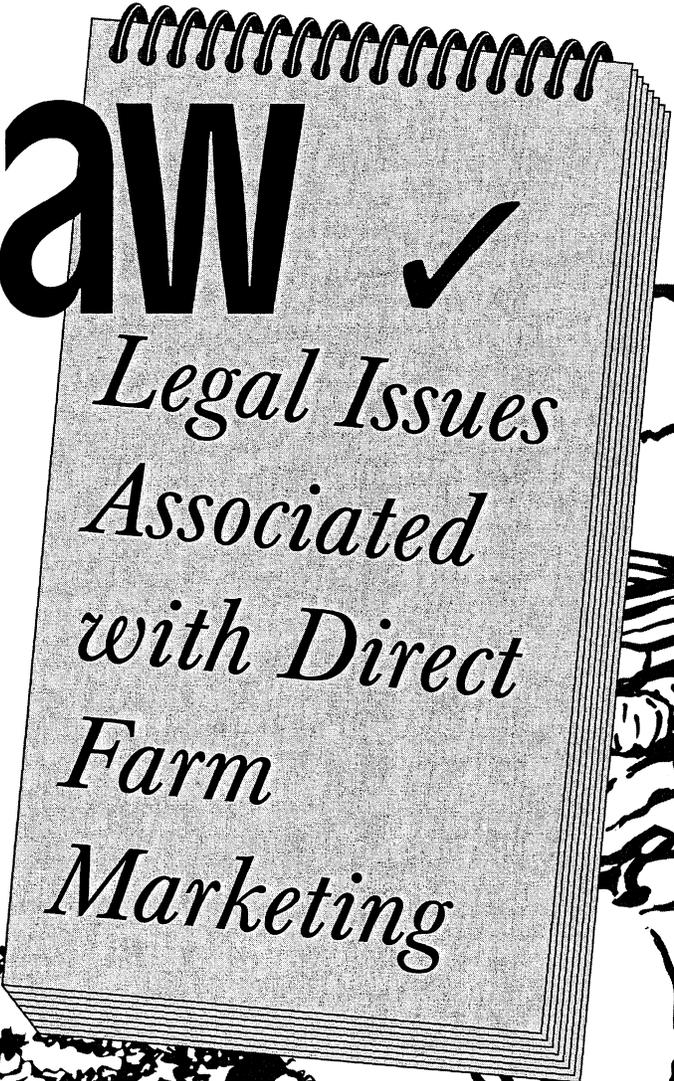
Available online at: www.bizoffice.com/library/files/obd10.txt

Texas Nature Tourism Information Center: Liability/Insurance

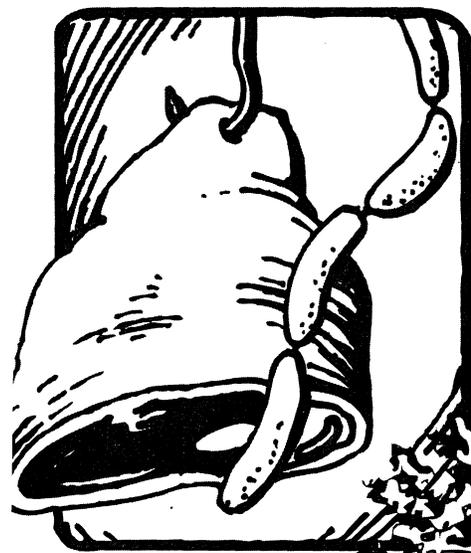
This one example of what is available in many states. The first step is to check what information is available in the county or state in which you live. For more information www.rpts.tamu.edu/tce/nature_tourism/liabilityinsurance.htm

In the Eyes of the Law

Richard F. Prim
Kaarin K. Foede



*Legal Issues
Associated
with Direct
Farm
Marketing* ✓



Tourism
CENTER

UNIVERSITY OF MINNESOTA
Extension

PART OF THE ...

S E R V I C E

Contents

Foreword	1
-----------------------	---

Chapter One

Risks Associated With Conducting an On-Site Business

Negligence and Liability	2
Owners, Occupiers, and Possessors	4
Landlords and Tenants	4
Negligence Per Se	5
Foreseeability	5
Limits on Liability	6
Insurance	6
Homeowner's Liability Insurance vs. Business Liability Insurance	7
Language in Policies	7
Notice and Cooperation	7
Deductibles	8
Workers' Compensation Insurance	8
Risk Management Strategies	8
Inspect, Repair, Warn	8
Learn and Follow Laws, Regulations, and Ordinances	9
Use Disclaimers	9

Chapter Two

Product-Associated Risks

Negligence	10
Strict Liability	11
Breach of Warranty	11
Implied Warranty of Merchantability	12
Implied Warranty of Fitness	12
Express Warranties	12
Defenses to Product Liability Claims	13
Useful Life	13
State-of-the-Art	13
Alteration or Misuse	14
Inherent Danger	14
Comparative Fault	14
Statute of Limitation	14
Risks Associated With Food Products	15

Chapter Three

Business Structures for Direct Marketers

Sole Proprietorship	16
General Partnership	16
Limited Partnership	17
Corporation	17
Sub-Chapter C Corporations	
Sub-Chapter S Corporations	
Limited Liability Partnership	18
Limited Liability Company	18
Cooperative	19

Chapter Four

Employment Issues

Liability for Employees' Acts	20
Negligent Hiring	20
Negligent Retention	21
Negligent Supervision	21
Minimizing Risk	21
Hiring Issues	22
Background Checks and Testing	22
Inappropriate Questions	22
Criminal Background Check	22
Driving Record	23
Credit Check	23
Additional Requirements	23

Conclusion	24
-------------------------	----

Checklist	25
------------------------	----

Glossary	26
-----------------------	----

Resources	inside back cover
------------------------	-------------------

Liability insurance: How much coverage do you really need?

Direct marketing of farm products is a business that exposes you to the possibility of lawsuits from customers and employees. Farmers are advised to take two approaches to litigation: reduce the likelihood that someone will get hurt because of your actions, and protect yourself with adequate liability insurance in case someone gets hurt anyway.

The first approach involves basic, common-sense safety precautions and you don't need anyone to tell you about those. (You might be surprised, however, at the variety of ways city folks can hurt themselves on a farm or how quickly some people will blame you for their own clumsiness.)

It's the liability insurance question that puzzles many growers: If you have customers coming to your farm, you obviously need liability insurance - just as you have a liability portion in your homeowner's policy. But how much do you need? And do you need liability insurance if you sell off the farm? In either case, do you need product liability insurance?

We took these questions to Charlie Touchette of the Massachusetts Federation of Farmers' Markets. For 12 years, Touchette has been the administrator of a liability insurance program for small farmers who sell at farmers markets throughout Massachusetts. In those 12 years, with as many as 40 markets covered, only four claims have been paid.

"We've had lawsuits filed, but we have never gone to court; the cases have been dropped," Touchette said. "We have never had a case where a lawsuit for pain and suffering has gone anywhere."

All of the claims that have been paid were for medical expenses caused by unfortunate accidents at farmers' markets such as customers being hit by wind-borne umbrellas or tripping over baskets of produce.

"That is an absolutely legitimate reason for having insurance and every insurance program you look at should have a medical expense level that is paid out without a lawsuit," he said.

If you have only a homeowner's policy, you should upgrade to a farm policy. Many people will get a rider on

their homeowners policy, which is cheaper than buying a commercial farm policy, but has less coverage. Even with a farm policy, you need to be certain that your direct marketing activities are covered, both on and off the farm.

Besides covering you against legitimate accidents, the policy also should cover you against frivolous lawsuits. But how much is enough?

"Keep in mind why people get insurance," Touchette said. "It's to protect themselves from loss. If you own a \$5 million farm, you don't want to protect yourself for \$50,000 because if you get sued, you lose your farm.

"Generally speaking, a million dollars is adequate. But you have to consider the premium for a million dollars versus the premium for \$500,000 coverage. Is it \$10 more per year? Then pay it. Is it double? Then you've got to evaluate it."

The Massachusetts Federation of Farmers' Markets policy will pay a total of \$2 million per year, for all the markets and all the individual farmers covered under it. Touchette said that was enough coverage. "I've never had a claim for even \$50,000," he said.

As for product liability insurance for produce growers, Touchette calls it "the biggest farce in insurance."

Supermarkets that require a farmer to have product liability insurance "are looking to get rid of their own liability," he said. "Where is the product liability for produce? You've got far more chance of something going wrong from the time you deliver it to the warehouse to the time it hits the shelves," he said.

Still, the farmers' market insurance program has \$50,000 worth of product liability insurance.

Finding a company to provide liability insurance for direct marketers can be difficult. Both the Massachusetts Federation of Farmers' Markets and the Greenmarket in New York City have policies from Butler Insurance Company. Ask an independent insurance agent to research your options, or call the marketing division of your state department of agriculture to find out if there is a group program for farmers who direct market.

Rural landowner liability for recreational injuries: Myths, perceptions, and realities

B.A. Wright, R.A. Kaiser, and S. Nicholls

ABSTRACT: Concern about closure of private, rural lands to outdoor recreation has been documented in the research literature for several decades. While many reasons for this phenomenon have been posited, liability for recreational injuries has been identified as a particularly worrisome problem for landowners. However, landowners' perceptions of liability are not commensurate with the reality of legal risks. This article examines rural landowner liability risks through an analysis of the 50 state recreation-use statutes intended to protect landowners from legal exposure tied to injuries sustained on their land. Further, data from the 637 appellate court cases heard since 1965 involving recreational injuries were compiled and analyzed based on the characteristics of the landowner (public or private), recreation activity pursued at the time of injury, and actual liability exposure. Although the focus of this article is primarily on the liability risks of private landowners and organizations, public agencies also are discussed. Recreation-use statutes are increasingly used in government defense, and cases provide more depth in understanding the reality of landowner liability. Recommendations to agencies concerned with access to private lands and suggestions for future research are included.

Keywords: Private lands, landowners, liability, recreational access, recreational injuries

It has long been recognized that access to privately owned rural lands must play a strategic role in meeting the increasing demand for public outdoor recreation. The Outdoor Recreation Resources Review Commission (1962), perhaps the most comprehensive assessment of outdoor recreation demand ever conducted, predicted that the demand for outdoor recreation opportunities would triple by the year 2000. These demand projections were reached by 1977, 23 years earlier than expected (*Resources for the Future*, 1983). A decade later, the President's Commission on Americans Outdoors (1987) reiterated the strategic necessity of increasing access to and use of private lands as a partial solution for satisfying the growing demand for outdoor recreation. This strategy is still important today as public agencies with limited resources struggle to keep pace with outdoor recreation demands.

In an effort to encourage greater private sector involvement in meeting these outdoor recreation demands, a growing number of local reports and conference proceedings informed rural landowners of income

opportunities and offered guidance on the operation of access programs (Copeland, 1998; Crispell, 1994; Kays et al., 1998; Lynch and Robinson, 1998; U.S. Department of Commerce, 1990; Yarrow, 1990). These reports universally point to the need to provide legal, financial, business, and marketing information to landowners. This need to inform landowners is most acute in the area of liability risks. If public access programs are to be successful, landowners need to understand and manage the legal risks associated with outdoor recreation enterprises.

In 1987, the National Private Land Ownership Study provided the first national assessment of the access problem. Researchers found that only 25% of the nation's private landowners granted access to people to whom they were not personally acquainted (Wright et al., 1988). Among the findings, landowners in northern states allowed greater recreational access (31%) than did owners in the South (13%). When the study was repeated in 1997, the number of landowners granting access to people with whom they had no personal connections decreased

dramatically. Nationally, only 12% of the landowners allowed recreational access—a decrease of 50% from 10 years earlier (Teasley et al., 1997). Again, landowners in the North had a higher propensity (16%) to open their land than did southern owners (6.5%).

This finding has significant implications for state fish and wildlife agencies, because the majority of federal and state funding for wildlife management comes from hunting and fishing license sales and from federal excise taxes on hunting and fishing equipment (Wildlife Conservation Fund, 1996). Federal statistics indicate that the number of licensed hunters in the United States decreased by 10% between 1982 and 1998 (U.S. Fish and Wildlife Service, 1998). One of the reported reasons for this drop in license sales is the lack of access to public and private areas (McMullin et al., 2000).

Through the years, access research has identified a number of factors that keep landowners from granting access (Brown, 1974; Brown et al., 1984; Copeland, 1998; Durrell, 1968; Holecek and Westfall, 1977; Wright and Fesenmaier, 1990). Wright et al. (1988) postulated that five domains influence landowner access policies. These include: (1) landowner perceptions of users, (2) landowner objectives for the land; (3) economic incentives; (4) landowner adversity to certain uses (such as hunting); and (5) liability and risk concerns.

Liability concerns are a domain influencing landowner access decisions. The fear of being sued or being held liable for injuries sustained by recreational users has consistently been cited as a primary concern of landowners (Holecek and Westfall, 1977; Kaiser and Wright, 1985; Wornach et al., 1975). Even though all states have taken significant steps to insulate landowners from liability when they grant free recreational access, liability remains a concern among landowners and a barrier to public access (Becker, 1990; Copeland, 1998).

This article examines rural landowner li-

Brett A. Wright is a professor and chair of the Department of Parks, Recreation and Tourism Management at Clemson University in Clemson, South Carolina. **Ronald A. Kaiser** is a professor in the Institute for Renewable Natural Resources in the Department of Recreation, Park and Tourism Sciences at Texas A&M University in College Station, Texas. **Sarah Nicholls** is an instructor in the Department of Park, Recreation and Tourism Resources at Michigan State University in East Lansing, Michigan.

bility risks through an analysis of state recreation-use statutes and appellate court cases dealing with outdoor recreation injuries, focusing primarily on private landowners and organizations. However, public agencies are mentioned because recreation-use statutes are increasingly used in government defense of injury lawsuits. Factors that influence landowner decisions to accept or restrict public access for outdoor recreation, including the perception and reality of landowner liability exposures associated with public access, also are discussed. The Lexis/Nexis computer retrieval system was used to compile recreation-use statutes and appellate court data. Statutes were analyzed against a set of landowner duty and liability parameters common to outdoor recreation and access programs. Appellate court data were analyzed based on the characteristics of the landowner (public or private), recreation activity pursued at the time of injury, and actual landowner liability exposure. Finally, recommendations are offered for public agencies and landowners interested in increasing access and contemplating public access programs.

Landowner Liability

Private landowner liability concerns are congruent with those of public park and recreation agencies vexed by the increasingly litigious nature of American society (Kaiser, 1986). As with many public policy issues, recreation liability concerns are unbued with certain myths, perceptions, and realities.

Liability perceptions. Most landowner public access studies indicate that landowners are concerned about the threat of liability and often use this as a justification to restrict public access (Brown et al., 1984; Cordell and English, 1987; Gramann et al., 1985; Wildlife Management Institute, 1983; Wright and Kaiser, 1986). Liability as a barrier to public access is a constraint also recognized by state wildlife administrators. Wright et al. (2001) found that administrators rated liability as the second-most-significant access problem facing landowners, exceeded only by concerns about trespass.

Research has clearly identified landowners' concerns about liability but has done little more than document that such liability is perceived as a problem. Lack of knowledge regarding recreation accident rates or landowner protections provided by state law contribute to this perception. Only 29 of the 50 state wildlife administrators reported that

their states had legislation minimizing landowner liability, even though all states have enacted recreation-use statutes protecting landowners from liability (Wright et al., 2001).

The reality of landowner liability. Common-law tort and property rules govern landowner duties and obligations to recreational users. Under these rules, recreational users are categorized as invitees, licensees, or trespassers. These categories are important because they establish the legal obligations of landowners in their relationships with recreational users. Among the three categories, invitees receive the greatest legal protection, licensees moderate protection, and trespassers little protection.

An invitee is a person expressly or implicitly invited on the property by the landowner for a public or a business purpose (Restatement Second of Torts, §332, 1965). For example, if a hunter leases or pays an access fee to the landowner, the hunter may be classified as an invitee. Under this circumstance, the landowner owes the highest duty of care to the invitee. In layman's terms, the landowner has a duty to (1) inspect the property and facilities to discover hidden dangers, (2) remove the hidden dangers or warn the user about them, (3) keep the property and facilities in reasonably safe repair, and (4) anticipate foreseeable activities by users and take precautions to protect users from reasonably foreseeable dangers (Kaiser, 1986).

Although this is a daunting task, the landowner is not required to ensure or guarantee the safety of the invitee. Landowners only have to use reasonable efforts in fulfilling these duties to prevent an unreasonable risk of injury.

A licensee is anyone who enters the property by permission only, without any economic or other inducement to the landowner (Prosser and Keeton, 1984). Commonly, a licensee is a social guest whose use of the property is gratuitous and not economically beneficial to the landowner (Restatement Second of Torts, §330, 1965). For example, a person permitted to hunt on a rancher's land without paying a fee is a licensee. The landowner's duty of care to a licensee is the same as to the invitee, except that the landowner does not have a duty to inspect the property to discover hidden dangers. However, once a landowner becomes aware of a hidden danger, there is a duty to warn the licensee of this hidden con-

dition. Conversely, a landowner has no duty to warn the licensee of dangers that are known, open, or obvious to a reasonable person.

The law affords the adult trespasser scant legal protection. A trespasser is a person who is on the property of another without any right, lawful authority, expressed or implied invitation or permission (Restatement Second of Torts, §329, 1965). Generally, a landowner has no duty to maintain the land for the safety of the adult trespasser, except that a landowner cannot intentionally, willfully, or wantonly injure a trespasser (Katko, 1971). Most states have adopted an exception known as "the discovered trespasser rule," requiring that landowners exercise reasonable care to not injure the discovered trespasser (Prosser and Keeton, 1984). The landowner has an obligation not to do something that would harm the trespasser. For example, if a landowner observes a trespasser entering a rifle range, that landowner has an obligation to stop firing and close the range until the trespasser is removed.

Landowner Liability Under Recreation-Use Statutes

In an effort to encourage landowners to make their lands available for public recreation use, all 50 states have adopted recreation-use statutes (Table 1). Most of these statutes are patterned after the Council of State Governments' model act (1965), which was based on previously enacted liability protection legislation in 14 states. (See dates in Table 1.) The underlying theory of the model act is that landowners protected from liability will allow recreational use of their land, thus reducing state expenditures to provide such areas.

Although the statutes vary in detail, they are all similar in limiting landowner liability and in altering the common-law duty of care. In effect, the statutes provide significantly greater liability protection for the landowner than is available under common law. As outlined in Table 1, most state statutes explicitly provide that the landowner has no duty to: (1) warn the recreation user of hidden dangers, (2) keep the property reasonably safe, or (3) provide assurances of safety to recreational users.

Only Alaska, Arizona, Massachusetts, Montana, Ohio, Oregon, Vermont, and Washington do not explicitly exempt landowners from these specific duties, but they do limit landowner liability.

Table 1. Analysis of state recreational-use statutes.

State	Year enacted	Duty to warn of hazards	Duty to keep land safe	Assure land safe for use	Liability for gross negligence/willful misconduct	Protection retained for public agency lease payments	Protection lost if fee charged
Alabama Ala. Code § 35-15-1	1965	No	No	No	Yes	Not specified	No, if use for noncommercial purpose
Alaska Ala. Stat. § 09.65.200	1980	Not specified	Not specified	Not specified	Yes	Not specified	Yes
Arizona Ariz. Rev. Stat. § 33-1551	1983	Not specified	Not specified	Not specified	Yes	Not specified	Yes/no, only for nonprofit corp.
Arkansas Ark. State. Ann. § 18-11-301	1965	No	No	No	Yes	Yes	No, provided fees only to offset costs
California Govt. Code § 846	1963	No	No	No	Yes	Yes	Yes
Colorado Colo. Rev. Stat. § 33-41-101	1963	Not specified	No	No	Yes	Yes	Yes
Connecticut Gen. State § 52-557f	1971	No	No	No	Yes	Yes	Yes/no, if fee to harvest firewood
Delaware Del. Code tit 7 § 5901	1953	No	No	No	Yes	Yes	Yes
Florida Fla. Stat. § 375.251	1963	No	No	No	Yes	Yes	Yes
Georgia Ga. Code § 51-3-20	1965	No	No	No	Yes	Yes	Yes
Hawaii Hawaii Rev. Stat. § 520-1	1969	No	No	No	Yes	Yes	Yes
Idaho Idaho Code § 36-1604	1976	No	No	No	Not specified	Yes	Yes
Illinois § 745 ILCS 65/1	1965	No	No	No	No	Yes	Yes/no, fees for land conservation allowed
Indiana Ind. Code Ann. § 14-22-10-2	1969	Not specified	No	No	Yes	Yes	Yes
Iowa Iowa Code Ann. § 461C.1	1967	No	No	No	Yes	Yes	Yes
Kansas Kansas Stat. Ann. § 58-3201	1965	No	No	No	Yes	Yes	Yes
Kentucky Ky. Rev. Stat. §150.645; §411.190	1968	No	No	No	Yes	Yes	Yes

Table 1 Continued

Table 1. Continued

State	Year enacted	Duty to warn of hazards	Duty to keep land safe	Assure land safe for use	Liability for gross negligence/willful misconduct	Protection retained for public agency lease payments	Protection lost if fee charged
Louisiana La. Rev. Stat. § 9:2791	1964	No	No	No	Yes	Yes	Yes
Maine Me. Rev. Stat. title 14 § 159-A	1979	No	No	No	Yes	Yes	Yes/no, fees allowed if use is noncommercial
Maryland Md. Code Nat. Res. § 5-1101	1957	No	No	No	Yes	Yes	Yes
Massachusetts Mass. Gen. Law ch. 21 § 17C	1972	Not specified	Not specified	Not specified	Yes	Yes	Yes/no, voluntary payments allowed
Michigan Mich. Comp. Laws § 324.73301	1953	No, unless known	Only reasonably safe	Not specified	Yes	Not specified	Yes/no, fees allowed for hunting, fishing and crop harvests
Minnesota Min. Stat. § 604A.20	1961	No	No	No	Yes	Yes	Yes
Mississippi Miss. Code § 89-2-1	1978	No	No	No	Yes	Yes	Yes
Missouri Mo. Ann Stat. § 537 345	1983	No	No	No	Yes	Yes	Yes
Montana Mont. Rev. Code § 70-16-301	1965	Not specified	Not specified	No	Yes	Yes	Yes
Nebraska Neb. Rev. Stat. § 37-729	1965	No	No	No	Yes	Yes	Yes/no, group rental fees allowed
Nevada Nev. Rev. Stat. § 41.510	1963	No	No	No	Yes	Yes	Yes
New Hampshire N.H. Rev. Stat. § 212.34	1961	No	No	No	Yes	Not specified	Yes/no, fees for crop picking allowed
New Jersey N.J. Stat. § 2A:42A-2	1968	No	No	No	Yes	Yes	Yes
New Mexico N.M. Stat. § 17-4-7	1973	Not specified	No	No	Yes	Yes	Yes
New York N.Y. Gen. Law § 9-103	1963	No	No	No	Yes	Yes	Yes
North Carolina N.C. Gen. Stat. § 38A-1	1995	No	Not specified	Not specified	Not specified	Yes	Yes/no, fees to cover damages allowed
North Dakota N.D. Cent. Code § 53-08-1	1965	No	No	Not specified	Yes	Yes	Yes

Table 1 Continued

Table 1. Continued

State	Year enacted	Duty to warn of hazards	Duty to keep land safe	Assure land safe for use	Liability for gross negligence/willful misconduct	Protection retained for public agency lease payments	Protection lost if fee charged
Ohio Ohio Rev. Code Ann. § 1533.18	1963	Not specified	Not specified	No	Not specified	Yes	Yes
Oklahoma Okla. Stat. Ann. title 76 § 1301	1965	No	No	No	Yes	Yes	Yes
Oregon Or. Rev. Stat. § 105.670	1971	Not specified	Not specified	Not specified	Yes	Not specified	Yes/no, fee for firewood cutting allowed
Pennsylvania Pa. Stat. title 68 § 477-1	1965	No	No	No	Yes	Yes	Yes
Rhode Island R.I. Gen. Law § 32-6-1	1978	No	No	No	Yes	Yes	Yes
South Carolina S.C. Code § 27-3-10	1962	No	No	No	Yes	Yes	Yes
South Dakota S.D. Codified. Laws § 20-9-12	1966	No	No	No	Yes	Yes	Yes/no, nonmonetary gift of less than \$100
Tennessee Tenn. Code Ann. §70-7-101; 11-10-101	1965	No	No	No	Yes	Yes	Yes
Texas Civ. Prac. & Rem. Code § 75 001	1965	No	No	No	Yes	Not specified	No, fees equal to 2x or 4x property taxes allowed
Utah Utah Code § 57-14-1	1971	No	No	No	Yes	Not specified	Yes
Vermont Vt. Stat. title 10 § 5212	1967	Not specified	Not specified	Not specified	Yes	Not specified	Yes/no, fees for firewood cutting allowed
Virginia Va. Code § 29.1-509	1950	No	No	No	Yes	Yes	Yes/no, fees for firewood cutting allowed
Washington Wash. Rev. Code § 4.24.200	1967	Not specified	Not specified	Not specified	Yes	Not specified	Yes/no, fees for firewood cutting allowed
West Virginia W.Va. Code § 19-25-1	1965	No	No	No	Yes	Not specified	No, fees up to \$50/person/year
Wisconsin Wisc. Stat. § 895.52	1963	No	No	Not specified	Yes	Yes	No, fee revenue up to \$2000/year allowed
Wyoming Wyo. Stat. § 34-19-101	1965	No	No	No	Yes	Yes	Yes

In addition to eliminating these specific landowner duties, all state statutes contain a general disclaimer of liability for an injury to a recreational user caused by the commission

or omission of the recreational user. The New Jersey statute provides an illustrative example:

"An owner, lessee or occupant of premises who gives permission to another to enter upon such

premises for a sport or recreational activity or purpose does not thereby assume responsibility for or incur liability for any injury to person or property caused by any act of persons to whom the permis-

sion is granted (N. J. State Ann 2A 42A-3 (b)(3))."

Major exceptions. While landowners enjoy significant liability protection under these statutes, they are not without legal risks. Landowners may be liable for user injuries when they (1) willfully fail to warn or guard against a dangerous condition on their property, or (2) charge an access or use fee. These exceptions have implications for landowners seeking to generate income from public access.

Willful conduct or gross negligence. Except for Idaho, Illinois, North Carolina, and Ohio, all other state statutes contain provisions that hold a landowner liable for certain types of bad conduct (Table 1). This landowner bad conduct is expressed as acts of willful misconduct or gross negligence. For example, the Kentucky statute provides that:

"This section shall not limit the liability which would otherwise exist for willful or malicious failure to guard or warn against a dangerous condition, use, structure or activity (Ky. Rev. Stat. 150.645)."

Consequently, a landowner aware of a dangerous situation has an affirmative duty to warn of the danger. The "discovered danger" requires action. However, the rule does not require the landowner to inspect the property to discover dangerous situations. For example, if a landowner discovers an abandoned well that is covered by brush, the landowner has a duty to warn guests of the location of the danger or to fill in the well to remove the hazard.

State recreation-use statutes do not generally define willful conduct or gross negligence, leaving the courts to determine what constitutes such behavior. Some states reserve "willful and malicious conduct" only for intentional or hateful acts (Moua, 1991), while other states include inaction that disregards possible harmful results (Burnett, 1982; Estate of Thomas, 1975; Krevics, 1976; Mandel, 1982; McGruder, 1972; Miller, 1976; Newman, 1993; North, 1981). An example of an intentional willful act would be if a landowner stretched a cable at neck height across a trail to deter snowmobile use, whereas willful disregard of consequences would be if a landowner knew that a cable existed and did nothing about it.

Charging a fee for access. Most recreation-use statutes do not provide liability protection when the landowner charges an access or use fee. Thirty-one states provide landowner liability only for free access. Generally, the

courts have strictly interpreted this gratuitous-use requirement so that the landowner cannot charge a fee and retain liability protection (Copeland, 1970; Graves, 1982; Hallacker, 1986; Kesner, 1975; Schoonmaker, 1986; Veeneman, 1985).

During the last two decades, there has been a trend to relax the fee restriction. Nineteen states allow landowners to impose limited fees and charges for recreational use and still retain the protection (Table 1). Texas and Wisconsin allow landowners to generate significant income from recreational access and use, while the other 17 states limit fees to certain uses or cap fee amounts.

Fees for harvesting plant products. Seven states—Connecticut, Michigan, New Hampshire, Oregon, Vermont, Virginia, and Washington—specifically allow landowners to charge fees for harvesting crops (gleaning) or gathering firewood and not lose liability protection (Table 1). These states do not cap the fee amount or the amount of annual revenue that can be generated from fees. Consequently, landowners can realize substantial revenue, depending on the size of "pick your own" operations.

In addition to the seven states that allow gleaning fees, 12 others permit landowners to impose fees for other types of recreational activities, including gleaning. These states generally cap the fees or cap the total amount of revenue that can be generated. For example, South Dakota caps the fee at \$100 and West Virginia at \$50 per person per year (Table 1).

Governmental lease payments. Landowners often lease land to state and local governmental agencies for park and other outdoor recreational uses. To encourage this practice, 38 states do not consider lease payments made to private landowners by public agencies as fees. Landowners in those states are allowed to retain liability protection. Only Alabama, Alaska, Arizona, Idaho, Michigan, New Hampshire, Oregon, Texas, Utah, Vermont, Washington, and West Virginia do not explicitly provide this protection for landowners (Table 1). Landowners leasing land to public agencies in these states must transfer the liability risk to the public agency via the lease agreement.

Private lease agreements. Landowners in a number of states often lease land to hunting clubs or private individuals. The lease payments made by private parties to landowners are considered to be fees. This means that the

free-access liability protections provided to the landowner under terms of the recreation-use statutes are lost. In contrast, governmental lease payments are not considered fees, and liability protections are retained by the landowner.

One option available to landowners in private lease arrangements is to transfer, by terms in the lease, the liability risk to renting parties or tenants. This risk-transfer language is often supplemented by a requirement that tenants purchase their own liability insurance coverage. Landowners that follow this practice can require minimum insurance policy coverage and proof of insurance.

Lawsuit Data On Landowner Liability

Nearly four decades have passed since the model state recreation-use legislation was drafted by the Council of State Governments (1965) to encourage public recreational access to private lands. This section discusses how the recreation-use statutes have been interpreted and applied by appellate courts since that time.

A total of 637 cases involving injuries or death to recreation users were identified and analyzed. The cases were nearly equally divided between public ($n = 307$) and private ($n = 330$) landowners. A distinction must be made between the filing of an injury lawsuit and a landowner being held liable for an injury. A person must file a lawsuit to establish liability, and not all lawsuits result in liability. Indeed, as this data indicates, liability was found in only about one-third of the cases. Only cases that proceeded through trial and reached an appeals court were included in the analysis. No data were included on cases settled out of court.

Litigation patterns by state. As outlined in Table 2, litigation patterns varied significantly among the states. Only Maryland, Missouri, North Carolina, Rhode Island, and Vermont did not have any cases involving the application of the recreation-use statute to a user injury.

With a few notable exceptions, private landowner litigation generally patterned state population. Not surprisingly, the larger states of California, Florida, Illinois, Indiana, Michigan, New York, Ohio, and Pennsylvania reported 161 cases (49% of all private landowner cases). However, a few of the smaller states also reported a significant number of cases. Alabama, Georgia, Louisiana, and Wisconsin reported 79 cases, or about

24% of the total. Surprisingly, Texas, the second-most-populated state in the nation and a state with 98% of its land held in private ownership, reported only two cases against private landowners.

Ten states (Alabama, California, Georgia, Illinois, Louisiana, Michigan, New York, Ohio, Pennsylvania, and Wisconsin) accounted for about 70% of all the private landowner litigation ($n = 229$ cases). Of these, New York reported the highest number of cases ($n = 46$). However, the percentage of cases imposing liability on private landowners (26%) was not higher than the national average. Michigan reported 29 cases, but only 7 of those (24%) resulted in landowner liability. Louisiana is notable for its litigation pattern. Twenty-seven cases involved private lands, and 12 of those cases (45%) imposed liability on the landowner.

Beyond these observations, few trends can be gleaned from landowner litigation patterns among states. Further analysis beyond the scope of this investigation may reveal patterns based on a state's heritage of outdoor recreation pursuits or the number of people pursuing outdoor recreation in each state.

Risks associated with different recreational activities. Clearly, the legal risk factors associated with different types of recreational activities are an important landowner consideration in allowing, restricting, or denying public access. Thirteen outdoor recreation activities were used for categorical analysis because they encompass the majority of traditional outdoor recreational pursuits. Because of the size and complexity of the cases, landowner liability determinations were not made for each of these 13 categories. The data reflect only the aggregate number of cases involving each type of recreation activity.

Water-related injuries from swimming, boating, and fishing generated the largest number of cases ($n = 196$, 31%) and potentially pose the greatest lawsuit risk exposure for landowners. Although lawsuit risks may be greater from water activities, it does not follow that the liability risk is also greater. These data simply indicate that more appellate lawsuits involved water than any other single recreation activity, and it should not be interpreted that landowners are more liable if they allow water-based recreation.

Over the last 30 years, motorized recreational activities have increased in popularity. This growth has resulted in an increasing number of motorized-vehicle injury cases.

Injury cases from motorized-vehicle accidents ($n = 82$) comprised about 12% of all the appellate cases brought under recreation-use statutes. Snowmobiles were involved in 63% of these cases. Nearly two-thirds of these cases arose in six states—California, Idaho, Michigan, New York, Ohio, and Pennsylvania. More than 25% of all cases came from New York.

Hunting, an activity traditionally associated with public access, provides very little lawsuit and liability exposure for landowners. Only 15 cases involved hunting accidents, and seven of those occurred in Louisiana. These data suggest that landowners allowing access for hunting have minimal lawsuit and liability exposure.

Public agency protection. Although recreation-use statutes were originally intended to protect private landowners, the majority of states ($n = 27$) have extended this same protection to government agencies (Table 2). The history behind this transition is interesting in that it closely tracks the decline in sovereign immunity that once protected public agencies. Today, all states have enacted tort claims statutes allowing people to sue public agencies for personal injuries. Because many of these state tort claims statutes hold the public agencies to the same negligence standards as private landowners, the courts have extended the protection of recreation-use statutes to public agencies (Kozlowski and Wright, 1989).

Public agency landowners were held liable in 36% of 307 reported cases, and private landowners were held liable in 27% of 330 reported cases. A large majority of the public agency cases included in Table 2 involve municipal park and recreation agencies and those recreation activities associated with these city agencies.

Summary and Conclusion

The myth and perception of landowner liability appears to be greater than the actual liability risks. State recreation-use statutes provide significant liability protection for landowners. This analysis shows that while significant similarities exist across the states, important differences also are present. All states limit landowners' liability for free access, and most states also lessen landowner obligations to the recreational user. The most notable difference among states relates to the ability (or inability) of the landowner to charge access or use fees and retain liability

protection. Clearly, landowners in these states have a greater ability to generate income from access and outdoor recreation activities than do landowners in states requiring free access. In free-access states, landowners are required to make a choice between income generation and liability protection. In states that permit access fees, landowners do not have to make this choice.

Despite the extensive liability protection provided landowners by state recreation-use statutes, a significant gap persists between the perception and the reality of landowner liability. Research indicates that landowners and a number of resource management professionals are not aware of the significant liability protection afforded by recreation-use statutes. If the gap between landowners' perceptions of liability and the reality of liability is to be bridged, the following three points must be considered.

1. Landowners must be made more knowledgeable regarding the degree of insulation they are afforded under state recreational-use statutes.

2. Organizations concerned with access to private lands, such as state Extension and fish and wildlife agencies, must endeavor to better understand and communicate to landowners the reality of private landowner liability exposure, rather than automatically accepting the myth of the liability crisis. Perpetuation of the liability myth exacerbates the access crisis.

3. Public agencies should consider initiating public/private lease partnerships as a means of increasing access and providing income to landowners. Thirty-eight states exempt public lease payments made to landowners from the no-fee provisions. This encourages landowners to lease their land to public agencies, receive substantial monetary payments for these leases, and retain liability protection.

Furthermore, additional research is needed in several areas before one can fully assess the impact of liability on landowners' access decisions or meaningful policies and programs developed. First, research producing a better understanding of landowners' perceptions of insurance availability, affordability, and the ability of insurance to increase access is needed. In addition, it would be desirable to determine the relative importance of liability and the various other disincentives experienced by landowners and how they collectively influence landowners' decisions. For example, some ownership objectives, such as

Table 2. Recreation injury litigation by state.

State	Number of cases against public agencies	Number of cases holding public agency liable	Number of cases against private landowner	Number of cases holding private landowner liable	Total number of cases	Hunting	Fishing	Swimming	Boating	Camping	Picnicking	Hiking	Nature Study	Horse Riding	Bicycling	Off-road Vehicles	Snowmobiling	Auto	Other
Alabama	10	2	12	3	22	1	1	8	3	-	-	-	-	-	-	-	-	-	9
Alaska	1	0	0	0	1	-	-	-	-	-	-	-	-	-	-	-	-	-	1
Arizona	8	3	4	3	12	-	-	1	1	-	-	-	-	1	2	2	-	-	5
Arkansas	3	1	2	1	5	-	-	2	-	1	-	-	-	-	-	-	-	-	2
California	21	8	22	3	43	-	1	8	1	1	1	2	-	-	2	9	-	4	14
Colorado	2	0	2	0	4	-	-	-	-	1	-	-	-	-	-	-	-	1	2
Connecticut	5	1	6	0	11	-	1	-	-	-	-	-	-	-	-	-	1	1	8
Delaware	0	0	1	0	1	-	-	1	-	-	-	-	-	-	-	-	-	-	-
Florida	7	2	4	0	11	-	-	3	5	-	-	-	-	-	1	-	-	-	2
Georgia	5	0	18	2	23	-	1	8	-	-	-	-	-	-	1	-	-	-	13
Hawaii	6	0	2	0	8	-	-	7	-	-	-	-	-	-	-	-	-	-	1
Idaho	8	3	4	1	12	-	-	-	-	-	-	-	-	-	-	3	1	1	7
Illinois	7	2	12	5	19	-	-	11	-	-	-	1	-	1	1	2	-	-	3
Indiana	6	2	7	1	13	1	-	4	1	-	-	-	-	-	-	-	-	-	7
Iowa	1	0	3	1	4	-	-	1	-	-	-	-	-	-	-	2	-	-	1
Kansas	2	0	2	1	4	-	-	1	2	-	-	-	-	-	-	-	-	-	1
Kentucky	3	0	5	2	8	-	-	4	-	-	-	-	-	-	-	-	-	-	4
Louisiana	18	9	27	12	45	7	2	16	6	1	-	-	-	-	-	2	-	2	10
Maine	2	0	4	0	6	-	-	-	-	-	-	-	-	-	-	-	-	2	4
Maryland	0	0	0	0	0	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Massachusetts	7	5	1	1	8	-	-	-	-	-	-	-	-	-	1	-	1	-	6
Michigan	14	3	29	7	43	-	-	21	2	-	-	-	-	-	-	4	4	-	12
Minnesota	2	1	2	0	4	-	-	2	-	-	-	1	-	-	-	-	-	1	-
Mississippi	1	0	0	0	1	-	-	1	-	-	-	-	-	-	-	-	-	-	-
Missouri	0	0	0	0	0	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Montana	2	0	4	3	6	-	-	-	-	-	-	-	1	-	-	-	-	-	5
Nebraska	9	3	2	1	11	-	-	1	-	-	-	-	-	1	-	1	-	-	8
Nevada	4	0	2	0	6	-	-	2	-	-	-	1	-	-	-	1	-	-	2
New Hampshire	0	0	4	0	4	-	-	3	-	-	-	-	-	-	-	1	-	-	-
New Jersey	3	1	6	5	9	-	-	2	1	-	-	-	-	-	-	-	1	-	1
New Mexico	0	0	3	1	3	-	-	-	-	-	-	-	-	-	-	-	3	-	-
New York	35	13	46	12	81	3	2	2	1	-	-	-	3	-	1	10	17	5	8
North Carolina	0	0	0	0	0	-	-	-	-	-	-	-	-	-	-	-	-	-	-
North Dakota	3	2	1	1	4	-	-	1	-	-	-	-	-	-	-	-	-	1	1
Ohio	30	3	18	3	48	-	2	7	1	-	1	-	1	-	1	-	2	4	2
Oklahoma	2	1	1	0	3	-	-	2	-	-	-	-	-	-	-	-	-	-	-
Oregon	5	2	4	2	9	-	-	2	-	-	-	-	-	-	-	-	2	-	2
Pennsylvania	18	6	23	4	41	1	1	10	1	-	-	2	1	-	-	-	-	4	1
Rhode Island	0	0	0	0	0	-	-	-	-	-	-	-	-	-	-	-	-	-	-
South Carolina	1	0	1	0	2	-	1	-	-	-	-	-	-	-	-	-	-	-	-
South Dakota	2	1	0	0	2	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Tennessee	2	1	3	2	5	-	1	-	1	-	-	-	-	-	1	-	-	-	-
Texas	10	3	2	2	12	1	-	3	1	-	-	-	3	1	-	-	-	-	-
Utah	4	2	6	2	10	-	-	2	-	-	1	-	-	-	-	1	2	1	1
Vermont	0	0	0	0	0	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Virginia	2	0	0	0	2	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Washington	17	7	8	3	25	-	1a	4	1	-	-	-	-	-	-	3	2	-	2
West Virginia	1	1	2	2	3	-	-	1	-	-	-	-	-	-	-	-	1	-	-
Wisconsin	16	5	22	5	38	-	7	6	-	-	1	1	-	-	-	2	1	2	-
Wyoming	2	0	3	1	5	1	-	-	-	-	-	-	-	-	-	-	-	-	1
Total	307	111	330	92	637	15	21	147	28	0	7	4	13	2	6	24	58	24	30

wanting to maintain exclusive recreational use of the property for personal or familial use, may run counter to allowing public access. Finally, contingent valuation methods or similar approaches should be used to determine the level of incentives needed to overcome the disincentives experienced by landowners.

References Cited

Articles

- Becker, J.C. 1990 Legal liability associated with profitable resource-based recreation on private land. *Proceedings from the Conference on Income Opportunities for the Private Landowner through Management of Natural Resources and Recreational Access*. Grafton, W., A. Ferrise, D. Colyer, D. Smith, & J. Miller (editors). Morgantown, West Virginia: West Virginia University Extension Service. RD No. 740.
- Brown, T.L. 1974 New York landowners' attitudes toward recreation activities. *Proceedings, North American wildlife and natural resources conference*. Wildlife Management Institute, Washington, D.C.
- Brown, T.L., D.J. Decker, and J.W. Kelly. 1984 Access to private lands in New York 1963-1980. *Wildlife Society Bulletin* 12(4): 344-349.
- Copeland, J.D. 1998 Recreational access to private lands liability problems and solutions. *Proceedings, Natural Resources Income Opportunities for Private Lands*. April 5-7, 1998. Hagerstown, Maryland.
- Cordell, K. and D. English. 1987 Private land and water open for recreation. Washington, D.C. U.S. Department of Agriculture Forest Service Technical Publication (SE-4901).
- Council of State Governments. 1965 Public recreation on private lands: limitations on liability suggested state legislation. 1965 Volume 24. Chicago, Illinois.
- Crispell, D. 1994 Targeting hunters. *American Demographics* 16: 34-40.
- Durrell, J.S. 1968 Hunter-landowner relationships. *Proceeding, 34th North American wildlife and natural resources conference*. Wildlife Management Institute, Washington, D.C.
- Gramann, J., T. Bonnicksen, D. Albrecht, and W. Kurtz. 1985 Recreational access to private forests: the impact of hobby farming and exclusivity. *Journal of Leisure Research* 17: 234-240.
- Holecek, D. and R. Westfall. 1977 Public recreation on private lands - the land owner's perspective. *Research Report 335*. Michigan Agricultural Experiment Station, East Lansing, Michigan. 12 pp.
- Kaiser, R. 1986 Liability and Law in recreation, parks and sports. Englewood Cliffs, New Jersey: Prentice-Hall Inc.
- Kaiser, R., and B. Wright. 1985 Recreational access to private land beyond the liability burden. *Journal of Soil and Water Conservation* 40: 478-485.
- Kays, J., G. Goff, P. Smallidge, W. Grafton, & J. Parkhurst. 1998 *Proceedings, Natural Resources Income Opportunities for Private Lands Conference*. April 5-7, 1998. Hagerstown, Maryland.
- Kozlowski, J. and B. Wright. 1989 State recreational use statutes and their applicability to public agencies: a silver lining or more dark clouds? *Journal of Park and Recreation Administration* 26: 26-34.
- Lyach, L. and C. Robinson. 1998 Barriers to recreational access opportunities on private lands. *Proceedings, Natural Resources Income Opportunities for Private Lands Conference*. April 5-7, 1998. Hagerstown, Maryland.
- McMullin, S., M.D. Duda, and B. Wright. 2000 House Bill 38 and future directions for the Department of Game and Inland Fisheries: results of constituent and staff studies and recommendations for future action. Richmond, Virginia: Department of Game and Inland Fisheries.
- Outdoor Recreation Resources Review Commission. 1962 Prospective demand for outdoor recreation. Study Report 26. Washington, D.C.
- President's Commission on Americans Outdoors. 1987. *Americans outdoors: the legacy, the challenges*. Washington, D.C. Island Press.
- Prosser, W. and P. Keeton. 1984 *Prosser & Keeton on the law of torts*. St. Paul, Minnesota: West Publishing Co.
- Resources for the Future. 1983 *Outdoor recreation in America 1983*. Washington, D.C. Resources for the Future Inc. 42 pp.
- Tasley, R.J., J.C. Bergstrom, H.K. Cordell, S.J. Zarnoch, and P. Gentle. 1997. Private lands and outdoor recreation in the United States. U.S. Department of Agriculture Forest Service, Southeast Forest Experiment Station, Environmental Resources Assessment Group. 17 pp.
- U.S. Department of Commerce. 1990 *Recouple—natural resource strategies for rural economic development*. Technical Assistance and Research Division. Economic Development Administration.
- U.S. Fish and Wildlife Service. 1998. Unpublished data. Washington, D.C. U.S. Fish and Wildlife Service, Office of Federal Aid.
- Wildlife Conservation Fund of America. 1996. *The 1996 Survey of State Wildlife Agency Revenue*. Columbus, Ohio: The Wildlife Conservation Fund of America.
- Wildlife Management Institute. 1983 *Improving access to private land: a path to wildlife*. Washington, D.C. Wildlife Management Institute.
- Womach, J., R.A. Christensen, and R. Gum. 1975. An evaluation of the ASCS Pilot Public Access Program. U.S. Department of Agriculture Economic Research Service. Resource Document 44 pp.
- Wright, B.A., H.K. Cordell, T.L. Brown, and A.L. Rowell. 1988. National private landowner study. U.S. Department of Agriculture Forest Service, Southeast Forest Experiment Station, Outdoor Recreation and Wilderness Assessment Group. 49 pp.
- Wright, B. and D. Fesenmeyer. 1990. Modeling rural landowners' hunter access policies in East Texas, USA. *Environmental Management* 12: 229-236.
- Wright, B., and R. Kaiser. 1986. Wildlife administrators' perceptions of hunter access problems: a national overview. *Wildlife Society Bulletin* 14: 30-35.
- Wright, B.A., R.A. Kaiser, and N.D. Emerald. 2001. A national trends assessment of hunter access problems: Perceptions of state wildlife administrators, 1984-1997. *Human Dimensions of Wildlife* 6: 145-146.
- Yarrow, G. (editor). 1990. *Proceedings of the First Symposium on Fee Hunting on Private Lands in the South*. Cooperative Extension Service, Clemson University.

Cases

- Burnett v. Adrian 326 N.W.2d 810 (Michigan, 1982).
- Copeland v. Larson 174 N.W.2d 745 (Wisconsin, 1970).
- Estate of Thomas v. Consumers Power Co., 231 N.W.2d 653 (Michigan, 1975).
- Graves v. U.S. Coast Guard, 692 F.2d 71 (California, 1982).
- Hallacker v. Nat'l Bank & Trust Co., 806 F.2d 488 (New Jersey, 1986).
- Katko v. Briney, 183 N.W.2d 657 (Iowa, 1971).
- Kesner v. Trenton, 216 S.E.2d 880 (West Virginia, 1975).
- Krevics v. Ayers 358 A.2d 844 (New Jersey, 1976).
- Mandel v. U.S. 545 F.Supp. 907 (Arkansas, 1982).
- McGruder v. Georgia Power Co., 191 S.E.2d 305 *rev. on other grounds*, 194 S.E.2d 440 (Georgia, 1972).
- Miller v. U.S. 597 F.2d 614 (Illinois, 1976).
- Mousby v. Schilling v. NSP, 458 N.W.2d 836 (Wisconsin App., 1991).
- Newman v. Sun Valley Crushing Co. 787 P.2d 623 (Arizona App. Div. 1, 1992); 855 P.2d 787 (Arizona App. Div. 1, 1993).
- North v. Taco Hills Inc., 286 S.E.2d 346 (Georgia, 1981).
- Restatement of the Law of Torts, 2d., Sections 329-332. Washington, D.C.: American Law Institute (1965).
- Schoonmaker v. Ridge Runners Club 99 Inc., 500 N.Y.S.2d 562 (New York, 1986).
- Veeneman v. State, 373 N.W.2d 193 (Michigan, 1985).

University of California
Small Farm Center

Fact Sheets for Managing Agri- and Nature-Tourism Operations

Safety and Risk Management

Agricultural tourism can be a mutually beneficial exchange between agriculturists and urban residents. It can help agriculturalists learn more about urban concerns, while enabling urban residents to learn about farming and enjoy nature. It can also increase farm income if a fee is charged for farm visits or if products are sold to visitors. However, farm visits imply risks and potential liability to farm owners, should accidents occur that result in injuries to visitors. There is a need, therefore, to pursue prudent risk management strategies to minimize your liability exposure.

Safety is your first priority when entertaining visitors to your farm or ranch or when consumers visit your operation to participate in picking or other farming experiences, including farm tours.

Your visitors' safety is largely your responsibility. Review the following suggestions as a guide to assessing your own farm or nature tourism operation for potential hazards and to prepare for a safe, enjoyable visit to your farm, ranch or nature operation.

Managing and Reducing Risks

One essential tool to manage risk is liability insurance. Before hosting groups of visitors or planning a public event, check with your insurance agent about the adequacy of your liability coverage. An event insurance rider may be necessary.



Clearly identify the areas open to farm visitors.

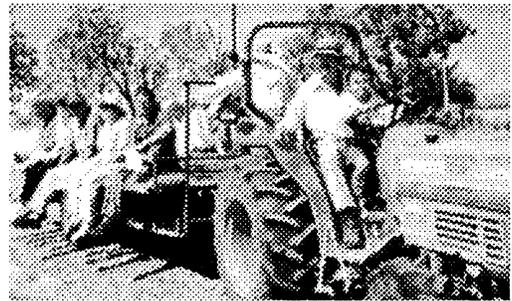
- Identify the specific areas that guests will visit; the activities in which they will participate, how they will be supervised, and the safety precautions you will take, and any rules you will need to post. For some activities (horseback riding, for example) a "hold harmless agreement" may be a good idea. A "hold harmless" agreement indicates that the visitor is willing to assume responsibility for certain risks. It does not, however, totally absolve you of a certain level of responsibility for the health and safety of your visitors.
- Plan for Emergencies. Keep a well stocked first aid kit handy. Be sure knowledgeable people are on staff that have CPR and first aid skills. Develop an emergency plan for dealing with natural disasters such as an earthquakes, floods, and fires.

- Suggest that visitors wear appropriate clothing such as closed-toed shoes (tennis shoes or boots, but not sandals). Long pants are recommended for certain activities.
- When you brief visitors, explain that you operate a working production facility. As such, certain hazards come with the territory (uneven ground, insects, climate, farm odors) and visitors must accept those risks and exercise reasonable caution.
- Clearly demarcate "off-limit" areas and specifically designated public areas. Rope off or block access to other areas.

Facilities and Equipment

- **Parking:** Most counties require that cars park completely off the paved road. Do you have adequate space for the expected number of vehicles?
- **Buses:** If buses must park away from your farm, plan for a drop-off and loading area.
- **Bathrooms:** Do you have clean, well stocked, public restrooms in good operation? If you are expecting a large number of visitors, consider renting portable units.

- **Security:** Depending on the event, you may want to employ additional help to ensure that guests do not put themselves or your farm operation at risk.



Park tractors and farm equipment within eyesight.

- **Ladders:** Store ladders away from trees and public spaces to eliminate the temptation to climb. This is particularly important with regard to young people.
- **Tractors and Equipment:** Park tractors and equipment within eyesight (if desired), but away from the visitors' area. Agricultural equipment fascinates people; however, the tractor often becomes a climbing object for children (even when they are supervised by adults). Discuss tractor safety and instill respect for your equipment. Never allow visitors to drive farm equipment.
- **Pest Management Materials:** Pesticides, herbicides, and other farm management products should be safely stored, in a secure location, preferably away from public view.
- **Shops and repair facilities** are among the most hazardous places on the farm and should generally be off-limits to the public. Close the doors and/or place a rope across the entrance with a "Do Not Enter" sign. Have farm personnel check these areas often.

Livestock and Animals

General concepts: All interactions between



Consider animal well-being first when choosing farm animals for public interaction.

animals and guests should be supervised by farm staff. Animals will behave differently around a crowd of people. They should be penned or confined for viewing, with limited, controlled access for petting. Carefully select your most healthy, "user-friendly" animals for public interaction, but remember that animal well-being comes first. Give adequate attention to odor, ventilation, manure, fly, and pest control in the visitor area.

- Pets: Ensure that only very friendly, social dogs will be near the public. However, warn visitors of a puppy's sharp teeth. Even friendly dogs can do

damage.

- Cats and kittens: Be wary of their sharp claws and teeth.
- Small livestock: Goats and sheep are generally more widely used as petting animals. As ruminants with no top front teeth, they can be handled more safely than a horse with top teeth. Also, they are smaller and lighter if they step on a child's foot.
- Poultry: Geese can be very aggressive. Chickens, ducks, and other poultry may be fed. However, to limit the stress on the animals, be careful to rotate them.
- Cattle and calves: Restrain any cow that will be handled, preferably in a grooming chute. Calves should be controlled. Hand milking is not recommended.
- Horses and ponies: Warn visitors that animals may bite. Horse and pony riding requires special rules and insurance. Consult your agent.
- Post a "Please wash your hands after handling animals" sign.
- Provide hand washing facilities, hand wipes, or sanitizing hand cleaner in a convenient area.



Water is a natural temptation for small children. Use ropes or fences to prevent access.

Lagoons and Ponds

Water is of special concern because of its attraction to children. Make sure that no visitor will be near water (secure with temporary fencing, cones and/or ropes). Do not trust parents to watch their children.

Hayrides

- Hayrides are popular with farm visitors, but safety precautions need to be taken. Also, additional insurance may be necessary for this activity. Establish a maximum rider load that provides safe seating for all occupants.



Check on additional insurance necessities before initiating hayride activities.

stay seated, legs away from wheels). The tractor speed should be no faster than an adult can jog. If there are problems, stop immediately.

- Check your route regularly for potholes, irrigation flooding, and other hazards that may change daily.

- Insist that participants follow the rules (no smoking)

This fact sheet was produced by Desmond Jolly, Cooperative Extension agricultural economist and director, UC Small Farm Program; and Denise Skidmore, member of the Agriculture and Nature Tourism Workgroup.

[Back to Factsheets](#)
[Back to Agricultural Tourism Home Page](#)

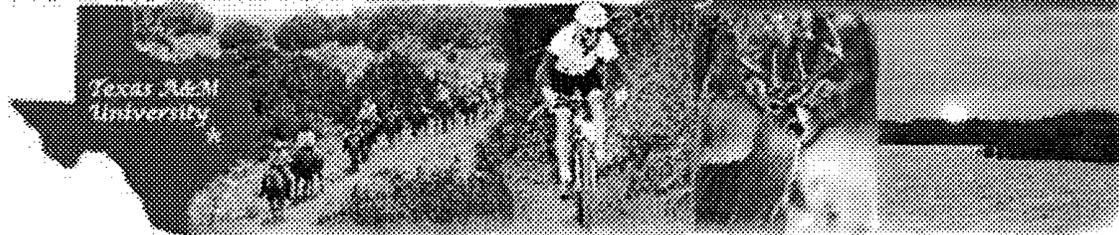
[[Home](#) | [Search](#) | [Feedback](#)]

© 2003 Small Farm Center: sfcenter@ucdavis.edu

<http://www.sfc.ucdavis.edu>

Wednesday, November 26, 2003 08:16:04

Texas Nature Tourism Information Center



[Home](#) | [About Us](#) | [Staff](#) | [Publications](#) | [Resources](#) | [Press Center](#) | [Calendars](#) | [Links](#) | [Site Contents](#) | [Help](#)

Liability/Insurance

Insurance for a nature tourism operation is a very important topic to most people who are considering developing an alternative tourism/recreation enterprise. In Texas concerns about liability have been significantly reduced. This is because the Legislature has established some laws that help protect landowners. Also Insurance companies are becoming more familiar with the safety records and needs of tour operators. The following links can provide you some more information, but you should *consult a lawyer and insurance agent for information regarding your particular situation.*

- **Insurance for Nature Tourism Operations in Texas** (Excerpt from the Publication; Developing Trails and Tourism on Private Lands in Texas (B-6103)
- Texas A&M **Real Estate Center** has published information on liability to help you understand your legal liability for ranch, hunting and tour operations. [Go To Liability Publications](#)
- Industry Associations are another way to gain access to affordable insurance options. Two organizations that provide insurance to a number of Texans are:
 - [Texas and Southwestern Cattle Raisers Association](#)
 - [Texas Wildlife Association](#)
- Insurance Companies: Two Companies that can offer policies for recreation enterprises: both water and land based operations.
 - 1) <http://www.cbiz.com> or go directly to the recreation insurance application at <http://www.cbiz.com/BGSG/commercial/whitewater.html>
 - 2) <http://www.kandkinsurance.com/> Under Attractions click "Outfitters & Guides" or "Hunting & Fishing" then click section for .pdf file application for operations with gross receipts less than \$300,000.

Online Databases

[Details about Databases](#)



Use Texas INFRONT to promote your tourism business or find other businesses.

[Sources of Assistance](#)
[Texas Tourism Laws](#)
[Publications & Events](#)

Practical Tools

- [Financial Analysis](#) (Excel Application)
- [Marketing](#) (Powerpoint presentation)
- [Web Site Development](#)
- [Links to Nature Tourism Businesses](#)
- [Answers to Business Questions](#)
- ["Tell Your Story" with Interpretation](#)
- [Liability/Insurance](#)

[Income Diversification Through Nature & Heritage Tourism: A Step-wise Guidebook to Evaluate Enterprise Opportunities](#)

Our "Nature Tourism Handbook" for people who are considering starting a tourism/ recreational business.



[RPTS Extension Home](#) | [RPTS Dept. Home Page](#) | [Texas Cooperative Extension](#) | [The Agriculture Program](#) | [Texas A&M Univ.](#)

[Home](#) | [About Us](#) | [Staff](#) | [Publications](#) | [Resources](#) | [Press Center](#) | [Calendars](#) | [Links](#) | [Site Contents](#) | [Help](#)