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Testimony of Tom Doak

Executive Director

Maine Woodland Owners

In Support of

LD 1953

“An Act to Ensure Public Access to Conservation Land
by Providing Protection from Liability to Landowners”

Senator Talbot Ross, Representative Pluecker and distinguished members of the Joint Standing Committee on Agriculture, Conservation and Forestry, my name is Tom Doak, Executive Director of Maine Woodland Owners speaking today in support of “An Act to Ensure Public Access to Conservation Land by Providing Protection from Liability to Landowners”.

Landowner Liability Law is a cornerstone of efforts to keep private land open to the public. It provides landowners protection from liability for anyone recreating on the land provided the landowner has not intentionally created a dangerous situation that the landowner knows is likely to cause injury. This protection does not extend to property used primarily for commercial recreational activities, such as a ski area.

Under existing law, a landowner can still be sued by someone injured on the property. However, when the landowner wins the suit, the court is **required** to award the landowner direct legal costs, including attorney’s fees, to be paid by the person bringing the suit.

The existing law provides such clear protection that only a few suits have ever been brought against landowners by people recreating on their land. And, all have failed.

There is no doubt that private landowners count on the protection under existing law when making the decision to allow public use of their property. I have just compiled survey data of family woodland owners, conducted by the University of Maine, which makes this point. Landowners were asked this question, “What incentives would encourage you to allow, or continue to allow, recreation use on your property?” Landowners were given multiple options to choose from. The most selected choice was “liability protection.”

We see this bill as an opportunity to reassure landowners, who are willing to guarantee permanent public access through an easement, or other document, that they can count on significant protection from liability and encourage them to provide the significant public benefit of access to land.



A Word of Caution and Practical Advice

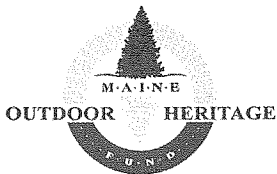
Use common sense. Avoid creating or allowing clearly dangerous situations. If you wish to block a road or path with a gate or other obstacle, do so with markings that are clearly visible day or night.

The best advice regarding fees under the "Land Owner Liability Law" is, if you are considering charging fees, you should be aware that you may not be covered. You may have to prove that the land is not used primarily for commercial recreation and that the user did not gain any exclusive right to use the land.



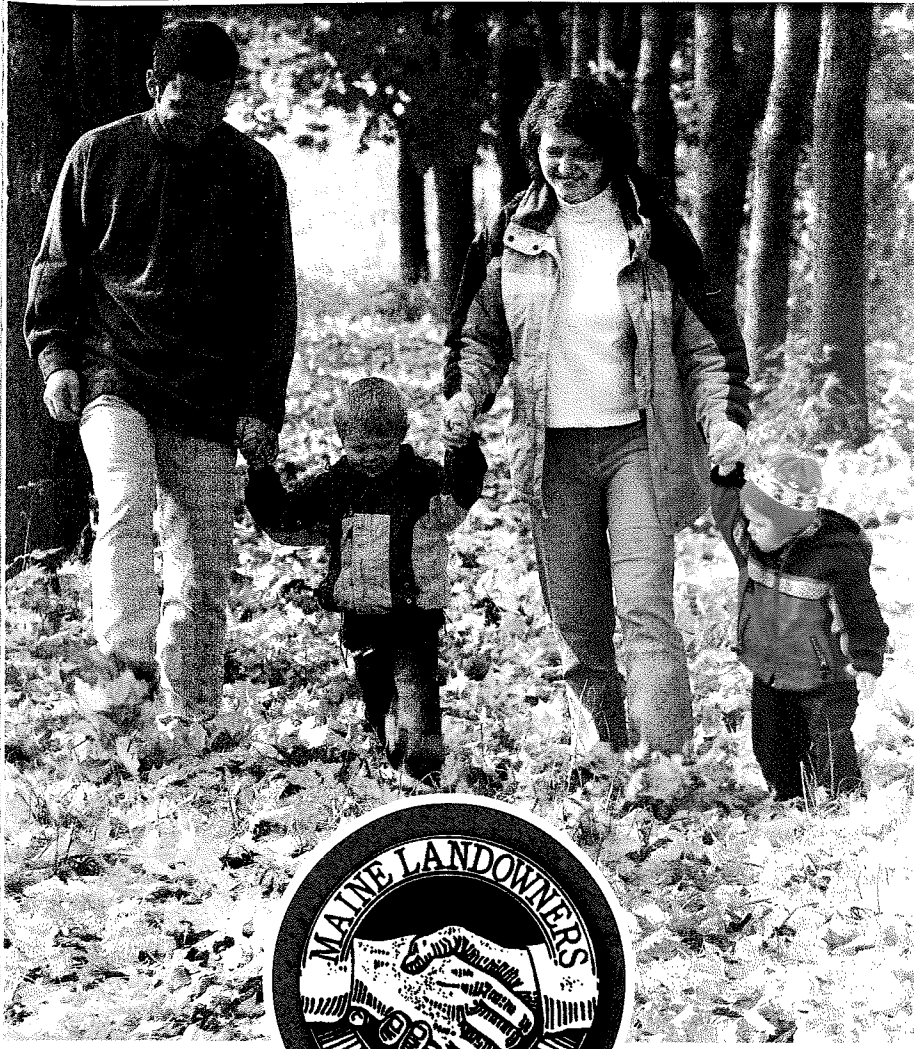
This brochure was prepared by the Maine Department of Conservation and the Department of Inland Fisheries and Wildlife. The publication was funded by a grant from the Maine Outdoor Heritage Fund and the Landowner Relations Program at the Department of Inland Fisheries and Wildlife. Appropriation # 014-09A-2610-01/12-08

The information contained in this brochure is only a summary. Please consult a lawyer for more detailed information and advice specific to your situation. You may also contact the State Director of Recreational Access & Landowner Relations who works with landowners and land users on issues of access at 207-287-8091 or visit www.maine.gov/lor



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Landowner Liability Explained: Rights and Responsibilities



The information in this brochure applies to individuals, businesses, non-profit organizations and non-governmental organizations that own, manage, lease, occupy or hold easements on land.

If someone comes onto my land and gets hurt, am I liable?

No, except in rare circumstances. Maine has a strong law to protect landowners, known as the “landowner liability” law (or the recreational use statute), Title 14, M.R.S.A. Section 159-A.

If someone uses your land or passes through your premises for outdoor recreation or harvesting, you assume no responsibility and incur no liability for injuries to that person or that person’s property. You are protected whether or not you give permission to use the land.

If you allow volunteers to maintain or improve your land for recreation or harvesting, you are also protected from liability for injuries to them.

Useful definitions taken from the Liability Law

“Premises” means improved and unimproved lands, private ways, roads, any buildings or structures on those lands and waters standing on, flowing through or adjacent to those lands. “Premises” includes railroad property, railroad rights-of-way and utility corridors to which public access is permitted.

“Recreational or harvesting activities” means recreational activities conducted out-of-doors, including, but not limited to, hunting, fishing, trapping, camping, hiking, sight-seeing, bird-watching, operating snow-traveling and all-terrain vehicles, skiing, hang-gliding, dogsledding, equine activities, boating, sailing, canoeing, rafting, biking, picnicking, swimming or activities involving the harvesting or gathering of forest, field and marine products. It includes entry of, volunteer maintenance and improvement of, use of and passage over premises in order to pursue these activities. “Recreational or harvesting activities” does not include commercial agricultural or timber harvesting.

“Occupant” includes, but is not limited to, an individual, corporation, partnership, association or other legal entity that constructs or maintains trails or other improvements for public recreational use.



Is the legal protection the same if I post my land “No Trespassing”?

Yes. As a practical matter, your legal protection is the same whether or not the land is posted.

Is it still possible for me to get sued in spite of the landowner liability law?

Yes, but it is very unlikely for two reasons: (1) a person who brings suit and loses must pay the landowner’s reasonable legal fees and court costs, and (2) the law protects landowners so clearly that there is little opportunity for the injured person to win. In fact, there has not been a single reported successful case against a landowner where the Maine Landowner Liability law applied.

If I am found not liable in a court of law, do I have to cover my court costs?

No. The court shall award any direct legal costs, including reasonable attorneys’ fees, to an owner, lessee, manager, holder of an easement or occupant who is found not to be liable for injury to a person or property pursuant to this section.

Does my homeowner’s or farmer’s insurance provide me with protection from claims?

Your homeowner’s or farmer’s liability insurance gives you important protection. The insurance company has two responsibilities under most policies. The company has the duty to pay the costs of defending any lawsuits brought or threatened against you (the “duty to defend”). In addition, if you are found liable in a lawsuit, the insurer has the duty in most circumstances to pay the damages assessed against you (the “duty to indemnify”).

Although each insurance policy has specific coverage and dollar amount limits, most personal injury actions against landowners will fall within the coverage provided by most home and farm liability policies. For all practical purposes, these policies assure landowners of a paid defense of any claims made against them and assure that judgements against them will be satisfied up to the dollar amount of the policy limit.

Be sure to check with your carrier regarding your specific coverage.

Are there situations in which the landowner liability law does not protect me from liability?

Yes. The landowner liability law does not provide protection if a person is injured because of the landowner’s “malicious” failure to guard or warn against a dangerous condition. “Malicious” does not mean that you must have a conscious dislike for the person. Malicious intent may be inferred when the landowner has knowledge of a highly dangerous situation, usually man-made, that would have been simple to remedy or warn against and the landowner failed to do so, knowing that people would be likely to be hurt.

Am I still covered by the landowner liability law if I charge a fee to use my land?

Maybe. In general, landowners running commercial recreation on their land are not protected. For example, commercial campgrounds or ski areas cannot expect to be protected by the law.

However, landowners do not automatically lose their protection if they charge fees. The landowner liability law applies to landowners who charge fees for entry as long as the land is not used mainly for commercial recreation or as long as the payment is not for exclusive use, such as club membership or rental for an event or campsite.

