Bill as Introduced

HB 244 – AS AMENDED BY THE HOUSE

13feb03... 0132h

2003 SESSION

03-0599
10/01

HOUSE BILL ***244***

AN ACT establishing a committee to study landowner liability for owners providing public access to snowmobile trails.

SPONSORS: Rep. Brady, Coos 2; Rep. Stohl, Coos 1; Rep. King, Coos 1; Rep. Woodward, Coos 3; Rep. Theberge, Coos 3; Sen. Gallus, Dist 1

COMMITTEE: Judiciary

AMENDED ANALYSIS

This bill establishes a study committee on landowner liability for owners providing public access to snowmobile trails

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Explanation: Matter added to current law appears in ***bold italics.***
Matter removed from current law appears [~~in brackets and struckthrough.~~]
Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

HB 244 – AS AMENDED BY THE HOUSE

13feb03... 0132h

03-0599
10/01

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Three

AN ACT establishing a committee to study landowner liability for owners providing public access to snowmobile trails.

Be it Enacted by the Senate and House of Representatives in General Court convened:

1 Committee Established. There is established a committee to study landowner liability for owners providing public access to snowmobile trails.

2 Membership and Compensation.

I. The members of the committee shall be as follows:

(a) Four members of the house of representatives, appointed by the speaker of the house.

(b) Four members of the senate, appointed by the president of the senate.

II. Members of the committee shall receive mileage at the legislative rate when attending to the duties of the committee.

3 Duties. The committee shall study landowner liability for owners providing public access to snowmobile trails. The committee shall seek input, advice, and recommendations from:

I. Representatives from the insurance industry.

II. The New Hampshire Snowmobile Association.

III. The Society for the Protection of New Hampshire Forests.

IV. Landowners providing access to trails for snowmobile use.

V. The office of the attorney general.

VI. The department of resources and economic development, division of parks and recreation, bureau of trails.

VII. Attorneys familiar with landowner liability/ immunity/ insurance issues.

4 Chairperson; Quorum. The members of the study committee shall elect a chairperson from among the members. The first meeting of the committee shall be called by the first-named house member. The first meeting of the committee shall be held within 45 days of the effective date of this section. Five members of the committee shall constitute a quorum.

5 Report. The committee shall report its findings and any recommendations for proposed legislation to the speaker of the house of representatives, the senate president, the house clerk, the senate clerk, the governor, and the state library on or before November 1, 2003.

6 Effective Date. This act shall take effect upon its passage.

Amendments

Wildlife and Recreation
April 15, 2003
2003-1293s
10/09

Amendment to HB 244

Amend subparagraph I(b) of section 2 of the bill by replacing it with the following:

(b) Two members of the senate, appointed by the president of the senate.

Amend the bill by replacing section 4 with the following:

4 Chairperson; Quorum. The members of the study committee shall elect a chairperson from among the members. The first meeting of the committee shall be called by the first-named house member. The first meeting of the committee shall be held within 45 days of the effective date of this section. Three members of the committee shall constitute a quorum.

Committee Minutes

Date: April 15, 2003
Time: 2:00 p.m.
Room: Room 104 LOB

The Senate Committee on Wildlife and Recreation held a hearing on the following:

HB244 (New Title) establishing a committee to study landowner liability for owners providing public access to snowmobile trails.

Members of Committee present: Senator Gallus
Senator Roberge
Senator Cohen
Senator Gatsas

The Chair, Senator John Gallus, opened the hearing.

Senator John Gallus, D. 1: We will open the Senate hearing on HB244. The Chair recognizes the Bill's prime sponsor, Representative Mark Brady.

Representative Mark Brady, D.2: Thank you Mr. Chairman. For the record, Representative Mark Brady from Jefferson. I represent Coos, District 2, which runs, for those of you from down state that don't know, it runs from all the way from Stratford, down through Groveton, Lancaster, Whitefield, Dalton, over to Jefferson and to Randolph and to Gorham. So it is a big geographic area.

The rationale for this Bill really was brought about with concerns I have been getting from property owners up in that area that I just delineated to you. It is concern about possible land owner exposure for permitting snowmobiles, trails, on their property as they are part of the trail system in the State. It is becoming a bigger issue every winter and as the sport has really proliferated to the extent that it is today and the trails are more clogged all the time. You know, we read about more and more accidents and we see, I am not sure what the final number was this year on deaths, but I think it was somewhere between 8 to 10 deaths this year on the trails. It is becoming an issue.

It is a concern to us, for myself, for Senator Gallus, the Chairman here who co-sponsored this legislation as well because it is an economical development

issue for the North Country, first and foremost. We need the money. We want the snowmobilers. We continue to want the snowmobilers to come up but at the same time, at the heart of what makes our trail system work in this State is the individual land owner participation. It is the core of the trail system and I certainly get more and more complaints all the time from property owners up north. They are more and more concerned over accidents and what their liability is. So, headsight, I brought forth the legislation. We amended it in the House a little bit to do a study committee so that we could look at the issue a little more comprehensively and also look at it at a time of year when the trails, when there is no snow (finally, thank God) and we can look a little more in-depth at the situation. Not just from landowner liability issues, which is my great concern, but I think there are other issues we can get into.

If you see through and pass this legislation, to looking into enforcement issues. Looking at the State insurance policy that it has in place now, etc. There are a couple of different avenues where we can go. My concern, first and foremost though is on protecting land owner rights and giving them that assurance that they feel comfortable to continue to let the trail system, you know, give access to the trail system so the trails stay open and we derive the economic benefit. That is all I have to say.

Senator John Gallus, D. 1: Any questions from the committee? There being none, we thank you very much for your testimony.

Representative Mark Brady, D.2: Thank you.

Senator John Gallus, D. 1: Representative Gregory Sorg.

Representative Gregory Sorg, House Judiciary: Mr. Chairman, members of the committee. I have be deputized by Chairman Mock to come and represent the judiciary committee here. We heard it on the House side. This was one of a number of Bills that came before judiciary that would seem an indemnification for one group or set of individuals or another to protect them from doing things or refraining from doing things in the public interest. Of those bills, we may have recommended passage for one or two. I can't remember but we definitely did ITL a couple of them and others we retained and referred to a subcommittee and our committee because, even though many of the things that were being sought appeared to be allowable, we were afraid of setting too low a threshold for the people who sought the indemnification that we might cause some problems on that side as well.

If this Bill hadn't been amended to create a study committee, we probably would have retained this as well because this is a qualitatively different from

the others we had in that a snowmobile network obviously is only as strong as it's weakest leak and if there is a landowner somewhere who feels a great concern for liability, he can spoil it for everybody as that has been said by Representative Brady. This is a growing sport up north. It is very economically important so we considered it to be well worth studying and with particular emphasis upon what standard a landowner should be held to in order in relieving him from risk we don't, in fact, encourage him to perhaps engage in, or in behavior on his land that is dangerous or to refrain from doing things that he ought to do to keep the trails safe. So, it is something that needed some studying and we recommend that the Senate pass it.

Senator John Gallus, D. 1: Any questions from the committee? We thank you very much for your testimony. The Chair recognizes Charles Niebling.

Charles Niebling, NH Protection of Forests: Thank you Mr. Chairman, members of the committee. I am Charles Niebling, Director of Policy and Land Management with the Society for the Protection of NH Forests in support of the Bill as amended by the House. I think the Judiciary Committee and the sponsors did the wise thing by taking this in the direction of a study bill. It is important to note, I believe, that NH has good limited landowner liability statutes that stood the test of time. My organization was very much involved in helping to draft them over the years and we stand by them today. Nonetheless, with this sport growing as fast as it is, I think it is prudent for the General Court to take a look at whether the language of those statutes, 508:14 and 212:34 are where they need to be given the skittishness of the insurance industry these days and just the general litigious nature of society. So, with that Mr. Chairman, on behalf of the Forest Society, owners of 36,000 acres and trail use agreements with countless clubs all over the State, I want to express our support for the bill.

Senator John Gallus, D. 1: Any questions from the committee? There being none, we thank you. No one is signed up to speak. Is there anyone else who would like to speak for a first time?

Jason Stock, NH Timberland Assoc.: I would.

Senator John Gallus, D. 1: Jason Stock.

Jason Stock, NH Timberland Assoc.: My name is Jason Stock with the NH Timberland Owner's Association and similar to what you heard earlier today, we also support the Bill. This past winter I had, I did, in fact, receive a couple of calls from landowners who did express a concern over this issue. For all the reasons that Charlie Niebling had mentioned, we feel this is, in fact, worth studying and we support the Bill.

Senator John Gallus, D. 1: Thank you. Any questions from the committee? Thank you very much. Is there anyone else who wishes to speak for a first time? Anyone who wishes to speak for a second time? There being no one, I close the senate hearing on HB244.

Hearing closed at 2:10 p.m.

Respectfully submitted:

Susan A. Bridge
Senate Secretary
April 18, 2003

Speakers

SENATE WILDLIFE & RECREATION COMMITTEE

Date April 15, 2003 Time 2:00 p.m. Public Hearing on **Bill # HB244**

(New Title) establishing a committee to study landowner liability for owners providing public access to snowmobile trails.

(Please print) ***Please check box(es) at left that apply.***

SPEAKING?	FAVOR	OPPOSED	NAME	REPRESENTING
☒	☒ ✓	☐	REP GREGORY SORG	HOUSE JUDICIARY COM.
☒	☒ ✓	☐	CHARLES NIEBLING	SOCIETY FOR PROTECTION OF NH FORESTS
☒	☒ ✓	☐	Rep. Mark Brady	Sponsor
☒	☒	☐	JASON STOCK	N.H. Timberland Assoc.
☐	☐	☐		
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Testimony

State of New Hampshire

HOUSE OF REPRESENTATIVES

CONCORD

MEMORANDUM

DATE: **October 2, 2003**

TO: **Honorable Craig Benson, Governor**
Honorable Gene G. Chandler, Speaker of the House
Honorable Thomas R. Eaton, President of the Senate
Honorable Karen O. Wadsworth, House Clerk
Honorable Steven J. Winter, Senate Clerk
Michael York, State Librarian

FROM: **Rep. Henry P. Mock, Chairman**
Post Office Box 237, Jackson NH 03846-0237
(603) 356-5109

SUBJECT: **Final Report on HB 244, establishing a committee to study landowner liability for owners providing public access to snowmobile trails**

Pursuant to Chapter 77:1, Laws of 2003, enclosed please find the Final Report of the committee charged with studying HB 244, establishing a committee to study landowner liability for owners providing public access to snowmobile trails.

If you have any questions or comments regarding this report, please do not hesitate to contact me.

HPM:co
cc: Study Committee Members
Marie Helene Bailinson, Committee Researcher

FINAL REPORT

HB 244 (Chapter 77:1, Laws of 2003), establishing a committee to study landowner liability for owners providing public access to snowmobile trails

This report is hereby submitted in accordance with the requirements of Chapter 77:5 (Report), Laws of 2003, effective May 28, 2003. (See ***Appendix "A"***)

The four members of the House appointed by the Speaker were:

Hon. Henry P. Mock (Chairman)
Hon. David Russell
Hon. Harry Merrow
Hon. Eric Stohl.

Senate members appointed by the President of the Senate were:

Hon. Robert Flanders
Hon. John Gallus (Clerk)

The first meeting was called by the first-named House member on August 12, 2003 at 10:00 a.m. in Legislative Office Building Room 208. An attempt had been made to notify all user groups and interested parties of this meeting. In accordance with Chapter 77:3, representatives were present from the insurance industry (the States Trail insurer), the New Hampshire Snowmobile Association, the Society for the Protection of New Hampshire Forests, landowners, the Demer's Group representing trial lawyers, the Department of Resources and Economic Development, Division of Parks and Recreation, Bureau of Trails. Attorney Anne Edwards of the Attorney General's Office could not be present at this meeting and had previously notified the Chairman of her desire to testify. An excellent representation of legislators who sponsored HB 244 were present and testified as to the impetus for the proposed legislation. (See ***Appendix "B-1", Appendix "B-2", and Appendix "B-3")*** for the Minutes of the Meetings of August 12 and 28, 2003, and September 25, 2003, respectively.)

As introduced, HB 244 (03-0599) (see ***Appendix "C")*** granted sweeping landowner immunity as an exception to RSA 212:34.

At the public hearing before the House Judiciary Committee on February 5, 2003 (see ***Appendix "D"***), the bill's sponsors testified that they had previously agreed to an

amendment establishing a committee to study landowner liability for owners providing access to snowmobile trails, the result being Chapter 77, Laws of 2003.

Mr. Paul Gray, Chief, Department of Resources and Economic Development, Trails Bureau, testified at length and submitted to extensive questioning with Mr. Peter J. McArdle of Acadia Insurance, the State's insurance carrier, regarding the existing insurance policy covering landowners who permit, in writing or orally, state trails on their property. The committee questioned the "oral permission" component of the insurance statute (i.e., RSA 260:61) (see ***Appendix "E"),*** and ultimately was convinced that the Legislature used good sense in 1981 in allowing oral permission when landowners "buying into" the new concept of established State trails became skeptical of signing their names but, nevertheless, had no problems with a trail on their property, as long as liability insurance was provided.

Insurance Policy Information

- The issue of landowners' costs in defending themselves against a suit was discussed – even though the suit was deemed to be frivolous. Mr. Peter J. McArdle of Acadia Insurance, the State's insurer, made it clear that the cost of defense is the responsibility of the carrier, and that that cost is not "included" in the $2 million policy; rather, it is an expense to the insurance company.

    - ✓ The $2 million policy is for coverage for one year and is cumulative. In other words, the $2 million could cover one incident or twenty, but the total could not exceed $2 million;

    - ✓ The cost of the policy for 2003 is $63,861. (An increase in the policy to $5 million would be approximately $100,000 to $125,000, as noted in ***Appendix "B-2".***) The cost of the policy varies from year to year. Some annual costs are listed below:

1993	$ 83,940
1994	$ 85,980
1995	$100,960
1996	$ 86,700
1997	$ 78,030
1998	$ 68,850
1999	$ 53,672

- Approximately 5,000 landowners are covered by the policy, covering about 9,000 miles of trails that include snowmobile trails, OHRV trails, and the Heritage Trail.

- There have been no claims paid since 1996. Prior to 1996, the policy covered the State of New Hampshire as well as the landowners. The State was dropped from the policy, causing a reduction in premium. Interestingly, this may have been responsible for there being no claims filed since then.

- Prior to 1996, claims paid and expenses to the insurance carrier were as follow:

1991	4 claims	paying	$25,000	($30,000 in expenses)
1994	2 claims	paying	$0	($18,200 in expenses)
1995	3 claims	paying	$2,000	($6,600 in expenses)
1996	1 claim	paying	$30,000	($2,200 in expenses)

It should be noted here that the above insurance policy covers State-maintained trails, as well as thousands of miles of trails maintained by individual clubs. All clubs affiliated with the New Hampshire Snowmobile Association carry their own additional insurance policies.

Additional information pertaining to the insurance coverage and costs through the years has been provided to the Committee by Acadia Insurance and is hereby submitted as ***Appendix "F"****.*

Legal Ramifications of Existing Statutes

The study committee recognized and studied four (4) separate statutes dealing directly with landowner liability issues. Excerpts of these statutes are hereby provided in this report, as submitted by the Attorney General's Office. The committee limited its inquiry to "landowner liability for owners providing public access to snowmobile trails", as clearly delineated in the Final Version of HB 244, Chapter 77, Laws of 2003. We did not attempt to address any liability to landowners relative to environmental damage by trespassers, etc.

At this point and for the sake of clarity, we are submitting, in part, the written testimony of Anne M. Edwards. Assistant Attorney General, Civil Bureau, which we feel clearly displays the existing statutes presently protecting landowners from civil suit:

(see next page)

ISSUES RELATING TO LANDOWNER LIABILITY FOR OHRV TRAILS
FOR STUDY COMMITTEE FOR HB 244
FROM THE ATTORNEY GENERAL'S OFFICE
AUGUST 28, 2003

(An Excerpt of the Written Testimony of Anne M. Edwards, Office of the Attorney General)

(Emphasis Added)

The following testimony is offered in response to issues and questions raised at the August 14, 2003, hearing.

Recreational Use Statutes - Most, if not all, of the New Hampshire statutes that govern landowner liability when members of the public are allowed to use private, Federal, State, or municipal lands free of charge are listed below. These statutes are generally referred to as "recreational use" statutes. The limited liability in all of the recreational use statutes is based on the premise that the public is allowed to use the property **without being charged a fee by the landowner** to use the property.

All of these statutes apply to the State Trail System on which OHRVs are ridden.

RSA 508:14, I - An owner, occupant, or lessee of land, including the state or any political subdivision, who without charge permits any person to use land for **recreational purposes** or as a spectator of recreational activity, shall not be liable for personal injury or property damage in the absence of intentionally caused injury or damage.

RSA 215-A:34, II - It is recognized that OHRV operation may be hazardous. Therefore, each person

who drives or rides an OHRV accepts, as a matter of law, the dangers inherent in the sport, and shall **not maintain an action against an owner, occupant, or lessee** of land for any injuries which result from such inherent risks, dangers, or hazards. The categories of such risks, hazards, or dangers which the OHRV user assumes as a matter of law include, but are not limited to, the following: variations in terrain, trails, paths or roads, surface or subsurface snow or ice conditions, bare spots, rocks, trees, stumps, and other forms of forest growth or debris, structures on the land, equipment not in use, pole lines, fences, and collisions with other operators or persons.

RSA 216-F:3 - . . . . No person who has granted a right of way for a trail across his land, or his successor in title, shall be liable to any user of the trail for injuries, suffered on said portion of the trail unless the same are caused by the wilful or wanton misconduct of the grantor or such successor in title, as the case may be.

RSA 212:34 - I. An owner, lessee or occupant of premises owes no duty of care to keep such premises safe for entry or use by others for **hunting, fishing, trapping, camping, water sports, winter sports or OHRVs** as defined in RSA 215-A, hiking, sightseeing, or removal of fuelwood, or to give any warning of hazardous conditions, uses of, structures, or activities on such premises to person entering for such purposes, except as provided in paragraph III hereof.

II. An owner, lessee or occupant of premises who gives permission to another to hunt, fish, trap, camp, hike, use OHRVs as defined in RSA 215-A, sightsee upon, or remove fuelwood from, such premises, or use said premises for water sports, or winter sports does not thereby:

(a) Extend any assurance that the premises are safe for such purpose, or

(b) Constitute the person to whom permission has been granted the legal status of an invitee to whom a duty of care is owed, or

(c) Assume responsibility for or incur liability for an injury to person or property caused by any act of such person to whom permission has been granted except as provided in paragraph III hereof.

III. This section does not limit the liability which otherwise exists:

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

(b) For injury suffered in any case where permission to hunt, fish, trap, camp, hike, use for water sports, winter sports or use of OHRVs as defined in RSA 215-A, sightsee, or remove fuelwood was granted for a consideration other than the consideration, if any, paid to said landowner by the state; or

(c) The injury caused by acts of persons to whom permission to hunt, fish, trap, camp, hike, use for water sports, winter sports or use of OHRVs as defined in RSA 215-A, sightsee, or remove fuelwood was granted, to third person as to whom the person granting permission, or the owner, lessee or occupant of the premises, owed a duty to keep the premises safe or to warn of danger.

Amending the Recreational Use Statutes - During the 2003 Legislative Session, there was a debate regarding whether RSA 212:34, III somehow lessened the liability

limitation for landowners. We do not believe that it does limit the liability. We believe that it states specifically what each of the other recreational use statutes implies. The recreational use statutes only limit liability for the landowner with respect to the trail users - not with respect to other people to whom the landowner may owe a duty.

The following is an explanation or an example of what each subparagraph of RSA 212:34, III means:

(a) If the landowner does something willful or malicious, such as digging a pit in the middle of an OHRV trail and covering it with branches and leaves and then leaving it there with no warning to the trail users, that is "willful or malicious" behavior and RSA 212:34 would not protect that landowner from liability;

(b) If a landowner charges someone to use his/her property, he/she does not receive the limited liability. The reasoning behind this provision is that that landowner is operating a commercial venture of some type and therefore should be responsible to his/her customers;

(c) If a landowner was running a daycare from his/her home and had given permission for an OHRV trail to cross his/her driveway, that landowner owes a duty to his/her daycare users to warn of the danger of the crossing trail. If the landowner does not warn his/her daycare users, he/she could be liable for damages if one of them is injured. However, that same landowner would not be liable to an OHRV trail user if one collided with a daycare user's car as long as the landowner had not been "willful or malicious" in his actions.

As a result of our review of all of the above-referenced recreational use statutes, we have not found a deficiency

in any of them that leaves a landowner who allows an OHRV trail on his/her property open to liability.

The main purpose of the insurance policy was two fold: 1) to provide landowners with a sense of security by having $2M in insurance coverage; and 2) to provide a legal defense to landowners who may get sued. Even though the recreational use statutes are very strong defenses, they cannot prevent someone from bringing suit against a landowner. As a result, the insurance coverage provides such a landowner with an attorney who files a motion to dismiss the case based on the recreational use statutes. And, as we believe Acadia testified last week, that defense has been successful each time.

The reason the policy is for $2M aggregate is that originally the State was included as an insured on the policy and the State is only liable for up to $2M per occurrence. The State is no longer insured under the policy resulting in a substantially lower premium. The insurance policy has a $2M aggregate amount because that was what was thought to be reasonable for the first year; and given the track record under the insurance policy for defending landowners using the recreational use statutes, there has never been a reason to increase it. The State and some of the trail owners have been sued for some catastrophic accidents on the recreational trails – a 30 year old father of one killed on a snowmobile, a teenage boy killed on an ATV, a 35 year old man paralyzed from the shoulders down after an OHRV accident – in each of these cases, the claims were dismissed on motions to dismiss based on the recreational use statutes.

Increasing the aggregate amount of the insurance policy would not necessarily result in a benefit. If a landowner does not commit willful or malicious acts and does not charge trail users to use the trail, he/she is going to be

protected by the recreational use statutes. If a landowner does act willfully or maliciously or charges trail users, then he/she is not protected by the recreational use statutes and is not covered by the insurance policy.

State Indemnification of Landowners - One way for the Legislature to answer the very limited criticism by essentially one landowner that the $2M coverage is not enough would be to enact legislation that would indemnify landowners above the $2M. As a result, the State would agree to pay damages amounts not covered by the $2M insurance coverage. The Legislature could make this indemnification unlimited or could limit it to damages up to $3M, $5M, $7M, etc.

State Providing Legal Defense of Landowners - One issue that was raised at the last hearing was canceling the insurance coverage and having the State defend the landowners. That could be done though not through the Attorney General's Office unless our statute was amended to allow us to defend people other than the State and its agencies. The other issue to consider with respect to having the State defend landowners is conflicts of interest. Often in the lawsuits involving OHRV trails, the State is a named party and the landowner is not. In that situation, the State would defend itself. In some suits, the State and the landowner are both named. In that situation, the Attorney General would defend the State and the Attorney General would retain a private attorney for the landowner. This would need to be done in order to avoid a conflict of interest with the Attorney General representing two defendants.

The Attorney General's Office looks forward to continuing to work with the Study Committee on this matter and thanks you for the opportunity to submit this testimony.

Conclusion

After having investigated the issues raised in HB 244 regarding the liability of landowners when persons are injured on the landowner's property when engaged in recreational pursuits, the Committee has unanimously concluded that existing statutes fully and adequately protect landowners from suit. To add any additional statutes regarding the subject would be duplicitous.

This bill was spawned, in part, by Jim and Sandy Dannis of Dalton and Milford, New Hampshire, when their "Letter to the Editor" appeared in several north country newspapers. (Their letter is included in this report as ***Appendix "G"***.) The Dannis' letter raises many issues, most of which the Committee found to not be relevant. Paragraph seven of the letter does raise a fair issue – that being of machines that leave the trail. If the operators are consequently injured in a mishap, the landowner is still indemnified by the four strong statutes previously discussed in this report, plus RSA 507:15, the frivolous actions statute which should deter a frivolous suit (see ***Appendix "H"***).

Apparently, the Dannises own a large tract of land in the Town of Dalton, intersected by a Class 6 town road on which a state snowmobile trail was located. The Dannises attempted to close the road. Since they did not own the land upon which the trail was located, it is difficult to understand their intense interest in the landowner liability issue.

In an attempt to keep the trail in town with the associated economic advantage of servicing snowmobilers, the town voted at the 2003 Town Meeting to upgrade the road to a Class 5 road, and have made provisions for the trail to be located beside it.

In January 2003, the Department of Insurance contacted twenty of the insurance companies that write the majority of the homeowner policies in the State to determine if they would cancel homeowner policies if the homeowners allowed snowmobile trails on their properties. Of the 20 companies, seventeen replied, and sixteen of them stated that they would provide homeowner coverage. These companies stated that they were aware of both the immunities provided by the recreational use statutes as well as the insurance coverage provided by the Department of Resources and Economic Development. As a result, there does not appear to be an issue with the homeowner insurance industry allowing snowmobile trails on their policy holders' properties (see ***Appendix "I"***).

The Committee members sincerely respect the anxiety experienced by participating landowners and can understand what precipitated that increased anxiety, particularly in the northern part of the State. We feel that if landowners are made aware of the protections afforded by existing statutes, participating landowners can be made comfortable once again with a State program which has operated well since 1981.

The New Hampshire Snowmobile Association, Department of Resources and Economic Development, the Timberland Owners Association, and the Society for Protection of New Hampshire Forests have all pledged to utilize their periodic publications to publicize the results of this study.

There are no laws, written or possible, to prevent litigation. The success of that litigation is minimal in the opinion of this Committee, considering the subject matter contained herein. It is the view of the Committee that the status quo is sufficient at this time.

Respectfully submitted,



Rep. Henry P. Mock
Committee Chairman

HPM:co

Attachments

CHAPTER 77

HB 244 - FINAL VERSION

13feb03... 0132h

04/24/03 1293s

2003 SESSION

03-0599

10/01

HOUSE BILL *244*

AN ACT establishing a committee to study landowner liability for owners providing public access to snowmobile trails.

SPONSORS: Rep. Brady, Coos 2; Rep. Stohl, Coos 1; Rep. King, Coos 1; Rep. Woodward, Coos 3; Rep. Theberge, Coos 3; Sen. Gallus, Dist 1

COMMITTEE: Judiciary

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VI. The department of resources and economic development, division of parks and recreation, bureau of trails.

VII. Attorneys familiar with landowner liability/ immunity/ insurance issues.

77:4 Chairperson; Quorum. The members of the study committee shall elect a chairperson from among the members. The first meeting of the committee shall be called by the first-named house member. The first meeting of the committee shall be held within 45 days of the effective date of this section. Three members of the committee shall constitute a quorum.

77:5 Report. The committee shall report its findings and any recommendations for proposed legislation to the speaker of the house of representatives, the senate president, the house clerk, the senate clerk, the governor, and the state library on or before November 1, 2003.

77:6 Effective Date. This act shall take effect upon its passage.

(Approved: Enacted in accordance with Article 44, Part II, N.H. Constitution, without signature of Governor, May 28, 2003)

(Effective Date: May 28, 2003)

2003 Study Committee,
HB244 Chapter 77:1, Laws of 2003

Meeting Report

TO: Members of the Committee

FROM: Senator John Gallus
First named Senator

RE: Meeting report on HB 244, (Chapter 77:1, Laws of 2003), establishing a committee to study landowner liability for owners providing public access to snowmobile trails.

MEETING DATE: August 12, 2003 10:00 a.m.

Members of the Committee Present:
Representative Henry Mock, Chair
Senator John Gallus, Secretary
Representative Eric Stohl
Representative Harry Merrow

Others Present:
Peter McArdle, Acadia Insurance
Director Paul Gray, Dept of Trails
Charles Niebling, NH Society for the Protection of Forests
Eric Dorby, Timberland Owner Association
Rob Johnson, NH Farm Bureau
Gail Hanson, NH Snowmobile Association
Representative Roland J. Lefebvre
Representative Robert L. Theberge

Summary of Meeting:

- Meeting started at 10:00 a.m. Representative Mock called meeting to order. Motion made by Sen. Gallus and seconded by Rep. Stohl to nominate Henry Mock to be Chairman. Voted 3 to 1 for Nomination.
- Representative Stohl recognized as one of the sponsors and explained why he signed on saying property owners need to be assured of indemnification of liability.

- Rep. Theberge recognized as sponsor also stated he is owner of hundreds of acres and is personally concerned with potential land owner liability and other things.
- Paul Gray testified that last year there was a scare of potential liability issues. He stated that current RSA says private land owners owe no duty of care to keep such premises safe for entry or use by others for certain outdoor uses (RSA 212:34). Plus a number of other RSA'a deal with protecting land owners for allowing recreational use of their land. Liability only arises from intentional conduct to injure or damage . Ultimately, the landowner is protected by the 2 million dollar insurance policy the State over 5,000 landowners still participate in this progra.
- Rep. Stohl asked Director Gray if he was covered on his land where a trail goes through and he never signed anything. Director Gray said he would check. Many of Coos Counties Agreements were verbal. He would check and get back to Rep. Stohl.
- Rep. Merrow asked if a private landowner has trail or logging roads that he has opened as trail which is not recognized by the State system, would he be covered by the insurance program? Director Gray said NO.
- Rep. Mock asked what RSA set up Insurance. Director Gray stated this was RSA 260.61 sets up insurance for snowmobiles and OHRV protection.
- Rep. Mock asked is mountain biking included in insurance. Director Gray said NO, not currently.
- Rep. Mock asked if all uses should be written into law to indemnify landowner? Director Gray stated may be too broad.
- Rep. Merrow asked, does land have to be registered for hunting and fishing to be covered? Director Gray says No hunting and fishing is covered.
- Sen. Gallus asked, could we not add to RSA's that any amount above 2,000,000 or current coverage amounts would be covered by the State to indemnifying the private property owner. Director Gray stated that it may be a good idea to add to statute.
- Rep. Stohl asked what are we paying and what would the cost be to raise to 5 million/75,000 currently for 2,000,000 would be 100,000 for 5,000,000.00.
- Peter McArdle, Acadia Insurance – the State – the current policy is for 2,000,000 in any 12 month period and policy should have homeowner of land registered with the State. That means any claims in total to only 2,000,000 could be one or 20 claims but in total only 2 million dollars in 12 month period. Not many claims have been made. No claim since 1996. Companies feel plenty of protection in RSA's and minimal claims have paid out. $63,861 is current premium. Claim in 1996 was approximately $30,000.00. Statute on books are great. Insurance company is happy with premium and policy because of statutes that are good. They do not expect to pay out a claim.

- Rep. Stohl. If the claims were to take place at same time and are for 3 million, who would be defended? Mr. McArdle stated all would be defended, first to settle would receive monies.
- Charles Niebling, Society of NH Forests. We feel comfortable with current statutes and insurance. Society is committed to continuing translation and we have little concern.
- Eric Dorby, Timberland Owners Association. We just want to be involved in the process. We are concerned about damage to wetlands and maybe that should be addressed by this committee.
- Rep. Mock. Any damage to land should be covered under current statute.
- Rob Johnson of the NH Farm Bureau stated why aren't just trails covered? Why do owners have to be registered? Director Gray stated that it was a requirement of the insurance company in accordance with the State contract.
- Gail Hanson NH Snowmobile Association stated she was very satisfied with the current statutes.
- Rep. Theberge asked what happens if riders go off trail or are allowed access from local motel? Director Gray stated statute covers landowner under all circumstances. Insurance covers only trails and landowners registered.
- Gail Hanson says NH snowmobilers tell motel owners to contact local Club and make sure they are put on landowner list.
- Charles Niebling asked, why were there not any claims? Director Gray stated all paid out claims were basically nuisance claims . No claims since 1996.
- Rep. Roland J. Lefebvre stated largest landowner in Washington closed snowmobile trail because ATV's were using trail. Was told that he hadn't posted his land against ATV's. Director Gray stated that was another issue.. Do not have to post against ATV's.
- Rep. Stohl stated he would like to suggest that we amend 261 that way liability in excess of $2 million be covered by the State

For Next Meeting:

- Rep. Mock stated he would like to meet with Fish and Game and Anne Edward to discuss issues further.

Next Meeting:
Thursday August 28, 2003
1:00 p.m.
Room 208, LOB

APPENDIX B-2

MINUTES OF THE MEETING OF
THE 2003 STUDY COMMITTEE, RE:
HB 244 (Chapter 77:1, Laws of 2003)
to study landowner liability for owners
providing public access to snowmobile trails

August 28, 2003

Members Present: Rep. Henry Mock (Chair), Sen. Robert Flanders, Rep. Eric Stohl (Acting Clerk), Rep. Harry Merrow, Rep. David Russell

Others Present: Rep. Frederick King, Rep. Roland Lefebvre, Peter McArdle (Acadia Insurance), Director Paul Gray (Bureau of Trails), Eric Darbe (NH Timberland Owners Association), Gail Hanson (NH Snowmobile Association), Nancy Smith (Office of the Attorney General)

Summary of Meeting:

- Meeting was called to order by Chairman Mock at 1:00 p.m.
- Rep. Merrow moved and Rep. Stohl seconded the approval of the minutes of the meeting held on August 12, 2003. Vote was unanimous.
- Peter McArdle, Acadia Insurance, testified as to the amount of money that has been paid out for the different years. They are as follows:

1996	1 claim	$30,000 payment plus $2200 in expenses
1995	3 claims	$2,000 payment plus $6,600 in expenses
1994	2 claims	$18,200 in expenses
1991	4 claims	$25,000 payment plus $30,000 in expenses

- Mr. McArdle stated that the insurance program was first initiated in 1981. Rep. Russell asked where the money comes from to pay for this insurance coverage? Paul Gray advised that it comes out of his budget. Rep. Stohl asked how much $5,000,000 worth of coverage would cost. Mr. McArdle estimated somewhere between $100,000 and $125,000 per year. Rep. Merrow asked what was the cost of the insurance program in the beginning. Mr. McArdle did not have that information, but he did have the contract prices for the 1990's. They are as follows:

1993	$83,940
1994	$85,980
1995	$100,900
1996	$86,700
1997	$78,300

1998	$68,850
1999	$53,672.

- Rep. King spoke in favor of the legislation and thanked the committee for looking into the issue. He stated that the question whether there was enough coverage for the landowners that allowed snowmobiles on the property was a serious topic up north last winter.

- Nancy Smith, Attorney General's Office, presented a written response to issues that were raised at the August 12th meeting.

- Sen. Flanders stated that he supported the insurance coverage program.

- Mr. McArdle stated that if a snowmobiler goes off the trail 20 or 30 feet and has an accident, the landowner's homeowner insurance would then be responsible for the coverage.

- Paul Gray briefly explained the Dalton case that raised these issues of adequate insurance coverage. A landowner in the Town of Dalton was told by his different insurance companies that if he allowed snowmobiles on his property, they would cancel his homeowners policy.

- Rep. Stohl moved and Sen. Flanders seconded that after the committee investigated and debated the issue, the motion is not to require additional legislation. The vote was unanimous in favor. VOTE 4-0.

For the next meeting:

- Chairman Mock will draft a response for the committee to review.

Next Meeting:

Thursday, September 25, 2003
10:00 a.m.
Room 208, LOB

APPENDIX B-3

MINUTES OF THE MEETING OF
THE 2003 STUDY COMMITTEE, RE:
HB 244 (Chapter 77:1, Laws of 2003)
to study landowner liability for owners
providing public access to snowmobile trails

September 25, 2003

Members Present: Rep. Henry Mock (Chair), Rep. Eric Stohl (Acting Clerk), Rep. Harry Merrow, Rep. David Russell

Others Present: Peter McArdle (Acadia Insurance), Gail Hanson (NH Snowmobile Association), Director Paul Gray (Bureau of Trails), Anne Edwards (Office of the Attorney General), Major Tim Acerno (Department of Fish and Game)

Summary of Meeting:

- Meeting was called to order by Chairman Mock at 10:00 a.m.
- The Committee reviewed the Minutes of the meetings held August 12th and August 28th; minor corrections were made.
- The Committee thoroughly reviewed Chairman Mock's draft of the Final Report; corrections were made after questions were asked of agency representatives, listed above. Anne Edwards of the Attorney General's Office will submit a written addition to the report.
- Rep. Merrow moved and Rep. Stohl seconded that the Final Report be approved, after all corrections and additions are made by the Chairman. Unanimous vote.

The meeting adjourned at 11:00 a.m.

2003 SESSION

03-0599
10/01

HOUSE BILL ***244***

AN ACT relative to landowner liability for snowmobile accidents.

SPONSORS: Rep. Brady, Coos 2; Rep. Stohl, Coos 1; Rep. King, Coos 1; Rep. Woodward, Coos 3; Rep. Theberge, Coos 3; Sen. Gallus, Dist 1

COMMITTEE: Judiciary

ANALYSIS

This bill provides that a landowner allowing access for snowmobiles shall not held liable for snowmobile related accidents or damage absent gross negligence or reckless disregard.

Explanation: Matter added to current law appears in ***bold italics.***
Matter removed from current law appears ~~[in brackets and struckthrough.]~~
Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

HB 244 – AS INTRODUCED

03-0599
10/01

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Three

AN ACT relative to landowner liability for snowmobile accidents.

Be it Enacted by the Senate and House of Representatives in General Court convened:

1 New Section; Landowner Liability Limited; Snow Traveling Vehicles. Amend RSA 215-A by inserting after section 28 the following new section:

215-A:28-a Landowner Liability Limited; Snow Traveling Vehicles. A landowner who allows use of his or her land for the operation of snow traveling vehicles shall not owe a duty of care as provided in RSA 212:34 and shall not be held liable for any injury or damage to an operator, passenger, or OHRV owner in any accident or claim related to the operation of the snow traveling vehicle unless the landowner acted with gross negligence, or with reckless disregard of a hazard.

2 Effective Date. This act shall take effect January 1, 2004.

HOUSE COMMITTEE ON JUDICIARY

PUBLIC HEARING ON HB 244

BILL TITLE: relative to landowner liability for snowmobile accidents.

DATE: Feb. 5, 2003

LOB ROOM: 208 **Time Public Hearing Called to Order:** 9:40 a.m.

Time Adjourned: 11:20 a.m.

(please circle if present)

Committee Members: Reps. Mock, Rowe, Jacobson, Ford, Dudley, Soltani, Woods, Rice, Souza, Desmarais, Haytayan, Mooney, Morris, Sorg, J. Wheeler, Wall, J. Pratt, Craig, Lasky, Potter and Franklin.

Bill Sponsors: Rep. Brady, Rep Stohl, Rep. King, Rep. Woodward, Rep. Theberge, Sen. Gallus

TESTIMONY

* Use asterisk if written testimony and/or amendments are submitted.

Rep. Mark Brady, prime sponsor- Supports. Landowners are increasingly cautious about opening property for snowmobile. This is due to fear of risks injuries/litigation. State should protect landowners. Amendment takes a good system and makes it stronger. Snowmobiles from out of state particularly show a lack of respect for landowners. If machine stays on designated trail there is no problem- once a snowmobile leaves this trail, state insurance does not cover injuries.
In response to Rep. Pratt question: unsure if landowner is liable if structure such as bridge is damaged. Snowmobile club is noticed of damage and does not respond. 6 deaths have occurred this winter (2002-2003).

Rep. Fred King, Dist. 1- Supports. Snowmobiling has become major recreation in North Country. Sport is successful because of landowners allowing snowmobiling on their property. All use of land owned privately should be protected by state law.

Rep. Robert Theberge, Berlin- Supports. Resident in Berlin, but family has farm in Jackson with 500 acres. Will always allow snowmobilers to use the land regardless of whether or not bill passes. There have been damages at times. Machines are now very fast but less noisy.

Jasen Stock, NH Timberland Owners Association, Concord- Supports. Trail itself is covered by state. State liability does not extend beyond trail. There is presently $2-3 Million in fund. Not sure if amount is sufficient.

Martin Jenkins, NH Trial Lawyers- Opposed to bill. In favor of amendment

Q: Rep. Desmarais: asked question about liability of landowner when snowmobile goes off the trail and onto private land. Also asked about continued use and trail then becoming a public right-of-way.

Q: Rep. Ford asked if owners have been sued
Q: Rep. Soltani: asked about why we need liability protection which is already in law.
Q: Rep. Rice: asked question about trespassing when off trail.
Q: Rep. Pratt: asked if this was about trial lawyers interests.
Q: Rep. Mock: asked question about tax break for landowners.

Chief Paul Gray, DRED Trails Bureau- Supports the bill. Impact of snowmobiles- in 2001, 42,000 snowmobiles registered. $219 million direct expenditures; $365 million impact on state. 2002, 55,000 snowmobiles registered; 2003, 65,000-70,000.

Charles Niebling, Society for the Protection of Forests, Concord- Supports. Current bills are working well. ATV bills are pending with basically same issues. Time to look at use of land owned around NH.

Richard Goudarzi, Granite State ATV Association, Concord- Opposes.
** Written testimony in file*
Cited case where picked-up driver was drinking-went off trail and sued; court threw case out. Cited RSA 815:34. The ATV issue should be included in bill.

Capt. Timothy J. Acerno, Fish and Game- Opposes bill as written; supports amendment. Offering services to committee, will supply materials.

Questions:
Rep. Sorg
Rep. Potter ++++
Rep. Pratt ++++
Rep. Wheeler
Rep. Ford ++
Rep. Franklin
Rep. Dudley
Rep. Rowe
Rep. Jacobson +
Rep. Desmarais +
Rep. Soltani
Rep. Mock
Rep. Rice

Respectfully Submitted,

Rep. Terri C. Dudley, Clerk

260:61 Credit Provided; Liability Insurance.

I. Annually on or before June 30 the state treasurer shall transfer, from road tolls collected, an amount equal to the number of licensed OHRV's for the previous year times $4.50, less any amount refunded for OHRV use for the previous year, to the OHRV bureau. The OHRV bureau shall use 66-⅔ percent of the amount credited for grants under its grant-in-aid program, and 33-⅓ percent for general operating expenses and expenses incurred in administering and supervising the grant-in-aid program. Any balances in the funds hereby transferred shall not lapse at the end of the fiscal year but shall remain in the OHRV fund.

II. The OHRV bureau's grant-in-aid program shall bear the expenses of the following:

(a) A liability insurance policy for the benefit of landowners who allow snowmobilers to use their property, and

(b) A liability insurance policy for the benefit of landowners who lease their land to the state of New Hampshire for use by snowmobilers.

HISTORY

Source. RSA 265:29-a. 1979, 298:1. 1981, 146:1. 1983, 449:29, eff. July 1, 1983.

Amendments—1983. Paragraph I: Substituted "$4.50" for "$3" in the first sentence and "66-⅔" for "50" preceding "percent of the amount credited" and "33-⅓" for "50" preceding "percent for general operating expenses" in the second sentence.

CROSS REFERENCES

OHRV bureau, see RSA 215-A:2 et seq.

EXHIBIT C

OFF HIGHWAY RECREATIONAL VEHICLE PROGRAM
LOSS/PREMIUM EXPERIENCE

1. Policy Period: 1/1/2001 – 2002
   Agent/Broker: The Rowley Agency

   Carrier: Acadia Insurance
   Claims: None
   Premium: $ 53,672

2. Policy Period: 1/1/2000 – 2001
   Agent/Broker: The Rowley Agency

   Carrier: Acadia Insurance
   Claims: None
   Premium: $ 53,672

3. Policy Period: 1/1/99 – 2000
   Agent/Broker: The Rowley Agency

   Carrier: Acadia Insurance
   Claims: None
   Premium: $ 53,672

4. Policy Period: 1/1/98 – 99
   Agent/Broker: The McDuffee Agency/Horan, Goldman & Co. of New England

   Carrier: Admiral Insurance/Gen Star
   Claims: None
   Premium: $ 68,850.00

5. Policy Period: 1/1/97 - 98
   Agent/Broker: The McDuffee Agency/Horan, Goldman & Co. of New England

   Carrier: Admiral Insurance/Gen Star
   Claims: None
   Premium: $ 78,030.00

6. Policy Period: 1/1/96 - 97
   Agent/Broker: The McDuffee Agency/Horan, Goldman & Co. of New England

   Carrier: Admiral Insurance/Gen Star
   Claims: Open - 1 Closed - 0
   Premium: $ 86,700.00

   Paid Losses:
   Indemnity: $30,000.00
   Expense: $ 2,219.53
   TOTAL: $32,219.53
   (Paid Loss Ratio: 37.2%)

   Reserves:
   Indemnity: $ 0.00
   Expense: $780.00
   TOTAL: $780.00
   (Incurred Loss Ratio: .9%)

APPENDIX F

Acadia Insurance®

September 2, 2003

The Honorable Henry P. Mock
P. O. Box 237
Jackson, New Hampshire 03846-0237

Re: HB 244

Dear Representative Mock:

I want to thank you and the committee very much for allowing me to participate in the discussions on HB 244.

This letter is in response to your request as to the total amount of premiums and claims paid on the insurance policies covering the state trail system. The most recent bid specifications had the premium and loss information back to calendar year 1991. From calendar year 1991 through the current policy term (calendar year 2003) the total premiums paid comes to $971,078. Losses paid in this timeframe total $57,000 with an additional $57,398.36 paid in claim adjustment expenses. The bid specifications did not give the premiums paid from calendar year 1981 to 1990, but did state there were no losses in this time period. I have enclosed a copy of the bid loss history for your convenience.

During the discussions there were some comments made that the insurance company determined what land was covered under the insurance policy. I would like to respectfully disagree with this statement. Enclosed are two pages from the state bid request that clearly explains that the insurance is intended to cover the OHRV trails program and not all the land owned by the various landowners who allow use of their land for snowmobile trails. I have also enclosed a copy of the state Right-of-Way Easement agreement that again clearly makes reference to the right-of-way i. e. the snowmobile trail only.

Again, I want to thank you and the committee for letting me participate in the discussions. I plan on being at the next meeting on September 25th, but in the meantime if there is any additional information I can provide you or a committee member, please do not hesitate to contact me.

Sincerely,

Peter J. McArdle, CIC, ARM
Assistant Vice President
Marketing and Government Relations

cc: Representative Eric G. Stohl
Representative David H. Russell
Representative Harry C. Merrow
Senator John T. Gallus
Senator Robert B. Flanders
Mr. Rob Simpson – The Rowley Agency

7. Policy Period: 1/1/95 - 96
Agent/Broker: The McDuffee Agency/Horan, Goldman & Co. of New England

Carrier: Admiral Insurance/Gen Star
Claims: Open - 0 Closed - 3
Premium: $100,960.00

Paid Losses:
Indemnity: $ 2,000.00
Expense: $ 6,691.00
TOTAL: $ 8,691.00
(Paid Loss Ratio: 8.6%)

Reserves:
Indemnity: $ 0.00
Expense: $ 0.00
TOTAL: $ 0.00
(Incurred Loss Ratio: 0%)

8. Policy Period: 1/1/94 - 95
Agent/Broker: The McDuffee Agency/Horan, Goldman & Co. of New England

Carrier: Admiral/Tudor/Jefferson/US Liability
Claims: Open - 0 Closed - 2
Premium: $ 85,980.00

Paid Losses:
Indemnity: $ 0.00
Expense: $18,244.68
TOTAL: $18,244.68
(Paid Loss Ratio: 21.2%)

Reserves:
Indemnity: $ 0.00
Expense: $ 0.00
TOTAL: $ 0.00
(Incurred Loss Ratio: 0%)

9. Policy Period: 1/1/93 - 94
Agent/Broker: The McDuffee Agency/Horan, Goldman & Co. of New England

Carrier: Admiral/Tudor/Jefferson/US Liability
Claims: None
Premium: $ 83,940.00

10. Policy Period: 1/1/92 - 93
Agent/Broker: The McDuffee Agency/Horan, Goldman & Co. of New England

Carrier: Admiral/Tudor/Jefferson/US Liability
Claims: None
Premium: $ 83,940.00

11. Policy Period: 1/1/91 - 92
Agent/Broker: The McDuffee Agency/Horan, Goldman & Co. of New England

Carrier: Admiral/Tudor/Jefferson/US Liability
Claims: Open - 0 Closed - 4
Premium: $ 83,940.00

Paid Losses:
Indemnity: $25,000.00
Expense: $30,243.15
TOTAL: $55,243.15
(Paid Loss Ratio: 65.8%)

Reserves:
Indemnity: $ 0.00
Expense: $ 0.00
TOTAL: $ 0.00
(Incurred Loss Ratio: 0%)

12. Policy Period: 1/1/81 - 90
Agent/Broker: The McDuffee Agency/Horan, Goldman & Co. of New England

Claims: There have not been any losses presented against these policies.

SPECIAL NOTE: Loss runs reflecting experience from 1/1/98 and prior were last updated 9/98. All losses to date have occurred on State-owned rail corridor trail conversions, not on privately owned land. The coverage requested in this proposal seeks coverage only for landowners other than the State.

GENERAL INFORMATION

Program Description:

The Off Highway Vehicle Trails Program relies heavily on the cooperation of landowners by allowing trails on their property. All of the trails in the OHRV program receive State funding for general maintenance and upkeep. There are approximately 6,000 ± miles of winter snowmobile trails and 250-300 miles of general OHRV trails approved on land other than State-owned. There are several ways landowners give permission for trail use on their property. Some landowners enter into a written agreement that outlines the level of permission provided, but many offer only verbal authority permitting such use of their property. On a yearly basis, the organizations receiving funding and insurance benefits submit a map of the trails and a list of the names and addresses of the landowners whom have given permission to the Bureau of Trails. The list of landowners is kept on file in the office of the Bureau of Trails as part of the yearly funding application, and is not used for any other purpose. This list is recorded and maintained manually, and cannot be reproduced for insurance purposes.

In addition to private landowners that have given permission to clubs for trails, the Bureau of Trails also has agreements, both written and verbal, with approximately 75 businesses with land holdings. These generally tend to be larger commercial landowners with considerable land holdings in the State. Many of the trails are open to all types of OHRV's both in the winter and summer.

The New Hampshire Heritage Trail is an additional program also insured under this policy. The trail is a 210 mile walking path that, when completed, will extend the length of the state. Currently, only 30% of this project has been completed.

The level of yearly trail maintenance remains high. Much of the work is done by volunteer organizations, with the assistance of the Bureau of Trails. The trails receive yearly inspections for safety purposes by persons in the organization responsible for trails, as well as personnel from the Bureau of Trails. The Bureau of Trails is also responsible for providing training and oversight to the volunteers with regard to trail maintenance and operation.

Exhibits described below, are offered to provide bidders with a more detailed understanding of the program and insurance exposure to date.

1) Exhibit C provides a summary of Premium/Loss data. Detailed loss runs are available and can be requested when submitting written questions.

2) Exhibit D provides an account of trail mileage of state-owned, leased and borrowed land participating in the Grant-In-Aid and Heritage Trail.

3) Exhibit E references the form used by the State when leasing land for use in the Off Highway Recreational Vehicle Program.

PROPOSALS NOT MEETING THE REQUESTED SPECIFICATIONS MAY BE CONSIDERED INCOMPLETE

DETAILED SPECIFICATIONS

The undersigned, a resident licensed Agent of the Company or Companies whose policy is offered herein, and which are licensed to transact business in New Hampshire, hereby agrees to furnish insurance to protect landowners who loan or lease land to the State or an approved Organization receiving State funding for use by OHRV's in the grant in aid program and the New Hampshire Heritage Trail.

1) The named insured shall be designated as "all landowners, other than the State of New Hampshire, who permit their land to be used for participation in the New Hampshire Heritage Trails and OHRV Program, and are recorded annually with the Bureau of Trails."

2) WHO IS AN INSURED shall include as an insured the person or organization shown in the Schedule, but only with respect to liability arising out of the ownership, maintenance or use of that part of the land leased to or borrowed by the State of New Hampshire or (organization) club.

3) The coverage required shall offer the following limits:

LIMITS OF LIABILITY

Bodily Injury and Property Damage	$2,000,000 each occurrence/$2,000,000 aggregate

4) The policy shall be endorsed to ensure the following conditions will apply:

   a) Automatic coverage of landowners when additional land is acquired for trail use during term of the policy.

   b) Named landowners insured shall be regarded as ordinary corporations and individuals instead of governmental subdivisions.

   c) The policy shall be written on an annual basis to begin on January 1, 2002, with renewal rates and annual premium charged to be guaranteed for the contract term, through January 1, 2005.

5) The policy, a copy of which is enclosed, shall be issued by:

_____

A Non-participating Stock Insurance Company

_____

A Mutual or Participating Stock Insurance Company with a dividend paying record during the past five (5) years as follows:

_____

_____

_____

ROBB R. THOMSON
Commissioner

RICHARD MCLEOD
Director
603-271-3556

PAUL GRAY
Chief
603 271-3254

STATE OF NEW HAMPSHIRE
DEPARTMENT OF RESOURCES and ECONOMIC DEVELOPMENT
DIVISION of PARKS and RECREATION
TRAILS BUREAU
172 Pembroke Road P.O. Box 1856 Concord, New Hampshire 03302-1856

FAX 603 271-2629
WEB: www.nhparks.state.nh.us
E-Mail: nhtrails@dred.state.nh.us

RIGHT – OF – WAY EASEMENT

Permission is hereby granted to the State of New Hampshire, Trails Bureau to maintain a public snowmobile trail across my property. It is understood that use of the right of way for said purpose in no way holds me liable or responsible for accidents that may occur as a result of others using my property as provided in Chapter 212, Section 34, Laws of the State of New Hampshire. There shall be no fee for this easement; however, the above named agrees to mark and maintain this right of way in a proper and safe manner. The State shall also provide a landowner liability insurance coverage for the sum of $2,000,000

This agreement shall have a term of:

( ) Indefinite
( ) 1 year upon approval
( ) 5 years upon approval

This agreement may be terminated for any cause by either party upon 30 day written notification.

Dated this_____ day of _____, 20___.

_____
Landowner or Agent Date

_____
Paul Gray, Chief Date
Trails Bureau

Property description

State's Snowmobile Trail Insurance Policy Leaves Landowners Exposed

With summer just around the corner, the State Bureau of Trails and local snowmobile clubs are starting to approach landowners for permission to let snowmobile trails on their land for next winter's snowmobile season. With 90% of the State's snowmobile trails on private land, individual landowners are key to the future of snowmobiling.

When private landowners are asked to open their land to snowmobiles, they justifiably expect the State to provide iron-clad protections against liability risks. This is basic fairness. Landowners who agree to snowmobile trails should not be exposed to additional risks as a result.

The State holds out its "trail liability insurance policy" as a key protection for landowners. Each year the State Bureau of Trails obtains a $2 million liability insurance policy for the benefit of landowners with snowmobile trails. The policy is supposed to cover the legal expenses and damage awards a landowner may suffer if there is a snowmobile accident on a landowner's property. Snowmobile proponents, including State officials, point to the $2 million coverage amount and tell landowners this insurance policy gives them strong protections. Indeed, the head of the Bureau of Trails has stated publicly that the policy is "an insurance model for all over the country".

Unfortunately, this is hogwash. We finally managed to obtain a copy of the 2003 snowmobile trails policy. It certainly is a model -- a model for misleading landowners into believing they have good protection when in fact they don't. The policy's limited aggregate dollar coverage, exclusion for any accidents "off trail" and a hard cap at only $5,000 in medical expenses make the policy more disappearing ink than substance.

Here's a good way to understand the State's snowmobile policy. Imagine your house burns down. You have been told you have $250,000 of homeowners' insurance. But when you call your insurance company to collect, the company says "Sorry, we've already had $250,000 of claims from other folks in the next town over whose houses burned. We're covering only $250,000 in total for everyone's houses, so you're out of luck. No more money for you." Needless to say, you'd be outraged. When someone says there is a $250,000 insurance policy, unless they are trying to mislead you it means there is $250,000 available for you if you suffer a loss.

That's common sense, but unfortunately common sense does not apply in the special world of State advocacy for snowmobiles. The State's snowmobile trails policy has a $2 million dollar amount, but that is the TOTAL amount the policy will pay in a year to ALL landowners for ALL claims. As the fine print in the policy makes clear, this $2 million cap on total payout applies whether there is one landowner claim or 1,000 landowner claims due to snowmobile accidents on their land. The result is the $2 million of "headline" coverage is meaningless. If you are the third landowner in 2003 to make a claim, and the claims made by the first two landowners use up the $2 million of coverage, you get nothing. You don't even get any assistance in defending yourself from a lawsuit. We believe it is highly misleading for the State to present this policy to landowners as "$2 million of coverage" when in fact there may be no coverage at all.

The State Bureau of Trails has repeatedly stated to the public that the State's insurance policy covers all of a participating landowners' land, not just the trail itself. They say it in simple words: "all of your land is covered, even off the trail". This is critical. Many snowmobile injuries and fatalities occur when snowmobiles veer off the trail into trees or other objects. Also, snowmobilers regularly ride their sleds off the trails onto the adjacent land, where the risks of accidents are higher because of lack of grooming and uneven terrain. But as the State bureaucrats have said, landowners are covered in these cases, right? Wrong! Unfortunately, the Bureau of Trails doesn't appear to have read the fine print. The policy clearly states that it covers

"only that part of the land leased to or borrowed by the State...or [snowmobile] clubs". So, the insurance policy covers the only the trails. This means landowners are left fully exposed for accidents that occur "off trail" on their land, another huge hole in the State's "model" coverage.

There are other elements of the trails policy that should make landowners fearful. After a snowmobile accident, recoveries for medical expenses are limited to an absurdly low $5,000 per person. It strikes us that the likelihood is about zero that a serious snowmobile accident victim will get out of the hospital for less than $5,000. Guess who may be on the hook for the rest, depending on the circumstances -- the landowner, of course. Also, a special note for towns -- the insurance for medical expenses is not available if the snowmobile accident occurs on a road. This is a bizarre exclusion in light of the Bureau of Trails' willingness to register trails on town roads, including the 3 miles of snowmobile trails on town roads in Dalton (mixing cars, trucks and snowmobiles on town roads was the only way forward in Dalton because private landowners said "no" to snowmobiles). Do the selectmen in these towns understand the limits of the State's coverage? Probably not, since it appears not even the State bureaucrats understand the policy.

There are other gaps and errors that would be laughable if they were not potentially so serious. For example, the trails policy expressly excludes coverage for damages arising from "vehicles designed for use principally off public roads". Let's read that again -- doesn't it sound like the definition of a snowmobile or ATV? Does that mean the policy doesn't cover, um, snowmobiles? Don't laugh yet. New York State had to shut down its snowmobile trails in January when someone read the New York trails insurance policy and discovered it excluded "snowmobile accidents". We certainly hope someone at the Bureau of Trails is reading the New Hampshire policy and is getting some help with the words.

The bottom line for landowners, and their own insurance companies, is that the State's policy may, depending on the circumstances, provide absolutely no protection at all from landowner liability for snowmobile accidents. That is a huge and serious point, and yet you can't find it anywhere in the Bureau of Trails literature. For some reason the State bureaucrats are so singlemindedly focused on expanding snowmobile trails that they are willing to sacrifice basic fairness to landowners, including an accurate, complete description of how the State's insurance policy doesn't work. Until the system is fixed, more and more sophisticated landowners will continue to "just say no" to snowmobiles.

Jim and Sandy Dannis
Dalton and Milford, New Hampshire

C

APPENDIX H

REVISED STATUTES ANNOTATED OF THE STATE OF NEW HAMPSHIRE
TITLE LII. ACTIONS, PROCESS, AND SERVICE OF PROCESS
CHAPTER 507. ACTIONS
FRIVOLOUS LAWSUITS AND PUNITIVE DAMAGES

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Current through End of 2002 Reg. Sess.

507:15 Penalties for Frivolous Actions.

If, upon the hearing of any contract or tort action, it clearly appears to the court that the action or any defense is frivolous or intended to harass or intimidate the prevailing party, then the court, upon motion of the prevailing party or on its own motion, may order summary judgment against the party who brought such action or raised such defense, and award the amount of costs and attorneys' fees incurred by the prevailing party plus $1,000 to be paid to the prevailing party, provided such costs and fees are reasonable. The trial judge shall also report such conduct to the supreme court committee on professional conduct.

HISTORY

Source. 1986, 227:3, eff. July 1, 1986. 1996, 2:2, eff. July 1, 1996.

Amendments--1996. Inserted "or intimidate" following "to harass", substituted "order summary judgment" for "award" preceding "against the party" and inserted "and award" preceding "the amount of costs" and "plus $1,000 to be paid to the prevailing party" preceding "provided such costs" in the first sentence.

N.H. Rev. Stat. § 507:15

NH ST § 507:15

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THE STATE OF NEW HAMPSHIRE
INSURANCE DEPARTMENT

56 Old Suncook Road
Concord, New Hampshire 03301-5151

Roger A. Sevigny
Commissioner

APPENDIX I

October 1, 2003

VIA FACSIMILE AND US MAIL

Anne Edwards, Senior Assistant Attorney General
NH Department of Justice
33 Capitol Street
Concord, NH 03301

Re: HB 244 – Landowner Liability and Snowmobile Trails

Dear Attorney Edwards:

As you may know, on January 10, 2003 the NH Insurance Department conducted a survey of the 20 highest volume property insurance carriers in the state in contemplation of committee activity on House Bill 244. The Department's survey revealed that of the 17 respondents to the survey, 16 of the companies, or 94%, will write or will renew coverage for landowners who permit snowmobile trail access on their property, provided there are no other underwriting issues presented. These companies state that the presence of a snowmobile trail, or participation in the New Hampshire Bureau of Trails Program, alone, would not result in denial or non-renewal of coverage. These companies informed the Department that they do not have underwriting guidelines in place that disqualify a landowner for coverage if a snowmobile trail crosses their property. The companies surveyed stated they were aware of the statutory immunity provisions currently existing under RSA 215-A:34,II. Additionally, they stated they were aware of the primary insurance coverage provided by the State of New Hampshire and the coverage carried by the New Hampshire Snowmobile Association.

I trust this information is helpful. If we can answer any further questions or provide additional information, please contact me at 271-2261.

Very truly yours,

Kathleen L. Belanger
Director, Consumer Services and Enforcement

KLB/kb
cc: Roger Sevigny, Insurance Commissioner

Committee Report

STATE OF NEW HAMPSHIRE

SENATE

REPORT OF THE COMMITTEE

Date:

THE COMMITTEE ON Wildlife and Recreation

to which was referred House Bill 244

AN ACT (New Title) establishing a committee to study landowner liability for owners providing public access to snowmobile trails.

VOTE: 4-0

2003-1293s

Having considered the same, report the same with the following amendment and recommend that the bill: **AS AMENDED OUGHT TO PASS.**

Senator Sheila Roberge
For the Committee

HB244 Docket

Next|Prev|Results List|Main|Bill Status

Bill Title: (New Title) establishing a committee to study landowner liability for owners providing public access to snowmobile trails.

Date	Body	Description
1/9/2003	H	Introduced and ref to Judiciary; HJ8, p112
1/14/2003	H	Copy to Chairman on 1/13/2003
1/15/2003	H	Hearing Feb 5 9:30 RM208,LOB
2/5/2003	H	Maj Report OTP/AM for Feb 13 (Vote 18-1;CC)
2/5/2003	H	Prop Comm Am{0132}(New Title); HC 13, p266-267
2/13/2003	H	Passed with Am; HJ 16, p345-346 + 353
3/27/2003	S	Introduced and Ref. to Wildlife & Recreation; SJ 10, Pg.214
4/11/2003	S	Hearing; April 15, 2003, Room 104, LOB, 2:00 p.m.; SC18
4/18/2003	S	Committee Report; Ought to Pass with Amendment{1293}, [04/24/03]; SC19, Pg.6
4/24/2003	S	Committee Amendment{1293}, AA, VV; SJ 14, Pg.338-339
4/24/2003	S	Ought to Pass with Amendment{1293}, MA, VV; OT3rdg; SJ 14, Pg.339
4/24/2003	S	Passed by 3rd Reading Resolution; SJ 14, Pg.340
5/8/2003	H	House Conc with Sen Am, Rep Rowe MA VV; HJ 40, p1276
5/15/2003	S	Enrolled
5/15/2003	H	Enrolled; HJ 45, p1435
5/28/2003	H	Became Law Without Signature on 5/28/2003 Eff: 5/28/2003 Chap: 0077

Next|Prev|Results List|Main|Bill Status

Docket Abbreviations