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# Arkansas' Recreational Use Statute

## Introduction

Farmers and landowners have long looked for ways to diversify their earning potential. In recent years, opening up property for hunting, camping or other recreational uses has been promoted as a way to broaden a landowner's income.

But opening up property to the public could also expose a farmer to new liabilities if someone is injured on the land. Recognizing property owners' liability concerns, Arkansas lawmakers passed a law in 1965 to "encourage owners of land to make land and water areas available to the public for recreational purposes by limiting their liability toward persons entering thereon for such purposes."<sup>i</sup>

The recreational use law altered a property owner's legal obligations to keep premises safe for entry or use by others for recreational purposes, and established qualifications for the law's protection.<sup>ii</sup>

This fact sheet provides readers with a general overview of Arkansas' Recreational Use Statute, when liability can be limited and situations in which an owner can lose the protections of the law. It should not be construed as providing legal advice.

## Owner and Recreational Use Defined

The definition of "owner" in the recreational use law is broad and includes "the possessor of a fee interest, a tenant, lessee, holder of a conservation easement ... occupant, or person in control of the premises."<sup>iii</sup> This means the law applies to the actual owner of the land as well as a tenant who is renting the land.

"Recreational purpose" includes "hunting, fishing, swimming, boating, camping, picnicking, hiking, pleasure driving, nature study, water skiing, winter sports, spelunking, aviation, viewing or enjoying historical, archeological, scenic, or scientific sites, or any other educational, exercise, pleasure, or relaxation activity undertaken on another's land."<sup>iv</sup>

## Landowners' Responsibilities and Liabilities

Arkansas landowners have different levels of responsibility for visitors on their land. For example, an owner has less responsibility or liability for a trespasser's injury than he or she would for an invited guest.<sup>v</sup>

Various court cases have established precedence for a landowner's "duty of care," or

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the duty of a person or business to act toward others and the public with vigilance, caution and prudence.

Under Arkansas common law, there are three classes of third parties:<sup>vi</sup>

(1) Trespasser

For trespassers, an owner is only liable for injuries caused by the owner's "willful or wanton misconduct."<sup>vii</sup> The Arkansas Supreme Court has explained "willful and wanton misconduct" to be where a landowner, lessee, or occupant "shows a deliberate intention to harm or utter indifference to, or conscious disregard of, the safety of others."<sup>viii</sup>

However, a landowner has the duty of providing reasonable care to protect a child against dangers that could attract a child, such as a pile of sand or a trampoline on the property.<sup>ix</sup>

(2) Licensee

Landowners have a higher degree of responsibility for warning licensees of hidden dangers than they do adult trespassers. A licensee is a person with permission to enter property owned by another party.<sup>x</sup>

(3) Invitee

For an invitee, or a person with the express or implied invitation to enter the property, landowners are required to keep the property in a reasonably safe condition for the benefit of the invitee.<sup>xi</sup> Landowners must demonstrate the highest level of care for invited guests.

Arkansas' Recreational Use Statute states that a landowner is not responsible for or liable for injury to person or property caused by an act or omission of the person, or for injury caused by any natural or artificial condition, structure or personal property on the land.<sup>xii</sup>

## Qualifying for Protection

In order to qualify for the protections of Arkansas' Recreational Use Statute, an owner cannot

charge any person to use the owner's property for a recreational purpose.

The law defines "charge" to be "an admission fee for permission to go upon or use the land."<sup>xiii</sup> However, "admission fee" is not clearly defined in the law, and no Arkansas court has ruled on its precise definition.

The law, however, does contain three specific exceptions from the definition of "charge."<sup>xiv</sup>

Exceptions:

- The sharing of game, fish, or other products of recreational use.
- Contributions in kind, services, or cash paid to reduce or offset costs and eliminate losses from recreational use.

In looking at the "contributions in kind, services, or cash paid to reduce or offset costs and eliminate losses from recreational use," the Eighth Circuit Court of Appeals has found the U.S. Corps of Engineers did not charge a recreational user when the fee charged was to help offset costs and not for entering the recreational area.<sup>xv</sup>

- The consideration or something of value from a tenant given to the owner, received by an owner to lease the property.

An Arkansas court has not interpreted this leasing exception, but the leasing exception could be viewed to allow an owner to receive compensation from a leasing arrangement.

Arkansas owners should check with a licensed attorney to make sure any fees collected would not be considered a charge under Arkansas law.

## Exceptions to Owner Immunity

There are specific situations noted in the Recreational Use Statute where landowners may be liable for a recreational user's injuries.

One instance is if property owners charge recreational users for entrance. In that situation, the recreational use statute as discussed above does not protect the owner. Nor does the law offer any protection to owners who maliciously fail to “guard or warn against an ultra-hazardous condition, structure, personal property, use or activity known to the owner to be dangerous.”<sup>xvi</sup>

In *Carr v. Nance*, the Arkansas Supreme Court upheld a jury’s finding in favor of a four-wheeler rider who sued a landowner for injuries suffered when his vehicle collided with a cable strung by the landowner’s son on a path in a defunct theme park.<sup>xvii</sup>

The cable strung between two trees was not marked and was hung at a height that would hit a rider but not a four-wheeler. The cable was not on the boundary of the property to prevent entry, which the court determined to be a common practice.

In *Carr*, the justices agreed with the lower court that the hanging of the cable was ultra-hazardous because the cable was unmarked, strung at a dangerous height, and in a location known by the owner to be used by four-wheeler users. The conditions were ultra-hazardous, according to the lower court’s interpretation, because they could not “(1) be performed without risk of serious harm to the person or another, regardless of any precaution taken; and (2) does not normally occur in that community.”<sup>xviii</sup>

Court justices also agreed with the lower court that the owner’s failure to warn was “malicious” because the owner had knowledge of the strung cable and an opportunity to warn but did not issue a warning.

## Conclusion

Arkansas’ recreational use law is a powerful tool to potentially limit an owner’s liability when opening his or her land for recreational uses. An owner has differing degrees of responsibility or liability for

injuries on his or her property. Generally, an owner has limited liability when not charging the person to use the property for a recreational purpose.

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This fact sheet only provides a review of Arkansas’ Recreational Use Statute. Arkansas recently enacted an agritourism statute that also reduces the duty of care owed to agritourism activity participants. This fact sheet does not discuss the agritourism statute but an agritourism operator should be aware of its existence. (Ark. Code Ann. §§ 2-11-101 to 2-11-107).

## References

- Ark. Code Ann. §§18-11-301 through 18-11-307 (2011).
- Carlton v. Cleburne County, Arkansas*, 93 F3d 505 (8th Cir. 1996).
- Terence J. Centner, *Revising State Recreational Use Statutes to Assist Private Property Owners and Providers of Outdoor Recreational Activities*, 9 BUFE ENVTL. L.J. 1 (2001).
- Terence J. Centner, “New State Liability Exceptions for Agritourism Activities and the Use of Liability Releases,” *Agriculture and Human Values*, 27(July): 189-198.
- Jenkins v. Ark. Power & Light Co.*, 140 F3d 1161 (8th Cir. 1998).
- Mandel v. United States*, 545 F Supp. 907 (W.D. Ark. 1982), *rev’d*, 719 F2d. 963 (8th Cir. 1983).
- Mandel v. United States*, 793 F2d 964 (8th Cir. 1986).
- Harrison M. Pittman, *The Arkansas Recreational-Use Statute: Past, Present, and Future Application for Arkansas Landowners and Recreational Users of Land*, 60 ARK. L. REV. 849 (2008).
- Roten v. United States*, 850 F Supp. 786 (W.D. Ark. 1994), *aff’d*, 39 F3d 1184 (8th Cir. 1994).

## Footnotes

- <sup>i</sup> Ark. Code Ann. § 18-11-301.
- <sup>ii</sup> Ark. Code Ann. § 18-11-304.
- <sup>iii</sup> Ark. Code Ann. § 18-11-302.
- <sup>iv</sup> Ark. Code Ann. § 18-11-302(5)(A)-(O).
- <sup>v</sup> *Autozone v. Horton*, 87 Ark. App. 349, 353-54 (Ark. Ct. App. 2004).
- <sup>vi</sup> Ark. Code Ann. § 18-60-108(a)(1)-(2).
- <sup>vii</sup> Ark. Code Ann. § 18-60-108(a)(1)-(2).
- <sup>viii</sup> *Bader v. Lawson*, 320 Ark. 561, 565 (Ark. 1995).
- <sup>ix</sup> *Bader*, 320 Ark. at 565.
- <sup>x</sup> *Bader*, 320 Ark. at 564.
- <sup>xi</sup> *Autozone*, 87 Ark. App. at 354.
- <sup>xii</sup> Ark. Code Ann. § 18-11-305.
- <sup>xiii</sup> Ark. Code Ann. § 18-11-302(1).
- <sup>xiv</sup> Ark. Code Ann. § 18-11-302(1)(A)-(B).
- <sup>xv</sup> *Greika v. United States*, 281 F. App'x 631 (8th Cir. 2008).
- <sup>xvi</sup> Ark. Code Ann. § 18-11-307.
- <sup>xvii</sup> *Carr v. Nance*, 2010 Ark. 497.
- <sup>xviii</sup> *Carr*, 2010 Ark. at 20.

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