MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION
SFN 2053 (2/85) 5M

ROLL NUMBER

DESCRIPTION

2321

2003 SENATE JUDICIARY

SB 2321

2003 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2321

Senate Judiciary Committee

☐ Conference Committee

Hearing Date 02/10/03

Tape Number	Side A	Side B	Meter #
1	X		0.0 - 6
Committee Clerk Signature	Maria L Salberg		

Minutes: **Senator Stanley W. Lyson, Vice Chairman** , called the meeting to order. Roll call was taken and all committee members present. Sen. Lyson requested meeting starts with testimony on the bill:

Testimony Support of SB 2321

Rep Dave Monson- Dist 10 Introduced Bill (meter 0.1) Reviewed bill.

This bill is modeled after a Texas bill in regards to what happens on private land, for example; bird watchers, snowmobiles, etc.

Rep Wayne Teeman - Dist 10, (meter 4.0) Discussed his support and would like to delay conclusion of bill until Senator Thomas L. Trenbeath who is also a sponsor was present. Discussed his location in a recreational area and the liability problem.

Testimony in opposition of SB 2321 None

Testimony Neutral to SB 2321 None

Senator Stanley W. Lyson, Vice Chairman closed the hearing.

2003 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB2321

Senate Judiciary Committee

☐ Conference Committee

Hearing Date 02/12/03

Tape Number	Side A	Side B	Meter #
1	X		19.0 - 21.0
Committee Clerk Signature	Mona L Solberg		

Minutes: **Senator Stanley W. Lyson, Vice Chairman** , called the meeting to order. Roll call was taken and not all committee members present. Sen. Lyson requested meeting starts with committee work on the bill:

Discussion of the Texas ruling (meter 19.9) and Bird watchers. Sen. Lyson stated that he was amazed on all the e-mail's he had received in favor of this bill.

Senator Lyson, discussed a case (meter 20.8) that had regarded a pressurized ridge. Discussed farmers/ranchers using the land for other uses.

Motion Made to DO FASS SB 2321 by Senator Dennis Bercier and seconded by Senator Thomas L. Trenbeath

Roll Call Vote: 5 Yes. 0 No. 1 Absent

Motion Passed

Floor Assignment Sen. Trenbeath

Senator Stanley W. Lyson, Vice Chairman closed the hearing

Date: February 12, 2003
Roll Call Vote #: 1

2003 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. SB 2321

Senate **JUDICIARY** Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken DO PASS

Motion Made By Sen. Bercier Seconded By Sen. Trenbeath

Senators	Yes	No	Senators	Yes	No
Sen. John T. Traynor - Chairman	A	A	Sen. Dennis Bercier	X	
Sen. Stanley. Lyson - Vice Chair	X		Sen. Carolyn Nelson	X	
Sen. Dick Dever	X				
Sen. Thomas L. Trenbeath	X				

Total (Yes) FIVE (5) No ZERO (O)

Absent ONE

Floor Assignment Sen. Trenbeath

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE (410)
February 12, 2003 1:09 p.m.

Module No: SR-27-2400
Carrier: Trenbeath
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

SB 2321: Judiciary Committee (Sen. Traynor, Chairman) recommends **DO PASS** (5 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). SB 2321 was placed on the Eleventh order on the calendar.

2003 HOUSE JUDICIARY

SB 2321

2003 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2321

House Judiciary Committee

☐ Conference Committee

Hearing Date 3-19-03

Tape Number	Side A	Side B	Meter #
1	xx		3.3-25.5

Committee Clerk Signature *Penrose*

Minutes: 12 members present, 1 member absent (Rep. Eckre)

Chairman DeKrey: We will open the hearing on SB 2321.

Rep. Wayne Tieman: Support, introduced the bill (see attached handout). We have a number of activities that we have during the year and it's due to the efforts of very energetic and enthusiastic group of volunteers in each one of the towns that form the anchor of the Rendezvous region, that would be Pembina, Walhalla, Langdon and Cavalier. There are a number of things that are going on, in terms of attracting visitors to our area and we feel that we have a lot to offer to people; not only in our state but in other parts of the world. Cavalier, where I live, is only 80 miles from Winnepeg, which is a population center of 650,000 and there are things that are offered up there, of course for culture and the arts, and so on. But that's not too far from our area. Also, we have Grand Forks, which is only about 80 miles away and that is, of course, a fast growing town and there's a lot of activities there. But within the Rendezvous region we have a number of activities which have been promoted in the past. We have, of course, snowmobiling,

we have hunting, fishing and lately there has been a lot of emphasis on bird watching. Bird watching is one of the fastest growing sports and leisure activities in our country. I've been involved for a short period of time with the Rendezvous region bird club, which meets on a regular basis in Edinburgh in the General Store. We also have come in contact with Mike Jacobs, the editor of the Grand Forks Herald and in his regular column, always in season he talks about the many kinds of birds which are native to the Rendezvous Region and up around the Red River Valley, and he has done a very good job as far as helping us promote that kind of activity within our Rendezvous region. It's the type of thing that attracts people from all over the world. We've had visitors from Norway, Iceland, Germany, states like California, Florida, Texas, they come a long ways. They hear that there is a certain species of bird that's in our area, they will spend a certain amount of money to get up and see it. That's the kind of people we like to have as far as visitors in our area. For example, in June we have our Rendezvous Festival right outside the Icelandic State Park, 4 miles west of Cavalier, and we had the Governor, and a number of state officials up for the bird watching tour through Icelandic park and on some private lands right outside the park. That was very interesting and we saw some bluebirds, that apparently you don't see very much of, and we were able to see that. But one thing that seems to come up a lot in our discussions, and we do have meetings every so often to plan some of these activities, is the fact that there is the liability reasons. That is what brings me here today. I'm basically here to introduce this bill and just kind of give you, frame the issue for you. The fear of being sued or being held liable for injuries sustained by recreational users such as birders, and other users of private land is really a worrisome issue. The bill that you have before you, SB 2321, is one of those that is primarily, introducing it to limit liability. It's modeled after a law

which is already, and has been in place for a number of years in Texas. I handed out some research on this, and we've done some research on this to kind of get some extra facts. I just want to point out that there seems to be, as the article title implies, myths, perceptions and yet there are realities about this particular issue. This is something that, as a recreation, as people want more recreation opportunities such as bird watching, they want to be certain that there isn't going to be legal ramifications to that. So I point this article out to you as a resource regarding this issue and as you see it is quite extensive as far as what is put together there.

Chairman DeKrey: Thank you.

Sen. Trenbeath: Support. This bill is patterned after the Texas law. Introduced the bill further. It is just another one of the small steps that will accomplish a couple of purposes. First of all, it will encourage tourism which we all want to do these days, or seemingly so. Secondly, it will allow a land owner somewhat of a secondary source of income, so it wouldn't be a major source of income, or be the particular straw off the camel's back that would allow him to stay on the land, but it can't hurt. There are a number of folks up in our area, and I suspect in other parts of the state also, that would like to dabble in the tourism area, especially during the off season for their primary use of the land. This would allow them to do this without having to, actually this would allow them to do that. They are really not able to do it now, because the cost of liability insurance is so high for that occasional use situation. That's really it in a nutshell.

Rep. Klemin: Well I'm just not sure how this works. Can you go through section 2b.

Sen. Trenbeath: In existing law, of course, you are probably reasonably familiar with anyway, that indicates that there is no limitation of liability if you charge for what is being done on the land. But, there is a limitation of liability if the total charge in the previous year for the use on

the land is less than, in the case of a farmer or rancher, 4x the annual taxes that were paid on that property. It also talks about 2x the total amount for other types of property. If you are an active farmer or rancher, on the ground, you could sell your services or sell access to your property to the maximum amount of 4x what you are paying in taxes in the previous year.

Chairman DeKrey: The thought being that if there was more than that, that it was more commercial venture.

Sen. Trenbeath: Yes, more than an ancillary use.

Rep. Klemin: So, in order to gain the benefit of this statute, the person doing the charging would have to keep accurate records of what he actually charged to persons, so he didn't go over the maximum.

Sen. Trenbeath: Yes, the theory of business, of course, is that you keep records of your business. You would have to keep records.

Rep. Delmore: In follow up to that, if a lot of the money that exchanges hands is in cash, you would rely on the person to be as honest as he can or whatever.

Sen. Trenbeath: That's certainly the case, but in that case, that's no different than any business either, especially if you are talking about small town main street businesses, you might say that those who deal in alcohol beverages, especially, they don't close their till until noon. It's no different than any other form of business. You have to rely on the honesty of the individual that is conducting the business, and of course, every time there is a slap on the hand when warranted, it brings everybody back into line.

Rep. Onstad: Let's take the situation of a landowner that does not charge.

Sen. Trenbeath: The original statute applies in that instance, which relieves the landowner of liability.

Rep. Kingsbury: If you go on a birding trip, then you pay for the trip, and if you went on someone's land, do they reimburse the landowner in that case.

Sen. Trenbeath: Yes. I went birding.

Rep. Kingsbury: When we went it was 20 below and there weren't any snowy owls.

Sen. Trenbeath: 75 below when I was in it, but we actually did it in an urban setting and did birding in Cavalier, ND and went from back yard to back yard with someone who knew what we were looking at and looking for. We didn't pay anybody for that access, so obviously they would have been covered under the existing statute. Another situation we have up there is that we like to get something in the Rendezvous Region going as far as hiking trails through the gorge, etc. It's tough to get easements from landowners in there to cross their ground because of the liability problem. If you're able to compensate them for that easement, and they wouldn't have to pay a premium for increased liability, it would give us a better shot at doing that. That goes for hiking, horseback riding, snowcatting, cross-country skiing and any number of recreational activities.

Rep. Kretschmar: Maybe I'm not reading this bill right, I hope I'm not, but it seems to me that if the landowner charges, and gets over the amount with the land, he has to insure for injuries suffered in any case. Maybe he isn't negligent at all. The way I read the statute he has to pay.

Sen. Trenbeath: I hope you are misinterpreting that. I hadn't read it with that in mind, I guess I read it that in any event he is, of course, liable for his willful and malicious failure to guard, you have to be able to warn, but just to verbalize, this chapter does not, in any way, any liability that otherwise exists. It doesn't increase his exposure.

Rep. Kretschmar: Subsection 2, there, line 11, injuries suffered in any case, if the charges are exceeding those limits. It would seem to me that guys are making the insured, like workmen's comp or something.

Sen. Trenbeath: I guess I couldn't agree with your interpretation, but I understand where you are coming from. If you read it in total, it says this chapter does not limit in any way, any liability that otherwise exists for injuries suffered in any case, in which the owner of the land charges more than 4x. I don't think it increases the exposure, that he would have absent the statute.

Rep. Klemin: We have the general statute which we don't have in front of us, I've got the book here, which says that subject to the provisions of section 53-08-05, which is the one we're dealing with. Subject to the section, the owner of the 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 of structure or activity on such premises to persons entering for such purposes. So the general duty of care is there is no duty of care. So that's where the charges for entry unto the property, so what this bill does, instead of saying he charges 10 cents, he has a duty of care, establishes the threshold under which he would still have no duty of care, or over which he would have a duty of care.

Sen. Trenbeath: Exactly right. It carves out that line and then excepts out from that, which would be the section on willful or malicious.

Rep. Klemin: So if he is over this threshold and then he's going to have to either be insured or bear the risk of not having insurance.

Sen. Trenbeath: Right.

Rep. Wrangham: If the farmer grants permission for birding on the NW quarter of this section, he charges a fee for it, would it just be the property tax from that quarter section or would it be 4x all the land he owns; does this need to be clarified.

Sen. Trenbeath: I've wrestled with that myself, and I guess I've come to the conclusion that without clarifying language, and clarifying language could be put in it, without clarifying language you would be talking about a taxable parcel. In other words, if you had quarter section which was part of a section, and the quarter section was used for a part-time recreational use, what the tax statement came for the section, then I would guess that you would be able to charge 4x what you are paying on that section. I've thought in my mind about describing something about contiguous parcels, or something of that nature, but I suppose there could be some language that could clarify that.

Rep. Delmore: First, how safe do I have to make my land. Obviously, if I have an old building that someone might go into and fall, do I have a liability for that or water hazards, those types of things on my mind.

Sen. Trenbeath: You still have the duty to warn if there is a hazardous condition on the property. If you are running snow cats in there, I think you probably ought to tell them where the barbed wire fence is. If you've got a precipitous drop-off at some point, yes you would want to mention that. Those hazards that are recognizable as hazards, you would have a duty to warn.

Rep. Delmore: If I know I'm not making any money off my land, I know I'm going to be having a lot of people in and going to be over this amount, can I pick up liability insurance coverage.

Sen. Trenbeath: I haven't the foggiest idea. I presume that you could, most risks are insurable. Of course, that's what gave rise to the bill is that it isn't cheap insurance and if what you are

doing represents a minimal income stream to you, you're not liable for pay that liability insurance on this.

Rep. Grande: As you were describing this, you were talking about part-time use, but if we have a piece of land that has bird watching, horse trails, snow cats, which is not very part-time anymore, you could be running somebody through there...

Sen. Trenbeath: I think that's why we set the income levels; because if there is a demand for the use of your property on a full-time recreational basis, that's probably what you are going to go to because you can make some money at it. So this really, by the limitation on the amount of money that you can make on it, would kind of dictate a part-time use.

Rep. Kretschmar: Let's see if I understand this correctly, the current law, if you charge any amount, you're subject to this statute, and now under this bill, you are raising that threshold, it has be twice or four times the amount of property tax.

Sen. Trenbeath: If you are charging for the use of your land, and somebody's on your land and you're making money at it, you are liable for any damages that any person would ordinarily be liable for. Obviously, you would have to prove the negligence existed, etc. This just exculpates you from that liability to a certain level of income.

Rep. Klemin: I just feel compelled to point then that if there are concurrent causes of the loss here, you won't have any insurance at all.

Sen. Trenbeath: Please don't go there.

Rep. Grande: If you are not charging for my land, but somebody comes through, and I've said go ahead and bird watch on here, and they fall into an old well, am I liable for that.

Sen. Trenbeath: Those, unfortunately, are questions that make Rep. Klemin and Rep. Kretschmar and myself wince, because there are no pat answers to that. Under certain circumstances, you may well be, but under other circumstances you may not be.

Rep. Grande: What if I charged you to be on the land, and you fell into the well.

Sen. Trenbeath: I think it would be safe to say at this point, regardless of passage of this bill or not, if you charge me to be on your land and I fell into your well, because you didn't warn me about it, you would be liable.

Rep. Grande: And if I warned you that this house was in tough shape and I don't want you to go in there and you did it anyway.

Sen. Trenbeath: There are certain other legal duties that go with that, not the least of which is assumption of risk. But I don't think this bill has anything to say about the situation where you are actually warned and you do it anyway.

Rep. Klemin: I would like to response to Rep. Grande, this bill basically the language is not being changed in subsection 1, only makes you liable if your failure to warn is willful and malicious. If you know there is something that somebody is going to fall into, and you hope they fall in, that would be willful and malicious.

Rep. Onstad: On that subject too, why not make it 10x, is 4x the Texas law.

Sen. Trenbeath: I believe that is where it came from. At some point, in your own mind you figure what might be fair.

Rep. Onstad: 10 times.

Sen. Trenbeath: Works for me.

Chairman DeKrey: Thank you. Further testimony in support. Testimony in opposition. We will close the hearing. What are the committee's wishes in regard to SB 2321.

Rep. Boehning: I move a Do Pass.

Rep. Klemin: Seconded.

12 YES 0 NO 1 ABSENT **DO PASS** **CARRIER: Rep. Wrangham**

Date: 3/19/03
Roll Call Vote #: 1

2003 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2321

House Judiciary Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass

Motion Made By Rep. Boehning Seconded By Rep. Kingsbury

Representatives	Yes	No	Representatives	Yes	No
Chairman DeKrey	✓		Rep. Delmore	✓	
Vice Chairman Maragos	✓		Rep. Eckre	AB	
Rep. Bernstein	✓		Rep. Onstad	✓	
Rep. Boehning	✓				
Rep. Galvin	✓				
Rep. Grande	✓				
Rep. Kingsbury	✓				
Rep. Klemin	✓				
Rep. Kretschmar	✓				
Rep. Wrangham	✓				

Total (Yes) 12 No 0

Absent 1

Floor Assignment Rep. Wrangham

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE (410)
March 19, 2003 10:34 a.m.

Module No: HR-49-5170
Carrier: Wrangham
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

SB 2321: Judiciary Committee (Rep. DeKrey, Chairman) recommends DO PASS (12 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). SB 2321 was placed on the Fourteenth order on the calendar.

2003 TESTIMONY

SB 2321

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 annual reports and conference proceedings have 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; Womach 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 lia-

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 imbued 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 condition. 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 (Kaden, 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. Statu § 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	Assume 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-

non 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 rule" 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 if the landowner charges an access or use fee. Thirty-one states provide landowner protection 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	-	-	6
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	8	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.

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