



# 126th MAINE LEGISLATURE

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Legislative Document

No. 154

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H.P. 129

House of Representatives, January 31, 2013

### **An Act To Amend the Laws Governing Limited Liability for Recreational or Harvesting Activities**

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Reference to the Committee on Judiciary suggested and ordered printed.

*Millicent M. MacFarland*  
MILLICENT M. MacFARLAND  
Clerk

Presented by Representative KESCHL of Belgrade.  
Cosponsored by Senator SAVIELLO of Franklin and  
Representatives: CHASE of Wells, CLARK of Easton, KNIGHT of Livermore Falls,  
NUTTING of Oakland, SHAW of Standish.

1 **Be it enacted by the People of the State of Maine as follows:**

2 **Sec. 1. 14 MRSA §159-A, sub-§1, ¶A**, as amended by PL 2005, c. 375, §1, is  
3 further amended to read:

4 A. "Premises" means improved and unimproved lands, private ways, roads, any  
5 buildings or structures on those lands and waters standing on, flowing through or  
6 adjacent to those lands. "Premises" includes railroad property, private railroad  
7 crossings, railroad rights-of-way and utility corridors to which public access is  
8 permitted.

9 **Sec. 2. 14 MRSA §159-A, sub-§1, ¶B**, as amended by PL 2009, c. 156, §1, is  
10 further amended to read:

11 B. "Recreational or harvesting activities" means recreational activities conducted  
12 out-of-doors, including, but not limited to, hunting, fishing, trapping, camping,  
13 environmental education and research, hiking, recreational caving, sight-seeing,  
14 operating snow-traveling and all-terrain vehicles, skiing, hang-gliding,  
15 noncommercial aviation activities, dog sledding, equine activities, boating, sailing,  
16 canoeing, rafting, biking, picnicking, swimming or activities involving the harvesting  
17 or gathering of forest, field or marine products regardless of whether an agreement  
18 pertaining to such activities exists. It includes the use of railroad property, private  
19 railroad crossings and railroad rights-of-way by nonrailroad users regardless of  
20 whether an agreement pertaining to such use exists. It includes, without limitation,  
21 entry of, volunteer maintenance and improvement of, use of and passage over  
22 premises in order to pursue these activities. "Recreational or harvesting activities"  
23 does not include commercial agricultural or timber harvesting.

24 **Sec. 3. 14 MRSA §159-A, sub-§4**, as amended by PL 1995, c. 566, §1, is further  
25 amended to read:

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

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

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

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

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

38 C. For an injury caused, ~~by acts of persons to whom permission to pursue any~~  
39 ~~recreational or harvesting activities was granted~~, to other persons to whom the person  
40 granting permission, or the owner, lessee, manager, holder of an easement or

1 occupant of the premises, owed a duty to keep the premises safe or to warn of danger-  
2 by acts of persons to whom permission to pursue any recreational or harvesting  
3 activities was granted; or

4 D. By virtue of the terms and conditions of a contract.

5 **SUMMARY**

6 This bill makes the following changes to the laws governing limited liability for  
7 recreational or harvesting activities.

8 1. It includes private railroad crossings in the definition of "premises."

9 2. It amends the definition of "recreational or harvesting activities" to provide that  
10 the listed activities qualify as recreational or harvesting activities regardless of whether an  
11 agreement pertaining to such activities exists.

12 3. It provides that the term "recreational or harvesting activities" includes the use of  
13 railroad property, private railroad crossings and railroad rights-of-way by nonrailroad  
14 users regardless of whether an agreement pertaining to such use exists.

15 4. It removes the provision that exempts an injury suffered in any case where  
16 permission to pursue a recreational or harvesting activity was granted in exchange for a  
17 payment from the extension of limited liability.

18 5. It provides that the laws governing limited liability for recreational or harvesting  
19 activities do not limit the liability that would otherwise exist by virtue of the terms and  
20 conditions of a contract.