

### Wisconsin's Recreational Use Statute

## Limiting the injury liability of private landowners

Donald Last

W isconsin's recreational use statute limits private property owners' responsibility for injury to people who use their land for recreation.

Except for special situations (some of which are described elsewhere in this publication), landowners are *not* legally obliged to:

- keep their property safe for recreational activity.
- inspect their property.
- give warning of an unsafe condition or activity on their property.

The law also limits property owners' liability for injuries to a person engaged in a recreational activity when the injuries are caused by another recreational user or by a wild animal.

This publication provides a summary and interpretation of the key provisions of the law. If you would like more information, consult an attorney or obtain a copy of the statute from a library or courthouse (Wis. Stats. 895.52).

## What is a recreational activity?

The state statute defines *recreational activity* as "any outdoor activity undertaken for the purpose of exercise, relaxation or pleasure, including practice or instruction in any such activity." The statute lists examples (shown in the sidebar) which fall within this general definition.

The following are examples of outdoor activities cited in Wisconsin's recreational use statute.

- animal training
- ballooning
- bicycling
- bird-watching
- camping
- climbing observation towers
- cutting or removing wood
- exploring caves
- **■** fishing
- hang gliding
- harvesting the products of nature
- hiking
- horseback riding
- hunting
- motorcycling
- nature study
- operating an all-terrain vehicle
- outdoor education
- outdoor games
- outdoor sports
- picnicking
- rock climbing
- sightseeing
- skating
- skiing
- sledding
- sleigh riding
- snowmobiling
- tobogganing
- trapping
- water sports

# Under what circumstances are property owners liable?

The state's recreational use statute describes several circumstances in which the owner of private property may be liable for an injury to a person using that owner's property.

You should note that "organized team sport" is specifically excluded from the definition of recreational activity in the statute. Therefore, the law does not limit liability if a property owner sponsors a team sporting event during which a participant is injured.

#### Example

1

Langlade Richland sponsors a softball tournament on land he owns. During the tournament, a foul ball hits and injures Rock St. Croix. Richland is not protected by the recreational use statute. St. Croix may initiate a lawsuit against Richland.

The law does *not* limit the liability of a property owner who collects more than \$2,000 annually from persons using the property for recreation. These collections must have been received during the year in which an injury to a recreational user occurs. They may take the form of money or an equivalent amount of goods or services.

A property owner may collect a maximum of \$5 per person per day for permission to gather products of nature, and may receive gifts from the government or nonprofit groups for managing and conserving the property's natural resources. A property owner also may receive a share of the game or other products of nature harvested by a recreational user. Such payments are not included in the \$2,000 collections rule described earlier.

#### Example 2

Forest Sawyer collects a daily use fee from each skier and snowmobiler. His total receipts are more than \$2,000 annually. Forest Sawyer's liability for an injury to a paying user is not reduced by the recreational use statute.

The law does *not* limit liability for an injury to a recreational user if the injury is caused by the malicious failure of the owner (or the owner's employee or agent) to warn the user about an unsafe condition known to the owner.

#### Example 3

A group of teenagers receives permission from Price Taylor to operate motorized three-wheelers on his land. Taylor is aware that a recent tornado had scattered broken glass and nails in the area in which the group plans to ride. He deliberately withholds this information because he "wants to teach the kids a lesson." One of the teens is injured by the broken glass. In any subsequent lawsuit, if Taylor's malicious intent is proved, he is not protected by the recreational use statute.

### Example 🗸

Lincoln Adams receives permission to hunt on Monroe Washington's land. Adams asks Washington if there is anything he should be warned about. Washington says "no" because he is unaware that a recent heavy rain has washed out part of a pathway. Adams later stumbles in the washout and breaks his leg. Because Washington was not aware of the hazard, he is

protected by the statute.

A property owner may be liable for an injury to a social guest who is expressly and individually invited for the occasion during which the injury occurs, but only if the injury takes place:

- on platted land (generally, land that has been developed).
- on residential property (which is a building designed and used for a private dwelling and the land around the building within a 300-foot radius).
- on property which is within 300 feet of a building or structure that is legally classified for mercantile or manufacturing use.

## Example 5

Vernon Sauk has a tennis court next to his home. Sauk invites Ashland Burnett to play a game of tennis. Burnett is injured while jumping over the net. Burnett can sue Sauk because the injury occurred within 300 feet of his home.

## Example 6

Grant Door invites Calumet Wood to ride one of his newly-purchased horses. The horse bolts and Wood injures a hip in falling off. Because the accident happened several hundred yards from Door's home and outbuildings, Door is protected by the recreational use statute.

A property owner is liable for injuries to employees engaged in a recreational activity if they are acting within the scope of their duties. Therefore, an employee who sustains an injury while on the job may sue an employer.

#### Example



Juneau Dunn owns two dairy farms located several miles from each other. Dunn's farm hand, Walworth Green, sometimes uses a motorbike to travel between farms. Green skids in loose gravel one day and is injured. Because Green was acting within the scope of this employment, the recreational use statute does not protect Dunn from liability. Another Dunn farmhand, Barron Brown, invites several friends to ride dirt bikes on his day off. While riding on Dunn's land, Brown is thrown from the bike and cracks a collarbone. Even though Brown is Dunn's employee, the recreational use statute limits Dunn's liability because the dirt-bike riding is outside the scope of Brown's responsibilities as a farm employee.

#### Summary

Wisconsin's recreational use statute protects private property owners by limiting their legal responsibility for persons who may be injured while using the land for recreational purposes. A recreational activity is defined as nearly every outdoor pursuit except organized team sports.

In general, property owners are immune from liability for an injury to, or injury caused by a person engaging in a recreational activity on the owner's property or an injury resulting from an attack by a wild animal.

An owner may be liable for an injury to a recreational user if the owner neglects to warn about a known hazard, or if the owner has a malicious intent to injure the user. A landowner may also be liable when an invited guest is injured near the owner's home or near a building used for selling or making something, or when the owner collects substantial amounts of money or goods from the recreational users.

People who use private property without permission are *trespassing*. They are subject to arrest and conviction under another section of state law. This law is explained in a publication entitled *Trespass Law in Wisconsin: An Overview* (G3409) available from county Extension offices.

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