

Legislative Analysis



LIABILITY FOR RECREATIONAL USER: INCLUDE AVIATION ACTIVITIES

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House Bill 5178 without amendment
Sponsor: Rep. Peter Pettalia
Committee: Judiciary

Complete to 6-2-14

A SUMMARY OF HOUSE BILL 5178 AS REPORTED BY COMMITTEE 5-8-14

Under the bill, which would amend the Natural Resources and Environmental Protection Act, a person who is injured in an *aviation activity*, including a passenger or spectator, could not sue a landowner or tenant of the premises where the injury occurred if the person had not paid the landowner or tenant for the recreational use of the premises, whether or not the person had permission to be on the premises. However, if the injuries were caused by the gross negligence or willful misconduct of the owner or tenant, an action could be brought.

"Aviation activity" would mean the noncommercial operation, and related acts in the air and on the ground, of an aircraft, including, but not limited to, a motorized or nonmotorized fixed wing aircraft, helicopter, balloon, hang glider, or parasail. The term includes participation in the operation or related acts as a passenger or spectator.

Currently, under the Natural Resources and Environmental Protection Act, liability for injuries sustained during recreational activities is already similarly restricted for persons engaging in fishing, hunting, trapping, camping, hiking, sightseeing, motorcycling, snowmobiling, or any other outdoor recreational use or trail use, with or without permission, against the owner, tenant, or lessee of the land.

MCL 324.73301

FISCAL IMPACT:

The bill would have no direct fiscal impact on state or local units of government.

BRIEF DISSUSSION OF THE ISSUES:

Under the state's recreational use law, a landowner is not liable for injuries to a person who is on the property for the purposes of fishing, hunting, snowmobiling or skiing, hiking, and so on. The immunity from liability applies whether the injured person was trespassing on the property or was engaging in the recreational activity under permission from the landowner. Persons who own private air strips on their property are asking to have the same immunity; the bill would simply add "aviation activity" to the list of

recreational activities for which an injured person could not sue the landowner and would define the term.

Arguments in support

Apparently, there are more than 500 privately owned landing strips in the state. For the most part, they are for the personal use of the landowner or the landowner's friends and family. Many are little more than a mowed strip of grass in a field. However, it appears that pilots of other aircraft, such as hot air balloons and helicopters, land on these private airstrips without permission. Like many recreational activities, ballooning, gliding, ultralights, etc. are not without inherent dangers. Landowners would like the same protection from lawsuits when a person engaging in an aviation activity is injured that is currently available when a person hiking on the land sprains an ankle or a fisherman falls in the river. Supporters of the bill say it is good for spurring economic activity in the state as private airstrip owners may be more willing to extend permission for pilots to use the strip if they do not fear lawsuits. If more airstrips are available for small aircraft to use, it may attract pilots from neighboring states and encourage in-state pilots to visit more areas in the state, all which may increase revenue from tourist-type activities (restaurants, golfing, gas tax revenue, and so on). The immunity only applies if the property owner does not charge for using the airstrip. Reportedly, over 20 states have adopted similar legislation and bills are pending in at least five more.

Arguments in opposition

Opponents say there is a huge distinction between traditional recreational land uses for which a landowner is not liable for injuries and giving immunity to private airstrip owners. For the traditional activities, it is understood that a person is taking the land "as is." With the exception perhaps of snowmobiling, most of the activities are done at a slow pace and dangers inherent to forested or undeveloped land can be easily identified and avoided if the user keeps a sharp eye. Being in a hot air balloon, glider, or small aircraft that suddenly loses lift or experiences mechanical problems is a different situation altogether. For the sake of survival, the craft must be put down quickly. Trying to ascertain from a few thousand feet up if there are rocks on the airstrip or perhaps a tractor parked on it is not feasible. There is a reasonable expectation that something meant for a small aircraft to land on is therefore safe for that purpose. Moreover, under the bill, the immunity would apply even if the landowner had given permission to the pilot, yet had not taken steps to ensure that potential dangers had been removed. The bill's language also does not limit it to privately owned property; thus it could apply to airstrips on government-owned land (as long as no usage fees were charged). Further, though the bill allows a lawsuit for "gross negligence" to go forward, the term has been interpreted by the courts as needing to show intent to do harm and thus has become a very high bar indeed to overcome.

POSITIONS:

A representative of the Michigan Private Airstrip Owners Association testified in support of the bill. (3-20-14)

The Aircraft Owners and Pilots Association indicated support for the bill. (4-17-14)

The Recreational Aviation Foundation – Michigan Liaison indicated support for the bill. (5-8-14)

A representative of the Michigan Association of Justice (MAJ) testified in opposition to the bill. (3-20-14)

A representative of King Trout Airport testified in opposition to the bill. (4-17-14)

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■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.