



AGRICULTURAL LAW AND TAXATION BRIEFS

DEPARTMENT OF AGRICULTURAL AND CONSUMER ECONOMICS, UNIVERSITY OF ILLINOIS AT URBANA-CHAMPAIGN

NEW RECREATIONAL USE ACT RULES FOR ILLINOIS LANDOWNER LIABILITY: TWO STEPS FORWARD, ONE STEP BACK

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Synopsis: Recent amendments to the Illinois Recreational Use Act, effective August 18, 2005, have reduced the liability risk for Illinois landowners and tenants who, at no charge, allow others on their lands for hunting and recreational shooting. However, the amendments do not reduce a landowner's liability risk if the entrant is allowed on the property for other recreational purposes like fishing or hiking. In some circumstances, a landowner's liability risk is actually increased by the amendments. Liability risks related to snowmobiles and ATVs are not affected.

Introduction

When is a landowner or tenant liable for the injuries of someone who enters their land for recreational purposes with the landowner or tenant's permission? The authors attempted to answer this question in a previous [AGRICULTURAL LAW AND TAXATION BRIEF](#) in May 2004.

As noted in the previous article, the liability risk to landowners ("Landowner" includes a tenant in possession of the land) increased when the Illinois Supreme Court decided *Hall v. Henn*, 208 Ill. 2d 325, 802 N.E.2d 797, in December 2003. The *Hall v. Henn* decision upset the long-settled expectation of many rural landowners by narrowing the scope of liability protection available under the [Illinois Recreational Use Act, 745 ILCS 65](#).

In sum, after the *Hall v. Henn* decision the Illinois Recreational Use Act offered protection from liability *only* to those landowners who opened their property to the *general public* for recreational use. The Act no longer protected landowners who allowed only invited or selected guests onto their land for recreational purposes.

Previously, the authors called on the Illinois legislature to overrule the *Hall v. Henn* decision and amend the Recreational Use Act with a goal of rebalancing the state's goals of encouraging the maintenance of safe premises and encouraging access to land by the general public for recreational purposes. See Uchtmann & Endres, *Recreational Use of Land & Liability*

Risk: Is New Legislation Needed?, ILLINOIS RURAL POLICY DIGEST, Vol. 2, No. 3 (Spring 2004). A link to the article and a complete description of the legislative proposal is available [here](#). In 2005, the legislature acted.

2005 Legislative Amendments to the Recreational Use Act

The Illinois Supreme Court in *Hall v. Henn* correctly recognized the importance of preserving some form of premises liability to encourage landowners to keep their property in a reasonably safe condition and to compensate individuals injured as a result of the landowner's negligence or other wrongful acts. On the other hand, the court's ruling that landowner protection under the Recreational Use Act is available only to those landowners who open their property to the general public compelled many landowners to restrict access to all but their closest friends and relatives.

Many users of rural open-space found their access to privately-owned land restricted and their favored recreational activities eliminated or pushed onto already oversaturated public lands. Moreover, a vast area of privately-owned land with high recreational potential remained underutilized within the state.

Accordingly, the 94th Illinois General Assembly (2005) amended the Recreational Use Act to address many of the concerns raised by the Illinois Supreme Court in its *Hall v. Henn* decision and rebalance these competing public policy goals. Specifically, the legislature



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amended three provisions of the Recreational Use Act discussed in sections (a) – (c) below.

(a) One Step Forward: Amending the Act’s Stated Legislative Purpose to Clarify that “Public” Includes “Selected Individuals”

In *Hall v. Henn*, the Illinois Supreme Court ruled that the Recreational Use Act applies only to those landowners who open their property to the “general public” (i.e., everyone). The immediate impact of the decision was to deny landowners the liability protection of the Recreational Use Act unless they open their land to every member of the public. The 2005 amendment to the Recreational Use Act explicitly overruled this interpretation and established that landowners may limit access to their property to only selected individuals while maintaining immunity protection under the Act. See [Illinois Public Act 94-625](#).

(b) A Second Step Forward: Excluding Residential Buildings from Liability Protection

The original 1965 version of the Recreational Use Act only protected owners of land “located outside the corporate limits of a city, village, or incorporated town and not subdivided into blocks and lots.” The Illinois legislature in the mid-1980s removed this restriction and thus opened the Act’s protections to both urban and rural landowners.

In 2005, the Illinois legislature again amended the definition of land to preserve the immunity that was obtained for urban and suburban landowners in the 1987 amendments, but excluded all residential buildings regardless of location. Specifically, the legislature amended the definition of “Land” in the Act to read as follows:

(a) “Land” includes roads, water, watercourses, private ways and buildings, structures, and machinery or equipment when attached to the realty, but does not

include residential buildings or residential property.

Although this amendment eliminated previously available immunity for injuries occurring at the residences of rural landowners, it encourages all landowners to exercise reasonable care in making residential areas safe for permitted visitors. In addition, the amendment furthers the original purpose of the Act – encouraging the opening of true “open space” for outdoor activities.

(c) One Step Back: Narrowing Landowner Immunity to Only Legislatively-Approved Recreational Activities

Perhaps the most important change for Illinois’ rural landowners is the amendment to the definition of “Recreational or Conservation Purpose.” It is important to note that all immunity afforded landowners under the Recreational Use Act is dependent upon the entrants (i.e., recreational users) engaging in a statutorily defined “Recreational or Conservation Purpose” when entering the land. In other words, if an injured entrant is not engaging in a recreational or conservation purpose as defined by the Act, there is no immunity from negligence-based liability for the landowner under the Recreational Use Act.

Under the previous version of the Act, and even after the *Hall v. Henn* decision, landowners had only minimal concerns about this requirement. This is because the statute defined “Recreational or Conservation Purpose” as “any activity undertaken for conservation, resource management, exercise, education, relaxation, or pleasure.” This broad definition afforded landowners certainty that if they allowed an entrant onto the land for a recreational activity, it was likely to meet the broad statutory definition of “Recreational or Conservation Purpose” and the landowner would have the Act’s immunity.

The 2005 amendments to the act eliminated this certainty for landowners by drastically reducing the scope of activities that qualify as a



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“Recreational or Conservation Purpose.” In fact, the legislature amended the definition to include *only* “hunting or recreational shooting” as recreational activities that would provide landowners’ immunity. In so limiting the permitted activities, the legislature has stripped protection from landowners who open their land for any other recreational, educational or conservation purpose, e.g., fishing and hiking, even if the land is opened without restriction to the “general public.”

In other words, landowners opening their land are no longer protected by this Act from premises liability claims unless the injured person was hunting or engaged in recreational shooting. Landowners will receive no statutory protection from this Act against claims from injured hikers, fishers, swimmers, bicyclers, bird watchers, or any other permitted entrant with the exception of hunters or sport shooters. (Note: Landowner immunity may be available under other special laws, e.g., for injuries to persons using snowmobiles or ATVs.)

A Revised Decision-Making Framework for Rural Landowners and Tenants

The May 2004 Agricultural Law and Taxation Brief (referenced above and available at this [link](#)), noted that landowners, in the wake of the *Hall v. Henn* decision, should reassess, perhaps in consultation with their legal advisor and insurance representative, whether they will continue to make their lands available to others for recreational purposes. The authors proposed three options for landowners: (a) open lands to everyone to retain liability protection of the Recreational Use Act; (b) deny access to everyone in order to minimize risk of injuries no longer covered by the Recreational Use Act; or (c) open lands to select persons for recreational activities in spite of increased liability risk.

The 2005 amendments to the Recreational Use Act have changed these options and landowners should again reassess their options for granting permission for recreational use on their land.

OPTION A: LANDS OPEN TO EVERYONE: After *Hall v. Henn*, this was the only option available for landowners who desired to retain the liability protection of the Recreational Use Act. This is no longer the case, as the 2005 amendments allow landowners to grant permission on a selective basis. Individuals that previously allowed unrestricted use, however, may no longer be covered because the only proper recreational purpose is “hunting or recreational shooting.” Accordingly, Option A – opening lands to everyone – will no longer afford a landowner the Act’s protection unless the injured person was hunting or shooting.*

OPTION B: LANDS OPEN TO ALMOST NO ONE: Many landowners adopted this risk management strategy after the *Hall v. Henn* decision and this may remain a preferred strategy for many. Landowners, however, after the 2005 amendments, are now protected by the Recreational Use Act if the injured person was engaged in hunting or recreational shooting, even if other users are usually denied access.*

OPTION C: LANDS REMAIN OPEN TO SELECT INDIVIDUALS: A few landowners after the *Hall v. Henn* decision continued to allow select individuals on their land despite the lack of protection under the Recreational Use Act. These landowners, after the 2005 amendments, now enjoy the Act’s immunity protection if the injured person they selectively allowed onto their property was hunting or sport shooting. Landowners selectively allowing all other types of recreational participants, however, will continue to fall outside the Act’s scope of liability protection.*

UNDER ALL OPTIONS: Landowners should consider liability insurance to manage this risk.

It may not be good public policy to force landowners into this albeit slightly altered but

*Landowners may enjoy immunity from negligence-based premises liability under other laws, e.g., laws limiting liability for injury while using snowmobiles or ATVs. Such laws, e.g., 625 ILCS 40/5-1 and 625 ILCS 5/11-1427 are beyond the scope of this article.



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still limited decision-making framework. Hopefully, the legislature will, in a future legislative session, again amend the Recreational Use Act to broaden the number of recreational activities warranting protection under the Act and restore certainty to landowners who generously open their rural lands to the public for recreational and conservation purposes beyond hunting and recreational shooting.

For a more complete analysis, along with proposed amendments to the Recreational Use Act, see A. Bryan Endres & D. L. Uchtmann, *The Latest Twist on the Illinois Recreational Use of Land and Water Areas Act: Clamping Down on Landowner Immunities*, 29 SOUTHERN ILLINOIS UNIVERSITY LAW JOURNAL 579-603 (Summer 2005).

Summary

Under the 2005 amendments to the Illinois Recreational Use Act, effective August 18, 2005, Landowners who selectively allow others on their lands at no charge to hunt or engage in recreational shooting now have a lower risk of being liable if the entrant is injured. The landowners (including tenants in possession of

land) are now protected from negligence-based premises liability in such circumstances. However, landowners still remain potentially liable for negligence-based premises liability if the injured entrant was on the landowner's property to fish or hike or engage in other recreational activities (except for hunting or recreational shooting under this Act, and except for snowmobile and ATV use under other laws). Also, if landowners previously opened their lands to the general public for non-hunting and non-shooting recreational activity, the liability risk of these landowners has actually increased because of the 2005 amendments. Landowners should be aware of these changes when deciding whether to allow others to use their lands at no charge for various recreational activities. Of course, landowners should also consider liability insurance as a tool to manage their risk if someone were to be injured on their property.

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Under the Illinois Recreational Use Act, should fishing, hiking, and other recreational activities be treated the same as hunting and recreational shooting? Should public policy encourage landowners to open their lands for a broad range of recreational activities, not just hunting & recreational shooting? Effective August 18, 2005 landowners have liability protection under this Act only if the entrant was allowed on landowner's property at no charge for hunting or recreational shooting purposes. However, this limited protection is available even if the landowner permits access to only a few selected persons.