

SENATE BILL NO. 211

INTRODUCED BY

*Katelyn Mills* *Stovall*  
*Sprague* *Harding* *Chala* *Gr*

A BILL FOR AN ACT ENTITLED: "AN ACT LIMITING A PROPERTY OWNER'S LIABILITY TOWARD PERSONS WHO MAKE RECREATIONAL USE OF THE PROPERTY; REPEALING THE PRESENT LAW ON RECREATIONAL USE IMMUNITY; AMENDING SECTIONS 15-6-133, 23-2-907, AND 77-1-805, MCA; AND REPEALING SECTIONS 70-16-301 AND 70-16-302, MCA."

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

**NEW SECTION. Section 1. Purpose.** The purpose of [sections 1 through 4] is to encourage owners of public and private property to make the property available to the public for recreational purposes by limiting the owner's liability toward persons entering upon the property and toward persons who may be injured or otherwise damaged by the acts or omissions of persons who enter upon the property.

**NEW SECTION. Section 2. Definitions.** As used in [sections 1 through 4], the following definitions apply:

(1) (a) "Charge" means the amount of money asked in return for an invitation to enter or go upon property.

(b) The term does not include general property taxes or special assessments levied for the improvement or maintenance of the property or rental paid by a group, organization, or corporation or by the state or federal government.

(2) "Owner" means a person or entity of any nature, whether private, governmental, or quasi-governmental. The term includes tenants, lessees, occupants, grantees of conservation easements, water users' associations, irrigation districts, drainage districts, and persons or entities in control of the property.

(3) "Property" means land, roads, water, watercourses, and private ways. The term includes any improvements, buildings, structures, machinery, and equipment on property.

(4) "Recreational purposes" means any activity that serves to refresh a person's mind or body by amusement, stimulation, or exercise. The term includes but is not limited to any one or any combination

1 of the following:

- 2 (a) play;
- 3 (b) sporting activities;
- 4 (c) hunting;
- 5 (d) fishing;
- 6 (e) swimming;
- 7 (f) boating;
- 8 (g) waterskiing;
- 9 (h) camping;
- 10 (i) picnicking;
- 11 (j) pleasure driving;
- 12 (k) winter sports;
- 13 (l) hiking;
- 14 (m) spelunking;
- 15 (n) bicycling;
- 16 (o) nature study;
- 17 (p) visiting, viewing, or enjoying historical, archaeological, scenic, or scientific sites; or
- 18 (q) other activities commonly known or understood to be recreational purposes.

19

20 **NEW SECTION. Section 3. Limitation on landowner liability -- duty of care.** (1) An owner of  
21 property who directly or indirectly invites or permits any person to use the property for recreational  
22 purposes, without charge, does not:

- 23 (a) extend any assurance that the property is safe for any purpose;
- 24 (b) confer upon the invitee or permittee the legal status of a person to whom a duty of care is  
25 owed; or
- 26 (c) assume responsibility for or incur liability for any injury to person or property caused by an act  
27 or omission of the invitee or permittee.

28 (2) The provisions of [sections 1 through 4] apply whether a person enters property for recreational  
29 purposes by invitation, permit, license, trespass, or any other method.

30 (3) An owner of property owes no duty of care to keep the property safe for entry or use by others

1 for recreational purposes or to give any warning of a dangerous condition, use, structure, or activity on the  
2 property to a person who enters the property for recreational purposes.

3 (4) Nothing in [sections 1 through 4] limits in any way the obligation of a person who enters or  
4 uses the property of another for recreational purposes to exercise due care in the use of the property.

5  
6 **NEW SECTION. Section 4. Liability limitation exception.** [Sections 1 through 4] do not limit  
7 liability that otherwise exists for:

8 (1) willful or malicious failure to guard against or warn against a dangerous condition, use,  
9 structure, or activity; or

10 (2) injury suffered when an owner of property charges a person to enter the property for  
11 recreational purposes.

12

13 **Section 5.** Section 15-6-133, MCA, is amended to read:

14 **"15-6-133. Class three property -- description -- taxable percentage.** (1) Class three property  
15 includes:

16 (a) agricultural land as defined in 15-7-202;

17 (b) nonproductive patented mining claims outside the limits of an incorporated city or town held  
18 by an owner for the ultimate purpose of developing the mineral interests on the property. For the purposes  
19 of this subsection (1)(b), the following provisions apply:

20 (i) The claim may not include any property that is used for residential purposes, recreational  
21 purposes as ~~described~~ defined in ~~70-16-304~~ [section 2], or commercial purposes as defined in 15-1-101  
22 or any property the surface of which is being used for other than mining purposes or has a separate and  
23 independent value for other purposes.

24 (ii) Improvements to the property that would not disqualify the parcel are taxed as otherwise  
25 provided in this title, including that portion of the land upon which the improvements are located and that  
26 is reasonably required for the use of the improvements.

27 (iii) Nonproductive patented mining claim property must be valued as if the land were devoted to  
28 agricultural grazing use.

29 (c) parcels of land of 20 acres or more but less than 160 acres under one ownership that are not  
30 eligible for valuation, assessment, and taxation as agricultural land under 15-7-202(1). The land may not

1 be devoted to a commercial or industrial purpose.

2 (2) Class three property is taxed at the taxable percentage rate applicable to class four property,  
3 as provided in 15-6-134(2)(a).

4 (3) The land described in subsection (1)(c) is valued at the productive capacity value of grazing  
5 land, at a production level set by the department, and the taxable value is computed by multiplying the  
6 value by seven times the taxable rate for agricultural land."

7

8 **Section 6.** Section 23-2-907, MCA, is amended to read:

9 **"23-2-907. Conditions of owner liability.** The liability of the owner of a cave or the owner's  
10 authorized agent, officer, employee, or designated representative acting within the scope of authority is  
11 restricted pursuant to ~~70-16-302~~ [sections 1 through 4]."

12

13 **Section 7.** Section 77-1-805, MCA, is amended to read:

14 **"77-1-805. Liability of state and lessee.** (1) The provisions of ~~70-16-302~~ [sections 1 through 4]  
15 that limit the liability of a landowner or ~~his~~ the landowner's tenant for the recreational use of property apply  
16 to the state and any lessee of state lands used for general recreational purposes.

17 (2) The lessee is not responsible for the suppression of or for damages resulting from a fire on ~~his~~  
18 the leased land caused by a general recreational user, except that a lessee who observes a fire caused by  
19 a general recreational user shall make reasonable efforts to suppress the fire or report it to the proper  
20 firefighting authority."

21

22 **NEW SECTION. Section 8. Codification instruction.** [Sections 1 through 4] are intended to be  
23 codified as an integral part of Title 70, chapter 16, part 3, and the provisions of Title 70, chapter 16, part  
24 3, apply to [sections 1 through 4].

25

26 **NEW SECTION. Section 9. Repealer.** Sections 70-16-301 and 70-16-302, MCA, are repealed.

27

-END-

REREFERRED AND APPROVED BY COM  
ON JUDICIARY

1 SENATE BILL NO. 211

2 INTRODUCED BY KEATING, MILLS, MILLER, STOVALL, SPRAGUE, HARDING, ESTRADA, CRIPPEN,  
3 FORRESTER

4  
5 A BILL FOR AN ACT ENTITLED: "AN ACT ~~LIMITING~~ REVISING THE LAWS RELATING TO A PROPERTY  
6 OWNER'S LIABILITY TOWARD PERSONS WHO MAKE RECREATIONAL USE OF THE PROPERTY;  
7 ~~REPEALING THE PRESENT LAW ON RECREATIONAL USE IMMUNITY;~~ AND AMENDING SECTIONS  
8 ~~15-6-133, 23-2-907, AND 77-1-805, MCA; AND REPEALING~~ SECTIONS 70-16-301 AND 70-16-302,  
9 MCA."

10

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

12 (Refer to Second Reading Bill)

13 Strike everything after the enacting clause and insert:

14

15 **Section 1.** Section 70-16-301, MCA, is amended to read:

16 "70-16-301. **Recreational purposes defined.** "Recreational purposes", as used in this part, includes  
17 hunting, fishing, swimming, boating, water skiing, camping, picnicking, pleasure driving, biking, winter  
18 sports, hiking, touring or viewing cultural and historical sites and monuments, spelunking, or other pleasure  
19 expeditions."

20

21 **Section 2.** Section 70-16-302, MCA, is amended to read:

22 "70-16-302. **Restriction on liability of landowner or his agent or tenant.** (1) A person who makes  
23 recreational use of any property in the possession or under the control of another uses property, including  
24 property owned or leased by a public entity, for recreational purposes, with or without permission and  
25 ~~without giving a valuable consideration therefor~~, does so without any assurance from the landowner, his  
26 ~~agent, or his tenant~~ that the property is safe for any purpose if the person does not give a valuable  
27 consideration directly to the landowner in exchange for the recreational use of the property. The landowner,  
28 ~~his agent, or his tenant~~ owes the person no duty of care with respect to the condition of the property,  
29 except that the landowner, ~~his agent, or his tenant~~ is liable to ~~such~~ the person for any injury to person or  
30 property for an act or omission that constitutes willful or wanton misconduct. For purposes of this section,

1 valuable consideration does not include the state land recreational use license fee imposed under 77-1-802.

2 (2) As used in this part, "landowner" means a person or entity of any nature, whether private,  
3 governmental, or quasi-governmental, and includes the landowner's agent, tenant, lessee, occupant,  
4 grantee of conservation easement, water users' association, irrigation district, drainage district, and persons  
5 or entities in control of the property or with an agreement to use or occupy property.

6 (3) As used in this part, "property" means land, roads, water, watercourses, and private ways.  
7 The term includes any improvements, buildings, structures, machinery, and equipment on property.

8 ~~(2)~~(4) The department of fish, wildlife, and parks, when operating under an agreement with a  
9 landowner or tenant to provide recreational snowmobiling opportunities, including but not limited to a  
10 snowmobile area, subject to the provisions of subsection (1), on the landowner's property and when not  
11 also acting as a snowmobile area operator on the property, does not extend any assurance that ~~such~~ the  
12 property is safe for any purpose, and the department, the landowner, or the landowner's tenant may not  
13 be liable to any person for any injury to person or property resulting from any act or omission of the  
14 department unless ~~such~~ the act or omission constitutes willful or wanton misconduct."

15

-END-

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MCA."

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

(Refer to Second Reading Bill)

Strike everything after the enacting clause and insert:

**Section 1.** Section 70-16-301, MCA, is amended to read:

"70-16-301. **Recreational purposes defined.** "Recreational purposes", as used in this part, includes hunting, fishing, swimming, boating, water skiing, camping, picnicking, pleasure driving, biking, winter sports, hiking, touring or viewing cultural and historical sites and monuments, spelunking, or other pleasure expeditions."

**Section 2.** Section 70-16-302, MCA, is amended to read:

"70-16-302. **Restriction on liability of landowner or his agent or tenant.** (1) A person who ~~makes~~  
~~recreational use of any property in the possession or under the control of another~~ uses property, including  
property owned or leased by a public entity, for recreational purposes, with or without permission ~~and~~  
~~without giving a valuable consideration therefor~~, does so without any assurance from the landowner, ~~his~~  
~~agent, or his tenant~~ that the property is safe for any purpose if the person does not give a valuable  
consideration directly to the landowner in exchange for the recreational use of the property. The landowner,  
~~his agent, or his tenant~~ owes the person no duty of care with respect to the condition of the property,  
except that the landowner, ~~his agent, or his tenant~~ is liable to ~~each~~ the person for any injury to person or  
property for an act or omission that constitutes willful or wanton misconduct. For purposes of this section,

1 valuable consideration does not include the state land recreational use license fee imposed under 77-1-802.

2 (2) As used in this part, "landowner" means a person or entity of any nature, whether private,  
3 governmental, or quasi-governmental, and includes the landowner's agent, tenant, lessee, occupant,  
4 grantee of conservation easement, water users' association, irrigation district, drainage district, and persons  
5 or entities in control of the property or with an agreement to use or occupy property.

6 (3) As used in this part, "property" means land, roads, water, watercourses, and private ways.  
7 The term includes any improvements, buildings, structures, machinery, and equipment on property.

8 ~~(2)~~(4) The department of fish, wildlife, and parks, when operating under an agreement with a  
9 landowner or tenant to provide recreational snowmobiling opportunities, including but not limited to a  
10 snowmobile area, subject to the provisions of subsection (1), on the landowner's property and when not  
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13 be liable to any person for any injury to person or property resulting from any act or omission of the  
14 department unless ~~such~~ the act or omission constitutes willful or wanton misconduct."

15 -END-





## HOUSE STANDING COMMITTEE REPORT

March 9, 1995

Page 1 of 1

Mr. Speaker: We, the committee on **Judiciary** report that **Senate Bill 211** (third reading copy -- blue) be concurred in as amended.

Signed: Bob Clark  
Bob Clark, Chair

Carried by: Rep. Mills

And, that such amendments read:

1. Page 1, line 27.

Strike: "directly"

-END-

SB 211

Committee Vote:  
Yes 15, No 1.

HOUSE

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**Section 2.** Section 70-16-302, MCA, is amended to read:

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15 -END-