

Resources for Blue Trails



SHUTTERSTOCK

LIABILITY

Liability can be a concern among landowners. The fear of a lawsuit may keep private landowners from opening their land to blue trail users even though they would like to share their land with the public. Public land managers also deal with the issue of liability. Fortunately, most states have enacted laws that, to varying degrees, limit private and public landowner liability. These laws can be useful to you in developing your trail.”

For private lands, these laws are called Recreational Use Statutes. For public lands, the governing law is usually the state’s Governmental Immunity Act or State Tort Claims Act. These laws are important because they can place the burden of responsibility on blue trail users and keep users from shifting that responsibility to private landowners and public land managers.

While most states have laws that limit liability, these laws can vary greatly from state to state. The purpose of this information is to provide a general reference guide for those interested in their state’s liability laws. It is not meant to be the definitive source of information. Contact your state Attorney General, city or county Attorney, or private counsel regarding the status of liability laws in your state.

Recreational Use Statutes: Many landowners are unfamiliar with protection they receive under a Recreational Use Statute. Recreational use statutes are on the books in 49 states, excluding Alaska and the District of Columbia. Under these statutes, a landowner will not be held liable for recreation injuries that result from the landowner’s mere carelessness. To recover damages, an injured person would need to prove that the landowner engaged in willful and wanton misconduct. Only if a fee is charged for access to their property would landowners lose the protection of their

Recreational Use Statute. In addition, under some state Recreational Use Statutes, public entities who own and maintain a trail are considered immune.

American Whitewater has created a [liability and recreational use table](#) as a tool for understanding the differences between state Recreational Use Statutes on a national basis. This table is a valuable tool. However, it is not the final word on liability law in U.S. Exercise good judgment when using this material and verify the status of your state statutes independently with an attorney before relying on this data.

State Tort Claims Act or Governmental Immunity Act: Liability is no less a concern for public landowners; unfortunately, the laws affecting their liability are more complex and less consistent on a state by state basis than those concerning private landowners.

In recent decades, the old doctrine of “sovereign immunity” has been eliminated in almost every state. The idea of sovereign immunity dates back to the English notion that “the King can do no wrong.” Under the doctrine of sovereign immunity, an injured party could not bring a negligence lawsuit against federal, state, or to a limited extent, local governments.

The end of sovereign immunity coupled with record numbers of people using public land has resulted in more and more lawsuits against public parks and recreation sites. Public land managers are therefore acutely aware of liability and necessarily take steps to minimize their chances of being sued. This can result in restricted access for blue trail users as public land managers seek ways to avoid potential injuries and subsequent lawsuits.

Fortunately, there are laws in each state that define the scope of governmental liability. Every state has replaced the doctrine of sovereign immunity with some form of a State Tort Claims Act or Governmental Immunity Act that serves as the primary basis for tort liability for municipal, county, school, and state governmental bodies. Simple awareness of these laws can help land managers make more calculated decisions regarding their liability.

On the federal level, the Federal Tort Claims Act serves as a basis for liability. Many State Tort Claims Acts follow the same format as the federal act. This means that each state has enacted a law that outlines the limit or extent of its liability. In other words, some states are “always subject to liability unless,” while others are “never subject to liability unless...”

To further confuse the issue, some state courts have held that the state Recreational Use Statute is applicable to governmental entities so as to relieve the government of liability for injuries sustained by users of recreational areas. Whether or not a Recreational Use Statute applies to public land depends on the language of the statute and on the case law of each individual state. American Whitewater has created a table of [state Tort Claims Acts or similar statutes](#).

Insurance: Providing insurance is an option. For example, the Hudson River Watertrail Association in New York owns its own campsite. A one million dollar insurance policy for the property runs about \$250 per year. The cost of adding another piece of property to the policy was estimated in 2001 to cost \$50 per year.