## HOUSE BILL NO. 42

## INTRODUCED BY COBB

## IN THE HOUSE

111 110001				
JANUARY 5, 1987	INTRODUCED AND REFERRED TO COMMITTEE ON JUDICIARY.			
JANUARY 12, 1987	COMMITTEE RECOMMEND BILL DO PASS AS AMENDED. REPORT ADOPTED.			
JANUARY 13, 1987	PRINTING REPORT.			
JANUARY 14, 1987	SECOND READING, DO PASS.			
JANUARY 15, 1987	ENGROSSING REPORT.			
	THIRD READING, PASSED. AYES, 97; NOES, 1.			
	TRANSMITTED TO SENATE.			
IN	THE SENATE			
JANUARY 21, 1987	INTRODUCED AND REFERRED TO COMMITTEE ON JUDICIARY.			
MARCH 4, 1987	COMMITTEE RECOMMEND BILL BE CONCURRED IN AS AMENDED. REPORT ADOPTED.			
MARCH 7, 1987	SECOND READING, CONCURRED IN.			
MARCH 10, 1987	THIRD READING, CONCURRED IN. AYES, 49; NOES, 0.			

RETURNED TO HOUSE WITH AMENDMENTS.

## 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.

9

10

11

12

13

14

15

16

17

19

20

21

22

23

24

25

2

10

11

12

1.3

14

15

16

17

18

19

20

21

22

23

24

25

HOUSE BILL NO. 42 1 INTRODUCED BY CORB 2 A BILL FOR AN ACT ENTITLED: "AN ACT TO CLARIFY THE LEGAL STANDARD GOVERNING LANDOWNER LIABILITY: AND AMENDING SECTIONS 23-2-321 AND 70-16-302, MCA." 7 8 WHEREAS, the Montana Supreme Court in Limberhand v. Big

Ditch Co., Mont. , 706 P.2d 491 (1985), replaced the traditional invitee, licensee, and trespasser standards for measuring landowner liability with a single standard of reasonable care: and

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

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

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



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

- 4 (2) A landowner, his agent, or tenant is liable to a person making recreational use of waters or land described in subsection (1) only for an act or omission that constitutes willful or wanton misconduct.
  - (3) No supervisor or any member of the arbitration panel who participates in a decision regarding the placement of a portage route is liable to any person who is injured or whose property is damaged because of placement or use of the portage route except for an act or omission that constitutes willful and wanton misconduct."

Section 2. Section 70-16-302, MCA, is amended to read: "70-16-302. Restriction on liability to-permittee of landowner or tenant. A landowner or tenant who permits, by act or implication, any person to enter upon any property in the possession or under the control of such landowner or tenant for any recreational purpose without accepting a valuable consideration therefor does not by granting such permission extend any assurance that such property is safe for any purpose or confer-upon owe such a person the-status of-invitee-or-licensee-to-whom any duty of care is-owed,-and such. A landowner or tenant shall-not-be is liable to such person for any injury to person or property resulting-from

LC 0366/01

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

-End-

1

HB 0042/02

1

3

16 17

18

19

#### HB 0042/02

# APPROVED BY COMMITTEE ON JUDICIARY

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.
17	
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

HOUSE BILL NO. 42

other than that provided in subsection (2).
(2) A landowner, his agent, or tenant is liable to a
person making recreational use of waters or land described
in subsection (1) only for an act or omission that
constitutes willful or wanton misconduct.
(3) No supervisor or any member of the arbitration
panel who participates in a decision regarding the placement
of a portage route is liable to any person who is injured or
whose property is damaged because of placement or use of the
portage route except for an act or omission that constitutes
willful and wanton misconduct."
SECTION 2. SECTION 27-1-701, MCA, IS AMENDED TO READ:

"27-1-701. Liability for negligence as well as willful acts. Everyone Except as otherwise provided by law, everyone

is responsible not only for the results of his willful acts

but also for an injury occasioned to another by his want of

ordinary care or skill in the management of his property or

23-2-311, does-not-have-the-status-of--invitee--or--licensee and is owed no duty by a landowner, his agent, or his tenant

person except so far as the latter has willfully or by want of ordinary care brought the injury upon himself."

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

"70-16-302. Restriction on liability to-permittee of landowner or HIS AGENT OR tenant. A landowner-or-tenant-who permits7-by-act-or-implication7-any-person-to-enter-upon-any

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

-End-

HB 42

50th Legislature HB 0042/02 HB 0042/02

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.
17	
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

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

- (2) A landowner, his agent, or tenant is liable to a person making recreational use of waters or land described in subsection (1) only for an act or omission that constitutes willful or wanton misconduct.
  - (3) No supervisor or any member of the arbitration panel who participates in a decision regarding the placement of a portage route is liable to any person who is injured or whose property is damaged because of placement or use of the portage route except for an act or omission that constitutes willful and wanton misconduct."
  - SECTION 2. SECTION 27-1-701, MCA, IS AMENDED TO READ:

    "27-1-701. Liability for negligence as well as willful acts. Everyone Except as otherwise provided by law, everyone is responsible not only for the results of his willful acts but also for an injury occasioned to another by his want of ordinary care or skill in the management of his property or person except so far as the latter has willfully or by want of ordinary care brought the injury upon himself."
  - Section 3. Section 70-16-302, MCA, is amended to read:

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

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

-End-

1	ROUSE 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
0	traditional invitee, licensee, and trespasser standards for
.1	measuring landowner liability with a single standard of
2	reasonable care; and
. 3	WHEREAS, this single standard adopted by the Montana
. 4	Supreme Court conflicts with the policy of restricted
.5	landowner liability established by the Legislature in
.6	sections 23-2-321 and 70-16-302, MCA.
.7	
.8	BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
.9	Section 1. Section 23-2-321, MCA, is amended to read:
0	"23-2-321. Restriction on liability of landowner and
1	supervisor. (1) A person who makes recreational use of
2	surface waters flowing over or through land in the
3	possession or under the control of another, pursuant to
4	23-2-302, or land while portaging around or over barriers or

while portaging or using portage routes, pursuant to

2	and is owed no duty by a landowner, his agent, or his tenan
3	other than that provided in subsection (2).
4	(2) A landowner, his agent, or tenant is liable to
5	person making recreational use of waters or land describe
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 arbitratio
9	panel who participates in a decision regarding the placemen
.0	of a portage route is liable to any person who is injured o
1	whose property is damaged because of placement or use of th
2	portage route except for an act or omission that constitute
.3	willful and wanton misconduct."
.4	SECTION 2. SECTION 27-1-701, MCA, IS AMENDED TO READ
.5	"27-1-701. Liability for negligence as well as willfu
6	acts. Everyone Except as otherwise provided by law, everyon
.7	is responsible not only for the results of his willful act
.8	but also for an injury occasioned to another by his want o
.9	ordinary care or skill in the management of his property o
0	person except so far as the latter has willfully or by wan
!1	of ordinary care brought the injury upon himself."
2	Section 3. Section 70-16-302, MCA, is amended to read
!3	"70-16-302. Restriction on liability topermittee o
4	landowner or HIS AGENT OR tenant. A landowner-or-tenant-who
:5	permitsby-act-or-implicationany-person-to-enter-upon-any

23-2-311, does-not-have-the-status-of--invitee--or--licensee

#### HB 0042/03

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 owe such-a 6 person-the-status-of-invitee-or-licensee-to-whom-any-duty-of 7 care--is--owedy--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 OF CARE WITH RESPECT TO THE CONDITION OF THE PROPERTY, 14 15 EXCEPT THAT THE LANDOWNER, HIS AGENT, OR HIS TENANT shall not--be is liable to such person for any injury to person or 16 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-

	March 3	1987
MR. PRESIDENT		
We, your committee on SENATE JUDICIAR	RY	
naving had under consideration	HOUSE BILL	No42
third reading copy ( blue ) color		
Clarify legal standard gover Cobb (Pinsoneault)	rning landowner liability.	
Respectfully report as follows: That	HOUSE BILL	No42
be amended as follows:		
1. Page 3, line 14. Following: "CARE" Insert: "with respect to the	he condition of the property"	

B

**XXXXXXXX** 

AND AS AMENDED
BE CONCURRED IN

99xXXXXXX

Senator Mazurek/

Chairman.