Title 14, §159-A. Limited Liability for Recreational or Harvesting Activities

1. **Definitions.** As used in this section, unless the context indicates otherwise, the following terms have the following meanings.

A. "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.

B. "Recreational or harvesting activities" means recreational activities conducted out-of-doors, including, but not limited to, hunting, fishing, trapping, camping, environmental education and research, hiking, rock climbing, ice climbing, bouldering, rappelling, recreational caving, sight-seeing, operating snow-traveling and all-terrain vehicles, skiing, hang-gliding, noncommercial aviation activities, dog sledding, equine activities, boating, sailing, canoeing, rafting, biking, picnicking, swimming or activities involving the harvesting or gathering of forest, field or 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.

C. "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.

2. **Limited duty.** An owner, lessee, manager, holder of an easement or occupant of premises does not have a duty of care to keep the premises safe for entry or use by others for recreational or harvesting activities or to give warning of any hazardous condition, use, structure or activity on these premises to persons entering for those purposes. This subsection applies regardless of whether the owner, lessee, manager, holder of an easement or occupant has given permission to another to pursue recreational or harvesting activities on the premises.

3. **Permissive use.** An owner, lessee, manager, holder of an easement or occupant who gives permission to another to pursue recreational or harvesting activities on the premises does not thereby:

A. Extend any assurance that the premises are safe for those purposes;

B. Make the person to whom permission is granted an invitee or licensee to whom a duty of care is owed; or

C. Assume responsibility or incur liability for any injury to person or property caused by any act of persons to whom the permission is granted even if that injury occurs on property of another person.

4. **Limitations on section.** This section does not limit the liability that would otherwise exist:

A. For a willful or malicious failure to guard or to warn against a dangerous condition, use, structure or activity;

B. For an injury suffered in any case where permission to pursue any recreational or harvesting activities was granted for a consideration other than the consideration, if any, paid to the following:

(1) The landowner or the landowner's agent by the State; or

(2) The landowner or the landowner's agent for use of the premises on which the injury was suffered, as long as the premises are not used primarily for commercial recreational purposes and as long as the user has not been granted the exclusive right to make use of the premises for recreational activities; or

C. For an injury caused, by acts of persons to whom permission to pursue any recreational or harvesting activities was granted, to other persons to whom the person granting permission, or the owner, lessee, manager, holder of an easement or occupant of the premises, owed a duty to keep the premises safe or to warn of danger.

5. **No duty created.** Nothing in this section creates a duty of care or ground of liability for injury to a person or property.

6. **Costs and fees.** 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.

COURT CASE

Hafford v. Great N. Nekoosa Corp., 687 A.2d 967 (Me. 1996)

The operator of outfitting business sued a property owner for injuries sustained in collision on eroded road. The SJC held that the operator, who was driving to pick up customers' vehicles at time of accident, was pursuing recreational activity so as to render the property owner immune from any liability for failure to maintain road properly.

STATUTORY HISTORY

The SJC described the history of this statutes in *Stanley v. Tilcon Maine, Inc*., 541 A.2d 951 (Me. 1988)

"The history of 14 M.R.S.A. §159–A is as follows: The statute was first enacted by P.L. 1961, ch. 276, entitled "An Act Relating to Liability of Landowners Towards Hunters, Fishermen, Trappers, Campers, Hikers, or Sightseers" and provided that landowners owed no duty to others who used their premises for "hunting, fishing, trapping, camping, hiking or sightseeing." R.S. ch. 37, § 152 (1954). "Premises" was defined as "lands, private ways and any buildings and structures thereon." R.S. ch. 37, §152(V) (1954). It was codified in 1964 under 12 M.R.S.A. §§ 3001–3005. In 1969, it was amended to include within the list of activities, operation of snow traveling vehicles and recreational activities. P.L. 1969, ch. 342, and P.L. 1969, ch. 504, § 21–A. In 1979, it was again amended to include "skiing, hang-gliding, boating, sailing, canoeing, rafting or swimming, or activities that involve harvesting or gathering forest products." The definition of premises was amended to include "improved and unimproved lands," as well as waterways. P.L. 1979, ch. 253, § 2; P.L. 1979, ch. 514, § 1; P.L. 1979, ch. 663, § 75. In 1979 the statute was moved from the inland fisheries and wildlife laws (Title 12) into the civil procedure laws (Title 14). In 1983, it was amended to include all-terrain vehicles. P.L. 1983, ch. 297, §2. Finally, in 1985, the statute was amended to include a provision for award of legal costs to defendants who prevail under the statute. P.L. 1985, ch. 762, § 25." *Stanley* @ 952.

Since 1985, §159-A has been amended as follows:

P.L. 1993, ch. 622

- ✓ provided that the definition of "recreational or harvesting activities" in sub-§1, ¶B was not limited to specifically listed activities and excluded commercial timber harvesting;
- ✓ added new ¶B, sub-¶1 and sub-¶2 to sub-§ 4, Limitation on section; and
- ✓ added reference to "managers" in conjunction with owners, lessees and occupants, throughout

P.L. 1995, ch. 566:

- ✓ expanded the list of "recreational or harvesting activities" and excluded commercial agricultural harvesting in sub-§1, ¶B;
- ✓ added "holder of an easement"; and

P.L. 2003, ch. 509 added a definition for "occupant" as new ¶ C to sub-§1

P.L. 2006, ch. 375 added the sentence, "Premises" includes railroad property, railroad rights-of-way and utility corridors to which public access is permitted." into sub-§1, ¶A

P.L. 2007, ch. 260 added "even if that injury occurs on property of another person" to sub-§3, ¶C

P.L. 2009, ch. 156 added "noncommercial aviation activities" to the definition of "recreational activities" in sub-§1, ¶B

P.L. 2015, ch. 20 added "rock climbing, ice climbing, bouldering, rappelling" to the definition of "recreational activities" in sub-§1, ¶B