

IN THE HOUSE

MARCH 16, 1987

RECEIVED FROM SENATE.

SECOND READING, AMENDMENTS
CONCURRED IN.

MARCH 17, 1987

THIRD READING, AMENDMENTS
CONCURRED IN.

SENT TO ENROLLING.

LC 0366/01

1 any only for an act or omission ~~of such landowner or tenant~~
2 ~~unless such act or omission~~ that constitutes willful or
3 wanton misconduct."

-End-

APPROVED BY COMMITTEE
ON JUDICIARY

1 HOUSE BILL NO. 42
2 INTRODUCED BY COBB

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT TO CLARIFY THE LEGAL
5 STANDARD GOVERNING LANDOWNER LIABILITY; AND AMENDING
6 SECTIONS 23-2-321, 27-1-701, AND 70-16-302, MCA."

7
8 WHEREAS, the Montana Supreme Court in Limberhand v. Big
9 Ditch Co., Mont., 706 P.2d 491 (1985), replaced the
10 traditional invitee, licensee, and trespasser standards for
11 measuring landowner liability with a single standard of
12 reasonable care; and

13 WHEREAS, this single standard adopted by the Montana
14 Supreme Court conflicts with the policy of restricted
15 landowner liability established by the Legislature in
16 sections 23-2-321 and 70-16-302, MCA.

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

19 Section 1. Section 23-2-321, MCA, is amended to read:
20 "23-2-321. Restriction on liability of landowner and
21 supervisor. (1) A person who makes recreational use of
22 surface waters flowing over or through land in the
23 possession or under the control of another, pursuant to
24 23-2-302, or land while portaging around or over barriers or
25 while portaging or using portage routes, pursuant to

1 ~~23-2-311, does-not-have-the-status-of--invitee--or--licensee~~
2 ~~and is owed no duty by a landowner, his agent, or his tenant~~
3 ~~other than that provided in subsection (2).~~

4 (2) A landowner, his agent, or tenant is liable to a
5 person making recreational use of waters or land described
6 in subsection (1) only for an act or omission that
7 constitutes willful or wanton misconduct.

8 (3) No supervisor or any member of the arbitration
9 panel who participates in a decision regarding the placement
10 of a portage route is liable to any person who is injured or
11 whose property is damaged because of placement or use of the
12 portage route except for an act or omission that constitutes
13 willful and wanton misconduct."

14 SECTION 2. SECTION 27-1-701, MCA, IS AMENDED TO READ:

15 "27-1-701. Liability for negligence as well as willful
16 acts. Everyone Except as otherwise provided by law, everyone
17 is responsible not only for the results of his willful acts
18 but also for an injury occasioned to another by his want of
19 ordinary care or skill in the management of his property or
20 person except so far as the latter has willfully or by want
21 of ordinary care brought the injury upon himself."

22 Section 3. Section 70-16-302, MCA, is amended to read:

23 "70-16-302. Restriction on liability to--permittee of
24 landowner or HIS AGENT OR tenant. A landowner-or-tenant-who
25 permits, by act or implication, any person to enter upon any



1 ~~property in the possession or under the control of such~~
 2 ~~landowner or tenant for any recreational purpose without~~
 3 ~~accepting a valuable consideration therefor does not by~~
 4 ~~granting such permission extend any assurance that such~~
 5 ~~property is safe for any purpose or confer upon one such a~~
 6 ~~person the status of invitee or licensee to whom any duty of~~
 7 ~~care is owed, and such~~ A landowner or tenant PERSON WHO
 8 MAKES RECREATIONAL USE OF ANY PROPERTY IN THE POSSESSION OR
 9 UNDER THE CONTROL OF ANOTHER, WITH OR WITHOUT PERMISSION AND
 10 WITHOUT GIVING A VALUABLE CONSIDERATION THEREFOR, DOES SO
 11 WITHOUT ANY ASSURANCE FROM THE LANDOWNER, HIS AGENT, OR HIS
 12 TENANT THAT THE PROPERTY IS SAFE FOR ANY PURPOSE. THE
 13 LANDOWNER, HIS AGENT, OR HIS TENANT OWES THE PERSON NO DUTY
 14 OF CARE, EXCEPT THAT THE LANDOWNER, HIS AGENT, OR HIS TENANT
 15 ~~shall not be~~ is liable to such person for any injury to
 16 person or property ~~resulting from any~~ only for an act or
 17 omission ~~of such landowner or tenant unless such act or~~
 18 ~~omission~~ that constitutes willful or wanton misconduct."

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18 but also for an injury occasioned to another by his want of
19 ordinary care or skill in the management of his property or
20 person except so far as the latter has willfully or by want
21 of ordinary care brought the injury upon himself."

22 Section 3. Section 70-16-302, MCA, is amended to read:
23 "70-16-302. Restriction on liability ~~to permittee of~~
24 landowner or HIS AGENT OR tenant. A ~~landowner or tenant who~~
25 ~~permits, by act or implication, any person to enter upon any~~

1 property-in-the-possession-or--under--the--control--of--such
2 landowner--or--tenant--for--any-recreational-purpose-without
3 accepting-a-valuable--consideration--therefor--does--not--by
4 granting--such--permission--extend--any--assurance-that-such
5 property-is-safe-for-any-purpose-or-confer-upon one such--a
6 person-the-status-of-invitee-or-licensee-to-whom-any-duty-of
7 care--is--owed,--and--such--A landowner-or-tenant PERSON WHO
8 MAKES RECREATIONAL USE OF ANY PROPERTY IN THE POSSESSION OR
9 UNDER THE CONTROL OF ANOTHER, WITH OR WITHOUT PERMISSION AND
10 WITHOUT GIVING A VALUABLE CONSIDERATION THEREFOR, DOES SO
11 WITHOUT ANY ASSURANCE FROM THE LANDOWNER, HIS AGENT, OR HIS
12 TENANT THAT THE PROPERTY IS SAFE FOR ANY PURPOSE. THE
13 LANDOWNER, HIS AGENT, OR HIS TENANT OWES THE PERSON NO DUTY
14 OF CARE, EXCEPT THAT THE LANDOWNER, HIS AGENT, OR HIS TENANT
15 shall--not--be is liable to such person for any injury to
16 person or property resulting-from-any only for an act or
17 omission of--such--landowner--or--tenant-unless-such-act-or
18 omission that constitutes willful or wanton misconduct."

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18 but also for an injury occasioned to another by his want of
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20 person except so far as the latter has willfully or by want
21 of ordinary care brought the injury upon himself."

22 Section 3. Section 70-16-302, MCA, is amended to read:

23 "70-16-302. Restriction on liability to ~~permittee of~~
24 landowner or HIS AGENT OR tenant. A ~~landowner or tenant who~~
25 ~~permits, by act or implication, any person to enter upon any~~



1 ~~property-in-the-possession-or--under--the--control--of--such~~
2 ~~landowner--or--tenant--for--any-recreational-purpose-without~~
3 ~~accepting-a-valuable--consideration--therefor--does--not--by~~
4 ~~granting--such--permission--extend--any--assurance-that-such~~
5 ~~property-is-safe-for-any-purpose-or-confer-upon one such--a~~
6 ~~person-the-status-of-invitee-or-licensee-to-whom-any-duty-of~~
7 ~~care--is--owed--and--such--A landowner-or-tenant PERSON WHO~~
8 MAKES RECREATIONAL USE OF ANY PROPERTY IN THE POSSESSION OR
9 UNDER THE CONTROL OF ANOTHER, WITH OR WITHOUT PERMISSION AND
10 WITHOUT GIVING A VALUABLE CONSIDERATION THEREFOR, DOES SO
11 WITHOUT ANY ASSURANCE FROM THE LANDOWNER, HIS AGENT, OR HIS
12 TENANT THAT THE PROPERTY IS SAFE FOR ANY PURPOSE. THE
13 LANDOWNER, HIS AGENT, OR HIS TENANT OWES THE PERSON NO DUTY
14 OF CARE WITH RESPECT TO THE CONDITION OF THE PROPERTY,
15 EXCEPT THAT THE LANDOWNER, HIS AGENT, OR HIS TENANT shall
16 not--be is liable to such person for any injury to person or
17 property ~~resulting-from-any~~ only for an act or omission of
18 ~~such--landowner--or--tenant-unless-such-act-or-omission that~~
19 constitutes willful or wanton misconduct."

-End-

MR. PRESIDENT

We, your committee on SENATE JUDICIARY

having had under consideration HOUSE BILL No. 42

third reading copy (blue)
color

Clarify legal standard governing landowner liability.
Cobb (Pinsonneault)

Respectfully report as follows: That HOUSE BILL No. 42

be amended as follows:

1. Page 3, line 14.

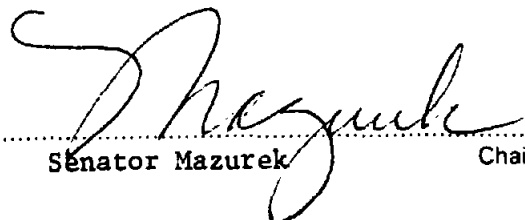
Following: "CARE"

Insert: "with respect to the condition of the property"

NB

~~XXXXXX~~ AND AS AMENDED
BE CONCURRED IN

~~BY NOT PASS~~



Senator Mazurek

Chairman.