

LANDOWNER LIABILITY AMENDMENTS

2013 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Brad R. Wilson

Senate Sponsor: J. Stuart Adams

LONG TITLE

General Description:

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

Highlighted Provisions:

This bill:

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

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

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

ENACTS:

57-14-301, Utah Code Annotated 1953

57-14-401, Utah Code Annotated 1953

RENUMBERS AND AMENDS:

57-14-101, (Renumbered from 57-14-1, as repealed and reenacted by Laws of Utah

30 2010, Chapter 410)

31 **57-14-102**, (Renumbered from 57-14-2, as last amended by Laws of Utah 2012,
32 Chapter 45)

33 **57-14-201**, (Renumbered from 57-14-3, as last amended by Laws of Utah 1997,
34 Chapter 62)

35 **57-14-202**, (Renumbered from 57-14-4, as last amended by Laws of Utah 2010,
36 Chapter 410)

37 **57-14-203**, (Renumbered from 57-14-5, as last amended by Laws of Utah 1997,
38 Chapter 62)

39 **57-14-204**, (Renumbered from 57-14-6, as last amended by Laws of Utah 2005,
40 Chapter 88)

41 **57-14-205**, (Renumbered from 57-14-7, as last amended by Laws of Utah 1997,
42 Chapter 62)

43

44 *Be it enacted by the Legislature of the state of Utah:*

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

46 **23-23-14. Landowner protection under Landowner Liability Act.**

47 Landowners who participate in cooperative wildlife management units shall have the
48 full protection afforded under Title 57, Chapter 14, [~~Limitation of~~] Limitations on Landowner
49 Liability[~~—Public Recreation~~].

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

52 **CHAPTER 14. LIMITATIONS ON LANDOWNER LIABILITY**

53 [~~57-14-1~~]. **57-14-101. Title -- Purpose.**

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

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

58 Act.

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

61 ~~[57-14-2]~~. **57-14-102. Definitions.**

62 As used in this chapter:

63 ~~[(4)]~~ (1) "Charge" means the admission price or fee asked in return for permission to
64 enter or go upon the land.

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

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

69 ~~[(1)]~~ (4) (a) "Land" means any land within the ~~[territorial limits of Utah]~~ state
70 boundaries.

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

73 ~~[(2)]~~ (5) "Owner" ~~[includes]~~ means the possessor of any interest in the land, whether
74 public or private land, including a tenant, a lessor, a lessee, ~~[and]~~ an occupant, or person in
75 control of the ~~[premises]~~ land.

76 ~~[(5)]~~ (6) "Person" includes any person, regardless of age, maturity, or experience, who
77 enters upon or uses land for recreational purposes.

78 ~~[(3)]~~ (7) "Recreational purpose" includes, but is not limited to, any of the following or
79 any combination thereof:

80 (a) hunting;

81 (b) fishing;

82 (c) swimming;

83 (d) skiing;

84 (e) snowshoeing;

85 (f) camping;

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

101 (8) "Serious physical injury" means any physical injury or set of physical injuries that:

- 102 (a) seriously impairs a person's health;
- 103 (b) was caused by use of a dangerous weapon as defined in Section 76-1-601;
- 104 (c) involves physical torture or causes serious emotional harm to a person; or
- 105 (d) creates a reasonable risk of death.

106 (9) "Trespasser" means a person who enters on the land of another without:

- 107 (a) express or implied permission; or
- 108 (b) invitation.

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

Part 2. Liability Relating to Recreational Use

112 ~~[57-14-3].~~ **57-14-201. Owner owes no duty of care or duty to give warning --**
113 **Exceptions.**

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

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

120 ~~[57-14-4].~~ **57-14-202. Use of private land without charge -- Effect.**

121 ~~[(1)]~~ Except as provided in Subsection ~~[57-14-6]~~ 57-14-204(1), an owner of land who
122 either directly or indirectly invites or permits without charge, or for a nominal fee of ~~[not]~~ no
123 more than \$1 per year, any person to use the owner's land for any recreational purpose, or an
124 owner of a public access area open to public recreational access under Title 73, Chapter 29,
125 Public Waters Access Act, does not ~~[thereby]~~:

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

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

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

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

134 ~~[(2) This section applies to the relationship between an owner of land and a trespasser.]~~

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

137 ~~[57-14-5].~~ **57-14-203. Land leased to state or political subdivision for**
138 **recreational purposes.**

139 Unless otherwise agreed in writing, Sections ~~[57-14-3]~~ 57-14-201 and ~~[57-14-4]~~
140 57-14-202 are applicable to the duties and liability of an owner of land leased to the state or
141 any subdivision of the state for recreational purposes.

142 Section 7. Section **57-14-204**, which is renumbered from Section 57-14-6 is
143 renumbered and amended to read:

144 ~~[57-14-6].~~ **57-14-204. Liability not limited where willful or malicious conduct**
145 **involved or admission fee charged.**

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

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

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

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

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

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

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

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

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

169 (b) does not charge a fee for that use.

170 Section 8. Section **57-14-205**, which is renumbered from Section 57-14-7 is
171 renumbered and amended to read:

172 ~~[57-14-7].~~ **57-14-205. Person using land of another not relieved from duty to**
173 **exercise care.**

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

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

179 **Part 3. Liability Relating to Trespassers**

180 **57-14-301. Owner liability to trespasser.**

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

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

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

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

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

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

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

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

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

194 (A) the artificial condition exists;

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

197 (C) a child is likely to trespass at the location of the artificial condition;

198 (iv) the artificial condition is not of a type that a child, because of the child's youth,
199 would discover exists or would not realize that the artificial condition poses a risk of serious
200 physical injury or death; and

201 (v) the owner fails to take reasonable measures to eliminate, or to protect against
202 serious physical injury or death from, the artificial condition;

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

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

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

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

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

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

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

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

225 (4) Nothing in this chapter shall impose liability on an owner except to the extent

226 liability existed as of May 14, 2013.

227 Section 10. Section **57-14-401** is enacted to read:

228 **Part 4. Inherent Risks of Certain Activities**

229 **57-14-401. Inherent risks of activities with a recreational purpose on certain**
230 **lands.**

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

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