

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 81

BY RESOURCES AND CONSERVATION COMMITTEE

AN ACT

1 RELATING TO FISH AND GAME; AMENDING SECTION 36-1604, IDAHO CODE, TO DEFINE A  
2 TERM AND TO REVISE PROVISIONS REGARDING APPLICABILITY OF SPECIFIED LAW  
3 TO THE DUTIES AND LIABILITY OF CERTAIN OWNERS OF LAND.  
4

5 Be It Enacted by the Legislature of the State of Idaho:

6 SECTION 1. That Section 36-1604, Idaho Code, be, and the same is hereby  
7 amended to read as follows:

8 36-1604. LIMITATION OF LIABILITY OF LANDOWNER. (a) Statement of Pur-  
9 pose. The purpose of this section is to encourage owners of land to make  
10 land, airstrips and water areas available to the public without charge for  
11 recreational purposes by limiting their liability toward persons entering  
12 thereon for such purposes.

13 (b) Definitions. As used in this section:

14 ~~(1-)~~ "Airstrips" means either improved or unimproved landing areas  
15 used by pilots to land, park, take off, unload, load and taxi aircraft.  
16 Airstrips shall not include landing areas ~~which~~ that are or may become  
17 eligible to receive federal funding pursuant to the federal airport and  
18 airway improvement act of 1982 and subsequent amendments thereto.

19 ~~(2-)~~ "Governmental entity" shall have the same meaning as provided in  
20 section 6-902, Idaho Code.

21 ~~(3)~~ "Land" means private or public land, roads, airstrips, trails,  
22 water, watercourses, irrigation dams, water control structures,  
23 headgates, private or public ways and buildings, structures, and ma-  
24 chinery or equipment when attached to or used on the realty.

25 ~~3-~~ (4) "Owner" means the possessor of a fee interest, a tenant, lessee,  
26 occupant or person in control of the premises.

27 ~~4-~~ (5) "Recreational purposes" includes, but is not limited to, any  
28 of the following activities or any combination thereof: hunting, fish-  
29 ing, swimming, boating, rafting, tubing, camping, picnicking, hiking,  
30 pleasure driving, the flying of aircraft, bicycling, running, playing  
31 on playground equipment, skateboarding, athletic competition, nature  
32 study, waterskiing, animal riding, motorcycling, snowmobiling, recre-  
33 ational vehicles, winter sports, and viewing or enjoying historical,  
34 archeological, scenic, geological or scientific sites, when done with-  
35 out charge of the owner.

36 (c) Owner Exempt from Warning. An owner of land owes no duty of care  
37 to keep the premises safe for entry by others for recreational purposes, or  
38 to give any warning of a dangerous condition, use, structure, or activity on  
39 such premises to persons entering for such purposes. Neither the installa-  
40 tion of a sign or other form of warning of a dangerous condition, use, struc-  
41 ture, or activity, nor any modification made for the purpose of improving the  
42 safety of others, nor the failure to maintain or keep in place any sign, other

1 form of warning, or modification made to improve safety, shall create lia-  
 2 bility on the part of an owner of land where there is no other basis for such  
 3 liability.

4 (d) Owner Assumes No Liability. An owner of land or equipment who ei-  
 5 ther directly or indirectly invites or permits without charge any person to  
 6 use such property for recreational purposes does not thereby:

7 (1-) Extend any assurance that the premises are safe for any purpose.

8 (2-) Confer upon such person the legal status of an invitee or licensee  
 9 to whom a duty of care is owed.

10 (3-) Assume responsibility for or incur liability for any injury to  
 11 person or property caused by an act of omission of such persons.

12 (e) Provisions Apply to Leased Public Land. Unless otherwise agreed  
 13 in writing, the provisions of this section shall be deemed applicable to the  
 14 duties and liability of an owner of land ~~leased to the state or any subdivi-~~  
 15 ~~sion thereof for recreational purposes~~ who grants public access for recre-  
 16 ational purposes pursuant to a lease or other agreement with a governmental  
 17 entity or nongovernmental organization as long as the landowner does not di-  
 18 rectly charge individual members of the public for such access, regardless  
 19 of whether the governmental entity or nongovernmental organization provides  
 20 landowners with remuneration.

21 (f) Provisions Apply to Land Subject to a Conservation Easement. Un-  
 22 less otherwise agreed in writing, the provisions of this section shall be  
 23 deemed applicable to the duties and liability of an owner of land subject to a  
 24 conservation easement to any governmental entity or nonprofit organization.

25 (g) Provisions Apply to Funding, Maintenance or Improvements. The pro-  
 26 visions of this section shall be deemed applicable to the duties and liabil-  
 27 ity of any governmental entity, nongovernmental organization or person that  
 28 provides funds, reasonably performs maintenance, reasonably makes or sup-  
 29 ports improvements, holds conservation easements or takes similar reason-  
 30 able action regarding land made available to the public without charge for  
 31 recreational purposes.

32 (h) Owner Not Required to Keep Land Safe. Nothing in this section shall  
 33 be construed to:

34 (1-) Create a duty of care or ground of liability for injury to persons  
 35 or property.

36 (2-) Relieve any person using the land of another for recreational  
 37 purposes from any obligation which he may have in the absence of this  
 38 section to exercise care in his use of such land and in his activities  
 39 thereon, or from legal consequences or failure to employ such care.

40 (3-) Apply to any person or persons who for compensation permit the land  
 41 to be used for recreational purposes.

42 (i) User Liable for Damages. Any person using the land of another for  
 43 recreational purposes, with or without permission, shall be liable for any  
 44 damage to property, livestock or crops which he may cause while on said prop-  
 45 erty, in addition to all remedies provided in section 6-202, Idaho Code, in  
 46 the event the person has committed a civil trespass.