

Department of Legislative Services
Maryland General Assembly
2014 Session

FISCAL AND POLICY NOTE

Senate Bill 533 (Senator Edwards)
Judicial Proceedings

Forests and Parks - Public Recreation on Private and State-Owned Land - Off-Highway Vehicles

This bill expands the applicability of specified responsibility and liability provisions currently applicable to cross-country skiing and the use of snowmobiles permitted by a landowner on the landowner's real property in Garrett County. The bill makes the provisions applicable statewide and applies them to both cross-country skiing and the use of off-highway vehicles (OHV) in general.

Fiscal Summary

State Effect: The bill is not expected to affect State finances.

Local Effect: None.

Small Business Effect: Potential meaningful.

Analysis

Bill Summary: As a result of the bill's expansion of the applicability of specified existing provisions, the bill establishes that if a landowner agrees to the use of a defined part of the landowner's real property for cross-country skiing or for use of an OHV, users impliedly consent to (1) adhere to every law; (2) observe every safety precaution and practice; (3) take every precaution against fire; and (4) assume all responsibility and liability for the person's safety and property. If a landowner leases a defined part of the landowner's property for those uses, specified provisions that describe a permission card to be signed by a landowner and a user, establishing permission to enter the property and agreement regarding responsibility and liability, are applicable. The Department of

Natural Resources (DNR) must adopt regulations to permit such use of a landowner's real property. "OHV" means a motor-assisted or motor-driven vehicle that is (1) designed for or capable of cross-country travel on or directly over land, snow, or other natural terrain and (2) not intended for use on public roads.

Current Law: In order to encourage a landowner to make land, water, and airspace above the land and water areas available to the public for any recreational and educational purpose, certain protections from liability are established in statute for those landowners that do so (referred to by the Maryland Court of Special Appeals, in *Fagerhus v. Host Marriott Corp.*, 143 Md. App. 525 (2002), as "Maryland's recreational use statute"). Generally an owner of land, including a local government and a landowner that has leased land to the State or any of its political subdivisions (for any recreational or educational purpose), is not liable for injury to persons that use the land for recreational or educational purposes upon invitation or permission from the owner, provided it is at no charge. The owner is not protected from liability for injury where the owner charges the person for the use of the land. An owner is also not protected from liability resulting from willful or malicious failure to guard or warn against a dangerous condition, use, structure, or activity.

To facilitate a method of providing written consent, the Secretary of Natural Resources is required to distribute specified permission cards to be available to the public and landowners. On the card, the landowner grants permission to enter the property and the user of the land agrees to specified assumption of responsibility and liability. The card contains signature lines for both the landowner and user.

If a landowner in Garrett County agrees to the use of a defined part of the landowner's real property for cross-country skiing or the use of snowmobiles, a user impliedly consents to (1) adhere to every law; (2) observe every safety precaution and practice; (3) take every precaution against fire; and (4) assume all responsibility and liability for the person's safety and property. If a landowner leases a defined part of the landowner's property for those uses, specified provisions above that describe a permission card to be signed by a landowner and a user are applicable. DNR must adopt regulations to permit such use of a landowner's real property.

Background: In *Fagerhus v. Host Marriott Corp.*, the Maryland Court of Special Appeals discussed the origin of Maryland's recreational use statute, indicating that it had been enacted in 1966 in response to a 1965 recommendation of the Council of State Governments. The council had indicated that while government acquisition and operation of outdoor recreational facilities was increasing, a significant amount of private land could add to the outdoor recreation resources available. Establishing protection from liability of landowners that allow use of their land without charge was based on the

theory that it was “not reasonable to expect such owners to undergo the risks of liability for injury to person and property attendant upon the use of their land by strangers from whom the accommodating owner receives no compensation or other favor in return.”

The existing provisions regarding cross-country skiing and the use of snowmobiles in Garrett County (which are made more broadly applicable under the bill), however, also refer to the leasing of land for such uses, and also make the provisions describing the permission card applicable in such situations.

DNR allows for off-road vehicle (ORV) use on certain designated trails on DNR land, subject to registration and other requirements. The definition of ORV is similar to, but broader than, the definition of OHV in the bill. DNR advises that greater use of OHVs on private land may ease the necessity of using DNR public land.

Small Business Effect: Small businesses in rural areas that may serve OHV users (gas stations, hotels/motels, auto-supply stores, and restaurants) could be meaningfully impacted to the extent the bill results in more land being made available for OHV use.

Additional Information

Prior Introductions: None.

Cross File: HB 660 (Delegate Myers, *et al.*) - Environmental Matters.

Information Source(s): Department of Natural Resources, Department of Legislative Services

Fiscal Note History: First Reader - February 10, 2014
ncs/lgc

Analysis by: Scott D. Kennedy

Direct Inquiries to:
(410) 946-5510
(301) 970-5510