

## SENATE BILL NO. 318

INTRODUCED BY J. PETERSON, JACKSON, GEBHARDT, WILLIAMS, JORE, LAKE, RICE, BARKUS,  
BLASDEL, BRUEGGEMAN, W. JONES, TAYLOR

A BILL FOR AN ACT ENTITLED: "AN ACT AMENDING MONTANA'S RECREATIONAL USE STATUTE TO PROVIDE LIMITED LIABILITY TO PRIVATE LANDOWNERS WHO PROVIDE AIRSTRIPS FOR THE PUBLIC WITHOUT VALUABLE CONSIDERATION; AMENDING SECTIONS 70-16-301 AND 70-16-302, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

**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, waterskiing, camping, picnicking, pleasure driving, ~~private, noncommercial flying of aircraft,~~ biking, winter sports, hiking, touring or viewing cultural and historical sites and monuments, spelunking, or other pleasure expeditions. THE TERM INCLUDES THE PRIVATE, NONCOMMERCIAL FLYING OF AIRCRAFT IN RELATION TO PRIVATE LAND."

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

**"70-16-302. (Temporary) Restriction on liability of landowner.** (1) A person who uses property, including property owned or leased by a public entity, for recreational purposes, with or without permission, does so without any assurance from the landowner that the property is safe for any purpose if the person does not give a valuable consideration to the landowner in exchange for the recreational use of the property. The landowner owes the person no duty of care with respect to the condition of the property, except that the landowner is liable to 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, valuable consideration does not include the state land recreational use license fee imposed under 77-1-802 or other funds provided under 77-1-815.

(2) As used in this part, the following definitions apply:

(a) (i) "Airstrip" means improved or unimproved landing areas ON PRIVATE LAND used by pilots to land, park, take off, unload, load, and taxi aircraft.

(ii) The term does not include municipal airports governed under Title 67, chapter 10, part 1.

(B) "FLYING OF AIRCRAFT" MEANS THE OPERATION OF AIRCRAFT, INCLUDING BUT NOT LIMITED TO LANDING, PARKING, TAKING OFF, UNLOADING, LOADING, AND TAXIING OF AIRCRAFT AT AN AIRSTRIP.

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

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

~~(4)(3)~~ The department of fish, wildlife, and parks, when operating under an agreement with a landowner or tenant to provide recreational snowmobiling opportunities, including but not limited to a snowmobile area, subject to the provisions of subsection (1), on the landowner's property and when not also acting as a snowmobile area operator on the property, does not extend any assurance that the property is safe for any purpose, and the department, the landowner, or the landowner's tenant may not be liable to any person for any injury to person or property resulting from any act or omission of the department unless the act or omission constitutes willful or wanton misconduct. (Void on occurrence of contingency--sec. 8, Ch. 596, L. 2003.)

**70-16-302. (Effective on occurrence of contingency) Restriction on liability of landowner.** (1) A person who uses property, including property owned or leased by a public entity, for recreational purposes, with or without permission, does so without any assurance from the landowner that the property is safe for any purpose if the person does not give a valuable consideration to the landowner in exchange for the recreational use of the property. The landowner owes the person no duty of care with respect to the condition of the property, except that the landowner is liable to 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, valuable consideration does not include the state land recreational use license fee imposed under 77-1-802.

(2) As used in this part, the following definitions apply:

(a) (i) "Airstrip" means either improved or unimproved landing areas ON PRIVATE LAND used by pilots to land, park, take off, unload, load, and taxi aircraft.

(ii) The term does not include municipal airports governed under Title 67, chapter 10, part 1.

(B) "FLYING OF AIRCRAFT" MEANS THE OPERATION OF AIRCRAFT, INCLUDING BUT NOT LIMITED TO LANDING, PARKING, TAKING OFF, UNLOADING, LOADING, AND TAXIING OF AIRCRAFT AT AN AIRSTRIP.

~~(b)(c)~~ "landowner" "Landowner" means a person or entity of any nature, whether private, governmental,

or quasi-governmental, and includes the landowner's agent, tenant, lessee, occupant, grantee of conservation easement, water users' association, irrigation district, drainage district, and persons or entities in control of the property or with an agreement to use or occupy property.

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

~~(4)(3)~~ The department of fish, wildlife, and parks, when operating under an agreement with a landowner or tenant to provide recreational snowmobiling opportunities, including but not limited to a snowmobile area, subject to the provisions of subsection (1), on the landowner's property and when not also acting as a snowmobile area operator on the property, does not extend any assurance that the property is safe for any purpose, and the department, the landowner, or the landowner's tenant may not be liable to any person for any injury to person or property resulting from any act or omission of the department unless the act or omission constitutes willful or wanton misconduct."

~~NEW SECTION. Section 3. Two-thirds vote required. Because [section 2] limits governmental liability, Article II, section 18, of the Montana constitution requires a vote of two-thirds of the members of each house of the legislature for passage.~~

NEW SECTION. Section 3. Effective date. [This act] is effective on passage and approval.

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