

LIABILITY FOR RECREATIONAL USER: ADD AVIATION ACTIVITIES

Phone: (517) 373-8080
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House Bill 4244 reported from committee w/o amendment
Sponsor: Rep. Peter Pettalia
Committee: Judiciary
Complete to (3-25-15)

Analysis available at
<http://www.legislature.mi.gov>

BRIEF SUMMARY: The bill would extend the same protection from liability to a landowner for injuries to a person using the land for aviation activities as provided for other recreational activities such as fishing, snowmobiling, or hiking, to name a few, under the state's recreational use law.

FISCAL IMPACT: The bill appears to have no direct fiscal impact on the state or local units of government. It would limit private lawsuits.

THE APPARENT PROBLEM:

Under the state's recreational use law, a landowner is not liable for injuries to a person who is on the property for the purposes of fishing, hunting, snowmobiling or skiing, hiking, and so on. The immunity from liability applies whether the injured person was trespassing on the property or was engaging in the recreational activity under permission from the landowner. As aviation-related activities are not specifically mentioned in the statute, some feel it is unclear if a landowner would be liable for injuries incurred by a person who lands a hot air balloon or small plane or glider on the property. Some persons who own private air strips on their property are asking to have the same immunity as others whose lands are used by people for various recreational activities.

THE CONTENT OF THE BILL:

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

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

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

MCL 324.73301

BACKGROUND INFORMATION:

A similar bill—House Bill 5178—passed the House in the 2013-14 legislative session.

ARGUMENTS:

For:

The bill would simply add "aviation activity" to the list of recreational activities for which an injured person could not sue the landowner and would define the term. Apparently, there are more than 500 privately owned landing strips in the state. For the most part, they are for the personal use of the landowner or the landowner's friends and family. Many are little more than a mowed strip of grass in a field. However, it is not uncommon for pilots of other aircraft, such as hot air balloons and helicopters, to land on these private airstrips or open fields without permission.

Like many recreational activities, ballooning, gliding, ultralights, etc., are not without inherent dangers. Landowners would like the same protection from lawsuits when a person engaging in an aviation activity is injured on their lands that is currently available when a person hiking on the land sprains an ankle or a fisherman falls in the river. Supporters of the bill say it is good for spurring economic activity in the state as private airstrip owners may be more willing to extend permission for pilots to use the strip if they do not fear lawsuits. If more airstrips are available for small aircraft to use, it may attract pilots from neighboring states and encourage in-state pilots to visit more areas in the state, all which may increase revenue from tourist-type activities (restaurants, golfing, gas tax revenue, and so on). Having more private airstrips registered would also aid responders when responding to emergencies.

Moreover, the immunity only applies if the property owner does not charge for using the airstrip or if the landowner did not engage in conduct constituting gross negligence or willful and wanton misconduct. According to the Aircraft Owners and Pilots Association, at least 23 states have adopted similar legislation and have done so with positive results.

Against:

When legislation was being discussed last session, opponents at that time said there is a huge distinction between traditional recreational land uses for which a landowner is not liable for injuries and giving immunity to private airstrip owners. For the traditional activities, it is understood that a person is taking the land "as is." With the exception perhaps of snowmobiling, most of the activities are done at a slow pace and dangers inherent to forested or undeveloped land can be easily identified and avoided if the user

keeps a sharp eye. Being in a hot air balloon, glider, or small aircraft that suddenly loses lift or experiences mechanical problems is a different situation altogether. For the sake of survival, the craft must be put down quickly. Trying to ascertain from a few thousand feet up if there are rocks on the airstrip or perhaps a tractor parked on it is not feasible. There is a reasonable expectation that something meant for a small aircraft to land on is therefore safe for that purpose at any given time.

Moreover, under the bill, the immunity would apply even if the landowner had given permission to the pilot, yet had not taken steps to ensure that potential dangers had been removed. Further, though the bill allows a lawsuit for "gross negligence" to go forward, the term has been interpreted by the courts as needing to show intent to do harm and thus has become a very high bar indeed to overcome.

Response:

With the exception of an emergency, most pilots arrange their landings ahead of time. According to committee testimony, it is standard practice for a pilot to contact the owner of a private airstrip and ask permission to use the strip. The owner, in turn, typically questions the pilot to ascertain such things as size of the plane and skill level of the pilot (e.g., some planes may need a longer strip) before granting permission. This back and forth conversation should highlight any known defects or issues regarding the appropriateness of the private airstrip for a particular aircraft. Further, though there have been some accidents involving private airstrips, there are no known lawsuits charging negligence. Lastly, federal law regulates the conduct and responsibilities of pilots which includes prohibiting the careless or reckless operation of aircraft that could endanger the life or property of another.

Against:

One airstrip owner, who has been plagued by trespassers because his airstrip is near prime fishing opportunities, opposed the bill on the grounds that it blends trespassers and invitees for aviation activity in the same statute. This is the wrong approach in this case. Just last session, in Public Act 226 of 2014, the Legislature created the Trespass Liability Act, which says, generally speaking, that a landowner owes no duty of care to a trespasser, and, except for some limited circumstances, is not be liable to the trespasser for physical harm caused by the landowner's failure to exercise reasonable care to put the land in a reasonably safe condition. Mixing up trespassers and invitees in House Bill 4244 adds uncertainty in this area, according to this airstrip owner.

POSITIONS:

Representatives of the Michigan Private Airport Owners Association testified in support of the bill. (3-17-15)

The Aircraft Owners and Pilots Association provided written testimony supporting the bill. (3-17-15)

A representative of the Recreational Aviation Foundation testified in support of the bill. (3-17-15)

A representative of King Trout Airport testified in opposition to the bill. (3-10-15)

A representative of the Michigan Association for Justice testified in opposition of the bill. (3-10-15)

A representative of the Negligence Law Council of the State Bar of Michigan testified in opposition to the bill. (3-10-15)

Legislative Analyst: Susan Stutzky
Fiscal Analyst: William E. Hamilton

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