

Department of Legislative Services
Maryland General Assembly
2017 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 1246 (Delegate Clark, *et al.*)
Environment and Transportation

Forests and Parks - Public Recreation on Private and State-Owned Land -
Hunting

This bill expands the applicability of specified responsibility and liability provisions currently applicable to cross-country skiing and the use of off-highway vehicles (OHVs) permitted by a landowner on the landowner's real property throughout the State. The bill makes the provisions applicable to hunting.

Fiscal Summary

State Effect: The bill is not expected to affect State finances or operations.

Local Effect: The bill is not expected to affect local government finances or operations.

Small Business Effect: Minimal.

Analysis

Bill Summary: As a result of the bill's expansion of the applicability of specified existing provisions, the bill establishes that if a landowner agrees to the use of a defined part of the landowner's real property for cross-country skiing, for use of an OHV, *or for hunting*, users impliedly consent to (1) adhere to every law; (2) observe every safety precaution and practice; (3) take every precaution against fire; and (4) assume all responsibility and liability for the person's safety and property. If a landowner leases a defined part of the landowner's property for those uses, specified provisions that describe a permission card to be signed by a landowner and a user, establishing permission to enter the property and agreement regarding responsibility and liability, are applicable. The Department of Natural Resources (DNR) must adopt regulations to allow such use of a landowner's real property.

Current Law: In order to encourage a landowner to make land, water, and airspace above the land and water areas available to the public for any recreational and educational purpose, certain protections from liability are established in statute for those landowners that do so (referred to by the Maryland Court of Special Appeals, in *Fagerhus v. Host Marriott Corp.*, 143 Md. App. 525 (2002), as “Maryland’s recreational use statute”). Generally, an owner of land, including a local government and a landowner that has leased land to the State or any of its political subdivisions (for any recreational or educational purpose), is not liable for injury to persons that use the land for recreational or educational purposes upon invitation or permission from the owner, provided it is at no charge. The owner is not protected from liability for injury where the owner charges the person for the use of the land. An owner is also not protected from liability resulting from willful or malicious failure to guard or warn against a dangerous condition, use, structure, or activity.

To facilitate a method of providing written consent, the Secretary of Natural Resources is required to distribute specified permission cards to be available to the public and landowners. On the card, the landowner grants permission to enter the property and the user of the land agrees to specified assumption of responsibility and liability. The card contains signature lines for both the landowner and user.

If a landowner agrees to the use of a defined part of the landowner’s real property for cross-country skiing or for use of an OHV, users impliedly consent to (1) adhere to every law; (2) observe every safety precaution and practice; (3) take every precaution against fire; and (4) assume all responsibility and liability for the person’s safety and property. If a landowner leases a defined part of the landowner’s property for those uses, specified provisions that describe a permission card to be signed by a landowner and a user, establishing permission to enter the property and agreement regarding responsibility and liability, are applicable. DNR must adopt regulations to permit such use of a landowner’s real property. “OHV” means a motor-assisted or motor-driven vehicle that is (1) designed for or capable of cross-country travel on or directly over land, snow, or other natural terrain and (2) not intended for use on public roads.

Under current law specific to hunting, a person must obtain written permission from the landowner (or the landowner’s agent) before hunting on the landowner’s property. The person hunting on the private property is liable for any damages they cause while hunting. The landowner is not liable for accidental injury or damage to the person regardless of whether the landowner gave permission to hunt on the private property.

Background: In *Fagerhus v. Host Marriott Corp.*, the Maryland Court of Special Appeals discussed the origin of Maryland’s recreational use statute, indicating that it had been enacted in 1966 in response to a 1965 recommendation of the Council of State Governments. The council had indicated that while government acquisition and operation

of outdoor recreational facilities was increasing, a significant amount of private land could add to the outdoor recreation resources available. Establishing protection from liability of landowners that allow use of their land without charge was based on the theory that it was “not reasonable to expect such owners to undergo the risks of liability for injury to person and property attendant upon the use of their land by strangers from whom the accommodating owner receives no compensation or other favor in return.”

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Department of Natural Resources; Department of Legislative Services

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mm/lgc

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