

SENATE BILL NO. 139

INTRODUCED BY E. SMITH, CAMPBELL, TVEIT, KOLSTAD, NATHE,  
HARDING, BECK, LYNCH, STIMATZ, MANNING, BOYLAN, NISBET,  
MEYER, IVERSON, DONALDSON, SWIFT, O'CONNELL, KOEHNKE, HARP,  
STRIZICH, QUILICI, PAVLOVICH, MILLER, MENAHAN, BRANDEWIE,  
WALKER, HOFMAN, DAILY, RAMIREZ, POULSEN, PHILLIPS, STORY,  
GRADY, HALLIGAN, THOFT, SEVERSON,  
MCCORMICK, WALLIN, JACOBSON

IN THE SENATE

JANUARY 19, 1987	INTRODUCED AND REFERRED TO COMMITTEE ON FISH & GAME.
JANUARY 30, 1987	COMMITTEE RECOMMEND BILL DO PASS AS AMENDED. REPORT ADOPTED.
JANUARY 31, 1987	PRINTING REPORT.
FEBRUARY 3, 1987	ON MOTION, TAKEN FROM SECOND READING AND REREFERRED TO COMMITTEE ON JUDICIARY.
FEBRUARY 19, 1987	COMMITTEE RECOMMEND BILL DO PASS AS AMENDED. REPORT ADOPTED.
FEBRUARY 20, 1987	PRINTING REPORT.
FEBRUARY 21, 1987	SECOND READING, DO PASS.
FEBRUARY 23, 1987	ENGROSSING REPORT.  THIRD READING, PASSED. AYES, 49; NOES, 0.  TRANSMITTED TO HOUSE.

IN THE HOUSE

FEBRUARY 24, 1987	INTRODUCED AND REFERRED TO COMMITTEE ON JUDICIARY.
MARCH 23, 1987	COMMITTEE RECOMMEND BILL BE CONCURRED IN AS AMENDED. REPORT ADOPTED.

MARCH 25, 1987 ON MOTION, TAKEN FROM SECOND READING  
AND REREFERRED TO COMMITTEE  
ON JUDICIARY.

MARCH 27, 1987 COMMITTEE RECOMMEND BILL BE  
CONCURRED IN AS AMENDED. REPORT  
ADOPTED.

MARCH 28, 1987 SECOND READING, CONCURRED IN.

MARCH 30, 1987 THIRD READING, CONCURRED IN.  
AYES, 97; NOES, 1.

RETURNED TO SENATE WITH AMENDMENTS.

IN THE SENATE

APRIL 2, 1987 RECEIVED FROM HOUSE.

SECOND READING, AMENDMENTS  
CONCURRED IN.

APRIL 3, 1987 THIRD READING, AMENDMENTS  
CONCURRED IN.

SENT TO ENROLLING.

1 *Senate* BILL NO. 139 *MATTER*  
 2 INTRODUCED BY *E. Smith Campbell Sweetheart*  
 3 *Harding Beck Simpson Stuart Richard Manning*  
 4 A BILL FOR AN ACT ENTITLED: "AN ACT DEFINING THE  
 5 RESPONSIBILITY AND LIABILITY OF SNOWMOBILE AREA OPERATORS  
 6 AND THE RESPONSIBILITY AND RISK BORNE BY SNOWMOBILERS;  
 7 AMENDING SECTIONS 27-1-701 AND 70-16-302, MCA; AND PROVIDING  
 8 AN IMMEDIATE EFFECTIVE DATE." *Walker*

9 *W*  
 10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

11 NEW SECTION. Section 1. Purpose. The legislature  
 12 recognizes that there are inherent risks in the sport of  
 13 snowmobiling that are essentially impossible for a  
 14 snowmobile area operator to eliminate but that should be  
 15 known by a reasonable and prudent snowmobiler. The purpose  
 16 of [this act] is to define those areas of responsibility and  
 17 the acts for which a snowmobile area operator is liable for  
 18 death or injury to any person or property and those risks  
 19 for which a snowmobiler expressly assumes or must be  
 20 considered to have voluntarily assumed the risk of death or  
 21 injury and for which there can be no recovery.

22 NEW SECTION. Section 2. Definitions. As used in [this  
 23 act], the following definitions apply:

24 (1) "Snowmobile" means a vehicle defined in  
 25 23-2-601(10).

1 (2) "Snowmobile area" means those areas designated as  
 2 snowmobile trails or areas open to the operation of  
 3 snowmobiles.

4 (3) "Snowmobile area operators" means those persons  
 5 responsible for the maintenance of snowmobile trails and  
 6 open areas or those persons providing rental snowmobile  
 7 equipment. Operators may include but are not limited to the  
 8 United States forest service, the Montana department of  
 9 fish, wildlife, and parks, the Montana snowmobile  
 10 association, individual snowmobile clubs, persons who offer  
 11 snowmobile equipment for rent, and private trail grooming  
 12 contractors.

13 (4) "Snowmobiler" means any person operating or riding  
 14 a snowmobile.

15 NEW SECTION. Section 3. Snowmobile area operators --  
 16 duties -- restriction on liability. (1) The person  
 17 responsible for the maintenance of or operation of a  
 18 snowmobile area shall mark all trail maintenance vehicles  
 19 and furnish the vehicles with flashing or rotating lights  
 20 that must be in operation whenever the vehicles are working  
 21 or are in movement in the snowmobile area.

22 (2) A snowmobile area operator is liable for death or  
 23 injury to a snowmobiler or other person or property only for  
 24 an act or omission that constitutes willful or wanton  
 25 misconduct.

1 (3) Except as provided in this section, a snowmobile  
2 area operator has no duty to eliminate, alter, control, or  
3 lessen the risk inherent in the sport of snowmobiling. A  
4 snowmobile area operator who attempts to eliminate, alter,  
5 control, or lessen the risk inherent in the sport of  
6 snowmobiling is liable only for an act or omission that  
7 constitutes willful or wanton misconduct.

8 NEW SECTION. Section 4. Snowmobiler's assumption of  
9 responsibility -- duties. (1) A snowmobiler assumes the risk  
10 and all legal responsibility for death or injury to himself  
11 or other persons or property that results from participating  
12 in the sport of snowmobiling by virtue of his participation.  
13 The assumption of risk includes but is not limited to death  
14 or injury caused by the following: variations in terrain,  
15 surface or subsurface snow or ice conditions, cornices,  
16 avalanches, poor visibility, bare spots, rocks, trees, other  
17 forms of forest growth or debris, and plainly marked trail  
18 maintenance equipment.

19 (2) A snowmobiler is responsible for:

20 (a) knowing the range of his own ability to snowmobile  
21 any slope, trail, or area and for snowmobiling within the  
22 limits of his ability considering the conditions;

23 (b) maintaining control of his speed and course at all  
24 times while snowmobiling:

25 (c) heeding all posted warnings; and

1 (d) refraining from acting in a manner that may cause  
2 or contribute to the injury of anyone.

3 NEW SECTION. Section 5. Maintenance of rental  
4 snowmobiles. A person who engages in the business of renting  
5 snowmobiles to another shall:

6 (1) maintain rental snowmobiles in a safe condition;

7 (2) offer each renter instructions in the operation of  
8 the rental snowmobile; and

9 (3) make available to each renter maps or information  
10 on trails in the area.

11 NEW SECTION. Section 6. Effective comparative  
12 negligence. Notwithstanding any comparative negligence law  
13 in this state, a person is barred from recovery from a  
14 snowmobile area operator for death or injury to person or  
15 property resulting from any risk inherent in the sport of  
16 snowmobiling as described in [section 4].

17 Section 7. Section 27-1-701, MCA, is amended to read:

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

25 Section 8. Section 70-16-302, MCA, is amended to read:

1 "70-16-302. Restriction on liability to permittee.

2 (1) A landowner or tenant who permits, by act or  
3 implication, any person to enter upon any property in the  
4 possession or under the control of such landowner or tenant  
5 for any recreational purpose without accepting a valuable  
6 consideration therefor does not by granting such permission  
7 extend any assurance that such property is safe for any  
8 purpose or confer upon such a person the status of invitee  
9 or licensee to whom any duty of care is owed, and such  
10 landowner or tenant shall not be liable to such person for  
11 any injury to person or property resulting from any act or  
12 omission of such landowner or tenant unless such act or  
13 omission constitutes willful or wanton misconduct.

14 (2) The department of fish, wildlife, and parks, when  
15 operating under an agreement with a landowner to provide  
16 recreational opportunities subject to the provisions of  
17 subsection (1) on the landowner's property, does not extend  
18 any assurance that such property is safe for any purpose,  
19 and the department may not be liable to any person for any  
20 injury to person or property resulting from any act or  
21 omission of the department unless such act or omission  
22 constitutes willful or wanton misconduct."

23 NEW SECTION. Section 9. Two-thirds vote required.  
24 Since this act limits governmental liability, Article II,  
25 section 18, of the Montana constitution requires a vote of

1 two-thirds of the members of each house for passage.

2 NEW SECTION. Section 10. Effective date. This act is  
3 effective on passage and approval.

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10 (3) "Snowmobile area operators" means those persons  
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14 United States forest service, the Montana department of  
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16 association, individual snowmobile clubs, LANDOWNERS OR  
17 THEIR TENANTS, persons who offer snowmobile equipment for  
18 rent, and private trail grooming contractors.

19 (4) "Snowmobiler" means any person operating or riding  
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24 snowmobile area shall mark all trail maintenance vehicles  
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1 that must be in operation whenever the vehicles are working  
2 or are in movement in the snowmobile area.

3 (2) A snowmobile area operator is liable for death or  
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5 an act or omission that constitutes willful or wanton  
6 misconduct.

7 (3) Except as provided in this section, a snowmobile  
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14 NEW SECTION. Section 4. Snowmobiler's assumption of  
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17 or other persons or property that results from participating  
18 THE RISKS INHERENT in the sport of snowmobiling by-virtue-of  
19 his-participation. The assumption of risk includes but is  
20 not limited to death or injury caused by the following:  
21 variations in terrain, surface or subsurface snow or ice  
22 conditions, cornices, avalanches, poor visibility, bare  
23 spots, rocks, trees, other forms of forest growth or debris,  
24 and plainly marked trail maintenance equipment.

25 (2) A snowmobiler is responsible for:

1 (a) knowing the range of his own ability to snowmobile  
2 any slope, trail, or area and for snowmobiling within the  
3 limits of his ability considering the conditions;

4 (b) maintaining control of his speed and course at all  
5 times while snowmobiling;

6 (c) heeding all posted warnings; and

7 (d) refraining from acting in a manner that may cause  
8 or contribute to the injury of anyone.

9 (3) THE PROVISIONS OF THIS SECTION DO NOT AFFECT A  
10 PRODUCTS LIABILITY CAUSE OF ACTION BASED UPON THE DESIGN OR  
11 MANUFACTURE OF SNOWMOBILE EQUIPMENT OR PRODUCTS OR SAFETY  
12 EQUIPMENT USED INCIDENTAL TO THE OPERATION OF A SNOWMOBILE.

13 NEW SECTION. Section 5. Maintenance of rental  
14 snowmobiles. A person who engages in the business of renting  
15 snowmobiles to another shall:

16 (1) maintain rental snowmobiles in a safe condition;

17 AND

18 (2) offer each renter instructions in the MECHANICAL  
19 operation of the rental snowmobile; and

20 ~~{3}--make--available--to--each--renter--maps--or--information~~  
21 ~~on--trails--in--the--area.~~

22 NEW SECTION. Section 6. Effective comparative  
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24 in this state, a person is barred from recovery from a  
25 snowmobile area operator for death or injury to person or

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2 snowmobiling as described in [section 4].

3 Section 7. Section 27-1-701, MCA, is amended to read:

4 "27-1-701. Liability for negligence as well as willful  
5 acts. Everyone Except as otherwise provided by law, everyone  
6 is responsible not only for the results of his willful acts  
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8 ordinary care or skill in the management of his property or  
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11 Section 8. Section 70-16-302, MCA, is amended to read:

12 "70-16-302. Restriction on liability to permittee.

13 (1) A landowner or tenant who permits, by act or  
14 implication, any person to enter upon any property in the  
15 possession or under the control of such landowner or tenant  
16 for any recreational purpose without accepting a valuable  
17 consideration therefor does not by granting such permission  
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21 landowner or tenant shall not be liable to such person for  
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23 omission of such landowner or tenant unless such act or  
24 omission constitutes willful or wanton misconduct.

25 (2) The department of fish, wildlife, and parks, when

1 operating under an agreement with a landowner OR TENANT to  
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9 constitutes willful or wanton misconduct."

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11 Since this act limits governmental liability, Article II,  
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considered to have voluntarily assumed the risk of death or injury and for which there can be no recovery.

NEW SECTION. Section 2. Definitions. As used in [this act], the following definitions apply:

(1) "Snowmobile" means a vehicle defined in 23-2-601(10).

(2) "Snowmobile area" means those areas designated as snowmobile trails or areas open to the operation of snowmobiles.

(3) "Snowmobile area operators" means those persons responsible for the maintenance of snowmobile trails and open areas or those persons providing rental snowmobile equipment. Operators may include but are not limited to the United States forest service, the Montana department of fish, wildlife, and parks, the Montana snowmobile association, individual snowmobile clubs, LANDOWNERS OR THEIR TENANTS, persons who offer snowmobile equipment for rent, and private trail grooming contractors.

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4 (b) maintaining control of his speed and course at all  
5 times while snowmobiling;

6 (c) heeding all posted warnings; and

7 (d) refraining from acting in a manner that may cause  
8 or contribute to the injury of anyone.

9 (3) THE PROVISIONS OF THIS SECTION DO NOT AFFECT A  
10 PRODUCTS LIABILITY CAUSE OF ACTION BASED UPON THE DESIGN OR  
11 MANUFACTURE OF SNOWMOBILE EQUIPMENT OR PRODUCTS OR SAFETY  
12 EQUIPMENT USED INCIDENTAL TO THE OPERATION OF A SNOWMOBILE.

13 NEW SECTION. Section 5. Maintenance of rental  
14 snowmobiles. A person who engages in the business of renting  
15 snowmobiles to another shall:

16 (1) maintain rental snowmobiles in a safe condition;

17 AND

18 (2) offer each renter instructions in the MECHANICAL  
19 operation of the rental snowmobile; ~~and~~

20 ~~{3}--make-available-to-each-renter-maps-or--information~~  
21 ~~on-trails-in-the-area.~~

22 NEW SECTION. Section 6. Effective EFFECT OF  
23 comparative negligence. Notwithstanding any comparative  
24 negligence law in this state, a person is barred from  
25 recovery from a snowmobile area operator for death or injury

1 to person or property resulting from any risk inherent in  
2 the sport of snowmobiling as described in [section 4].

3 Section 7. Section 27-1-701, MCA, is amended to read:

4 "27-1-701. Liability for negligence as well as willful  
5 acts. Everyone Except as otherwise provided by law, everyone  
6 is responsible not only for the results of his willful acts  
7 but also for an injury occasioned to another by his want of  
8 ordinary care or skill in the management of his property or  
9 person except so far as the latter has willfully or by want  
10 of ordinary care brought the injury upon himself."

11 Section 8. Section 70-16-302, MCA, is amended to read:

12 "70-16-302. Restriction on liability to permittee.  
13 (1) A landowner or tenant who permits, by act or  
14 implication, any person to enter upon any property in the  
15 possession or under the control of such landowner or tenant  
16 for any recreational purpose without accepting a valuable  
17 consideration therefor does not by granting such permission  
18 extend any assurance that such property is safe for any  
19 purpose or confer upon such a person the status of invitee  
20 or licensee to whom any duty of care is owed, and such  
21 landowner or tenant shall not be liable to such person for  
22 any injury to person or property resulting from any act or  
23 omission of such landowner or tenant unless such act or  
24 omission constitutes willful or wanton misconduct.

25 (2) The department of fish, wildlife, and parks, when

1 operating under an agreement with a landowner OR TENANT to  
2 provide recreational SNOWMOBILING opportunities, INCLUDING  
3 BUT NOT LIMITED TO A SNOWMOBILE AREA, subject to the  
4 provisions of subsection (1) on the landowner's property,  
5 AND WHEN NOT ALSO ACTING AS A SNOWMOBILE AREA OPERATOR ON  
6 THE PROPERTY, does not extend any assurance that such  
7 property is safe for any purpose, and the department, THE  
8 LANDOWNER, OR THE LANDOWNER'S TENANT may not be liable to  
9 any person for any injury to person or property resulting  
10 from any act or omission of the department unless such act  
11 or omission constitutes willful or wanton misconduct."

12 NEW SECTION. Section 9. Two-thirds vote required.  
13 Since this act limits governmental liability, Article II,  
14 section 18, of the Montana constitution requires a vote of  
15 two-thirds of the members of each house for passage.

16 NEW SECTION. Section 10. Effective date. This act is  
17 effective on passage and approval.

-End-

Mr. Speaker: We, the committee on JUDICIARY

report SENATE BILL NO. 139

do pass

be concurred in

as amended

do not pass

be not concurred in

statement of intent attached

*Earl L. Ray*

Chairman

1. Page 3, lines 5 and 6 and line 13.

Strike: "willful or wanton misconduct" on lines 5 and 6 and  
on line ~~13~~ **13**

Insert: "gross negligence"

2. Page 4, line 22.

Strike: "Effective"

Insert: "Effect of"

3. Page 6, line 5.

Strike: "the department,"

Strike: ", OR"

Insert: "and"

~~\_\_\_\_\_~~

55  
1/21

STANDING COMMITTEE REPORT

HOUSE

MARCH 26,

19 87

JUDICIARY

Mr. Speaker: We, the committee on

report SENATE BILL NO. ~~XXX~~ 139

do pass  
 do not pass

be concurred in  
 be not concurred in

as amended  
 statement of intent attached

*E. Long*

Chairman

*Strip*

~~Strike~~ amendment number 3 (to page 6, line 5 of the third reading copy of SB 139) on the March 23, 1987, House Judiciary Committee report and further amend the third reading copy of SB 139 as follows:

1. Page 6, line 2.

Following: "recreational"

Insert: "snowmobiling"

Following: "opportunities"

Insert: ", including but not limited to a snowmobile area,"

2. Page 6, line 3.

Following: "property,"

Insert: "and when not also acting as a snowmobile area operator on the property,"

*JAH*

*139*  
THIRD reading copy ( BLUE )  
color

REP. GRADY WILL CARRY THE BILL!