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Bill Analysis
Legislative Service Commission

H.B. 286

124th General Assembly
(As Reported by H. Civil and Commercial Law)

Reps. Distel, Latell, Key, Reinhard, Britton, Hollister, Jerse, Boccieri, Rhine, Krupinski, Coates, Allen, Seitz, Grendell, Manning, Beatty, Core

BILL SUMMARY

- Expands the definition of "recreational user," for purposes of the statutory immunity from liability granted to an owner, lessee, or occupant of premises for injury to person or property caused by an act of a recreational user, to specifically include a person to whom permission has been granted, generally without the payment of a fee or consideration to the owner, lessee, or occupant of premises, to enter upon the premises to operate a snowmobile or all-purpose vehicle.
- Deletes from the definition of "premises" for purposes of the recreational user statute, all state-owned lands, ways, and waters, including any buildings and structures on those lands, ways, and waters, leased to a corporation.

CONTENT AND OPERATION

Existing law

The recreational user statute currently provides that no owner, lessee, or occupant of *premises* (R.C. 1533.181(A)--not in the bill) (see below for definitions of terms):

- (1) Owes any duty to a *recreational user* to keep the premises safe for entry or use;
- (2) Extends any assurance to a recreational user, through the act of giving permission, that the premises are safe for entry or use;
- (3) Assumes responsibility for or incurs liability for any injury to person or property caused by any act of a recreational user.

The above provision applies to the owner, lessee, or occupant of privately owned, nonresidential premises, whether or not the premises are kept open for public use and whether or not the owner, lessee, or occupant denies entry to certain individuals (R.C. 1533.181(B)--not in the bill).

The following terms are defined for purposes of the recreational user statute (R.C. 1533.18):

"Premises" means all privately owned lands, ways, waters, and any buildings and structures thereon, and all state-owned lands, ways, and waters leased to a private person, firm, organization, or *corporation*, including any buildings and structures thereon. (See **COMMENT 1**.)

"Recreational user" means a person to whom permission has been granted, without the payment of a fee or consideration to the owner, lessee, or occupant of premises, other than a fee or consideration paid to the state or any agency thereof, to enter upon premises to hunt, fish, trap, camp, hike, swim, or engage in other recreational pursuits. (See **COMMENT 2**.)

Operation of the bill

The bill expands the definition of "recreational user" for purposes of the recreational user statute, to specifically include a person to whom permission has been granted, without the payment of a fee or consideration to the owner, lessee, or occupant of premises, other than a fee or consideration paid to the state or any agency of the state, to enter upon premises to *operate a snowmobile or all-purpose vehicle* (see definition of "all-purpose vehicle," below), in addition to the activities specified in current law as described above, or to engage in other recreational pursuits (R.C. 1533.18(B)). (See **COMMENT 3**.) The effect of the bill's expansion of the definition of "recreational user" to include a person who enters upon premises under the circumstances described in the preceding sentence to operate a snowmobile or all-purpose vehicle, is that an owner, lessee, or occupant of premises: (1) owes no duty to that person to keep the premises safe for entry or use, (2) does not extend any assurance to that person, through the act of giving permission, that the premises are safe for entry or use, and (3) does not assume responsibility for or incur liability for any injury to person or property caused by an act of that person.

The bill deletes from the definition of "premises" for purposes of the recreational user statute all state-owned lands, ways, and waters leased to a *corporation*, including any buildings and structures on those lands, ways, and waters (R.C. 1533.18(A)).

The bill defines "all-purpose vehicle" as having the same meaning as in the Special Vehicles Law, that is, any self-propelled vehicle designed primarily for cross-country travel on land and water, or on more than one type of terrain, and steered by wheels or caterpillar treads, or any combination thereof, including vehicles that operate on a cushion of air, vehicles commonly known as all-terrain vehicles, all-season vehicles, mini-bikes, and trail bikes, but *excluding* any self-propelled vehicle not principally used for purposes of personal transportation, any vehicle principally used in playing golf, any motor vehicle or aircraft required to be registered under the Motor Vehicle Licensing Law or the Aircraft and Aeronautics Law, and any vehicle excepted from the definition as a motor vehicle by the Motor Vehicle Law. (R.C. 1533.18(C) and R.C. 4519.01(B)--not in the bill.)

COMMENT

1. The recreational user statute has been interpreted to include land owned by political subdivisions. *Johnson v. Village of New London* (1988), 36 Ohio St.3d 60. Specifically, in *Johnson*, the Ohio Supreme Court held as follows:

A political subdivision has derivative immunity from tort liability to a recreational user of municipal property to the same extent that an owner of private land has, pursuant to R.C. 1533.181, immunity from tort liability to a recreational user of private property. (Citations omitted.) (Syllabus, at p. 60.)

2. In determining whether a person is a recreational user, the inquiry should focus on the character of the property on which the injury occurred and the nature and scope of the activities for which the premises are held open to the public. *Miller v. City of Dayton* (1989), 42 Ohio St.3d 113. According to the Supreme Court in that case, generally, recreational premises "include elements such as land, water, trees, grass, and other vegetation" and often have features such as "walks, fences and other improvements" and man-made structures that must be consistent with the purpose envisioned in the legislative grant of immunity. *Miller*, at pp. 114-115. The Court further noted that the phrase "other recreational pursuits" has been broadly construed by the Supreme Court and courts of appeals (citations omitted) to include *snowmobiling*, sledding, horseback riding, watching others swim, motorcycle riding, swinging, merry-go-round rides, softball, and watching others play baseball. *Miller*, at p. 115.

3. *Johnson v. Village of New London, supra*, involved a snowmobiler who was injured while riding his snowmobile in a village park. The Supreme Court decided that the village had derivative immunity from tort liability to the

snowmobiler under the recreational user statute. The bill codifies this judicial interpretation of the recreational user statute.

HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	06-05-01	p. 623
Reported, H. Civil & Commercial Law	11-21-02	p. 2112

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