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## States' Recreational Use Statutes: *New Hampshire*



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# A National Agricultural Law Center Research Publication

## States' Recreational Use Statutes: New Hampshire

**N.H. RSA § 212:34 ; § 508:14**

*Current through Chapter 143 of the 2022 Reg. Sess.*

### **§ 212:34 Duty of Care.**

#### **I. In this section:**

(a) “Charge” means a payment or fee paid by a person to the landowner for entry upon, or use of the premises, for outdoor recreational activity. A contribution or other voluntary payment not required to be made to use such land shall not be considered a charge or fee within the meaning of this section. In addition, a lease for a nominal fee of such land for said purposes to the state or any political subdivision thereof, or to any nonprofit corporation, trust, or association, shall not be considered a charge.

(b) “Landowner” means an owner, lessee, holder of an easement, occupant of the premises, or person managing, controlling, or overseeing the premises on behalf of such owner, lessee, holder of an easement, or occupant of the premises, including the state or any political subdivision.

(c) “Outdoor recreational activity” means outdoor recreational pursuits including, but not limited to, hunting, fishing, trapping, camping, horseback riding, bicycling, water sports, winter sports, snowmobiling as defined in RSA 215-C:1, XV, operating an OHRV as defined in RSA 215-A:1, V, hiking, ice and rock climbing or bouldering, or sightseeing upon or removing fuel wood from the premises.

(d) “Premises” means the land owned, managed, controlled, or overseen by the landowner upon which the outdoor recreational activity subject to this section occurs. For the purpose of this section, “land” shall include railroad property and railroad rights-of-way to which public access is permitted.

(e) “Ancillary facilities” means facilities commonly associated with outdoor recreational activities, including but not limited to, parking lots, warming shelters, restrooms, outhouses, bridges, and culverts.



II. A landowner owes no duty of care to keep the premises safe for entry or use by others for outdoor recreational activity or to give any warning of hazardous conditions, uses of, structures, or activities on such premises to persons entering for such purposes, except as provided in paragraph V.

II-a. Except as provided in paragraph V, a landowner who permits the use of his or her land for outdoor recreational activity pursuant to this section and who does not charge a fee or seek any other consideration in exchange for allowing such use, owes no duty of care to persons on the premises who are engaged in the construction, maintenance, or expansion of trails or ancillary facilities for outdoor recreational activity.

III. A landowner who gives permission to another to enter or use the premises for outdoor recreational activity does not thereby:

- (a) Extend any assurance that the premises are safe for such purpose;
- (b) Confer to 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 V.

IV. Any warning given by a landowner, whether oral or by sign, guard, or issued by other means, shall not be the basis of liability for a claim that such warning was inadequate or insufficient unless otherwise required under subparagraph V(a).

V. 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;
- (b) For injury suffered in any case where permission to enter or use the premises for outdoor recreational activity was granted for a charge other than the consideration if any, paid to said landowner by the state;
- (c) When the injury was caused by acts of persons to whom permission to enter or use the premises for outdoor recreational activity was granted, to third persons as to whom the landowner owed a duty to keep the premises safe or to warn of danger; or



(d) When the injury suffered was caused by the intentional act of the landowner.

VI. Except as provided in paragraph V, no cause of action shall exist for a person injured using the premises as provided in paragraph II, engaged in the construction, maintenance, or expansion of trails or ancillary facilities as provided in paragraph II-a, or given permission as provided in paragraph III.

VII. If, as to any action against a landowner, the court finds against the claimant because of the application of this section, it shall determine whether the claimant had a reasonable basis for bringing the action, and if no reasonable basis is found, shall order the claimant to pay for the reasonable attorneys' fees and costs incurred by the landowner in defending against the action.

VIII. It is recognized that outdoor recreational activities may be hazardous. Therefore, each person who participates in outdoor recreational activities accepts, as a matter of law, the dangers inherent in such activities, 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 outdoor recreational participant 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 objects or persons.

#### **§ 508:14 Landowner Liability Limited.**

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.

II. Any individual, corporation, or other nonprofit legal entity, or any individual who performs services for a nonprofit entity, that constructs, maintains, or improves trails for public recreational use shall not be liable for personal injury or property damage in the absence of gross negligence or willful or wanton misconduct.

III. An owner of land who permits another person to gather the produce of the land under pick-your-own or cut-your-own arrangements, provided said person is not an employee of the landowner and notwithstanding that



the person picking or cutting the produce may make remuneration for the produce to the landowner, shall not be liable for personal injury or property damage to any person in the absence of willful, wanton, or reckless conduct by such owner.

IV. In this section, “land” shall include railroad property and railroad rights-of-way. A contribution or other voluntary payment not required to be made to use such land shall not be considered a charge or fee within the meaning of this section. Nor shall a lease of such land for said purposes to the state or any political subdivision thereof or to any nonprofit corporation, trust, or association be considered a charge.

