

TITLE 36
FISH AND GAME

CHAPTER 16
RECREATIONAL TRESPASS -- LANDHOLDER LIABILITY LIMITED

36-1601. PUBLIC WATERS -- HIGHWAYS FOR RECREATION. (a) Navigable Streams Defined. Any stream which, in its natural state, during normal high water, will float cut timber having a diameter in excess of six (6) inches or any other commercial or floatable commodity or is capable of being navigated by oar or motor propelled small craft for pleasure or commercial purposes is navigable.

(b) Recreational Use Authorized. Navigable rivers, sloughs or streams within the meander lines or, when not meandered, between the flow lines of ordinary high water thereof, and all rivers, sloughs and streams flowing through any public lands of the state shall be open to public use as a public highway for travel and passage, up or downstream, for business or pleasure, and to exercise the incidents of navigation -- boating, swimming, fishing, hunting and all recreational purposes.

(c) Access Limited to Navigable Stream. Nothing herein contained shall authorize the entering on or crossing over private land at any point other than within the high water lines of navigable streams except that where irrigation dams or other obstructions interfere with the navigability of a stream, members of the public may remove themselves and their boats, floats, canoes or other floating crafts from the stream and walk or portage such crafts around said obstruction re-entering the stream immediately below such obstruction at the nearest point where it is safe to do so.

[36-1601, added 1976, ch. 95, sec. 2, p. 367.]

36-1603. TRESPASSING -- HUNTING, FISHING AND TRAPPING. (a) No person shall enter the real property of another and shoot any weapon or enter such property for the purposes of hunting, retrieving wildlife, fishing or trapping in violation of section [18-7008](#), Idaho Code.

(b) No person shall post, sign, or indicate that any public lands within this state, not held under an exclusive control lease, are privately owned lands.

(c) Remedies. Any violation of this section shall subject the violator to the penalties set forth in this title, including, but not limited to, section [36-1402](#) (e), Idaho Code.

(d) Permission forms.

(1) The department shall produce permission forms for a landowner to indicate that a land user has express written permission to use private land. The permission forms produced must contain spaces for all of the information required by section [18-7008](#) (1) (f), Idaho Code. The permission forms must state clearly that the permission may be revoked at any time by the landowner or his agent.

(2) The department shall make the permission forms available on the department's website, in all fish and game offices and in the sheriff's office in each county in the state of Idaho, at no charge to any person owning land in Idaho.

(3) The department shall provide information to anyone holding licenses, tags or permits to take fish or wildlife in Idaho regarding owners' rights and sportsmen's duties, at each point of sale and through

all reasonable means, including on the department's website and through the public media.

(4) The restrictions in this section and section [18-7008](#), Idaho Code, relating to trespass shall be stated in all hunting and fishing proclamations issued by the department.

(5) A landowner is not limited to using a permission form provided by the department under this subsection.

[36-1603, added 1976, ch. 95, sec. 2, p. 367; am. 1987, ch. 116, sec. 2, p. 230; am. 1992, ch. 283, sec. 2, p. 875; am. 1998, ch. 251, sec. 2, p. 821; am. 2005, ch. 112, sec. 1, p. 363; am. 2013, ch. 150, sec. 2, p. 348; am. 2014, ch. 28, sec. 3, p. 41; am. 2018, ch. 350, sec. 11, p. 836.]

36-1604. LIMITATION OF LIABILITY OF LANDOWNER. (a) Statement of Purpose. The purpose of this section is to encourage owners of land to make land, airstrips and water areas available to the public without charge for recreational purposes by limiting the owner's liability toward persons entering the owner's land for recreational purposes.

(b) Definitions. As used in this section:

(1) "Airstrips" means either improved or unimproved landing areas used by pilots to land, park, take off, unload, load and taxi aircraft. Airstrips shall not include landing areas that are or may become eligible to receive federal funding pursuant to the federal airport and airway improvement act of 1982 and subsequent amendments thereto.

(2) "Governmental entity" shall have the same meaning as provided in section [6-902](#), Idaho Code.

(3) "Land" means private or public land, roads, airstrips, trails, parks, campgrounds, water, reservoirs, watercourses, hydroelectric dams, irrigation dams, groundwater recharge sites, canals, laterals, ditches, drains, water control structures, headgates, private or public ways and buildings, structures, and machinery or equipment when attached to or used on the land.

(4) "Owner" means the possessor of a fee interest, right-of-way, or easement, a tenant, lessee, licensee, occupant, operator, permit holder, or person in control of, or with a right or duty to maintain, the land.

(5) "Recreational purposes" means the pursuit of personal enjoyment or pleasure on land when done without charge by the owner of the land, including but not limited to any of the following activities or any combination thereof: hunting, fishing, shooting, trapping, swimming, boating, rafting, tubing, camping, picnicking, hiking, pleasure driving, the flying of aircraft, bicycling, running, playing on playground equipment, skateboarding, athletic competition, nature study, waterskiing, animal riding, motorcycling, snowmobiling, operating recreational vehicles and off-highway vehicles, winter sports, viewing or enjoying historical, archeological, scenic, geological or scientific sites, and traveling across or being upon the land incidental to or ancillary to any of the recreational purposes described in this subsection.

(c) Owner Exempt from Warning. An owner of land owes no duty of care to keep the land safe for entry by others for recreational purposes, or to give any warning of a dangerous condition, use, structure, or activity on such land to persons entering for such purposes. Neither the installation of a sign or other form of warning of a dangerous condition, use, structure, or

activity, nor any modification made for the purpose of improving the safety of others, nor the failure to maintain or keep in place any sign, other form of warning, or modification made to improve safety, shall create liability on the part of an owner of land where there is no other basis for such liability.

(d) Owner Assumes No Liability. An owner of land or equipment who either directly or indirectly invites or permits without charge any person to use such property for recreational purposes does not thereby:

- (1) Extend any assurance that the land is safe for any purpose.
- (2) Confer upon such person the legal status of an invitee or licensee to whom a duty of care is owed.
- (3) Assume responsibility for or incur liability for any injury to person or property caused by an act or omission of such persons.

(e) Provisions Apply to Leased Public Land. Unless otherwise agreed in writing, the provisions of this section shall be deemed applicable to the duties and liability of an owner of land who grants public access for recreational purposes pursuant to a lease or other agreement with a governmental entity as long as the owner of the land does not directly charge individual members of the public for such access, regardless of whether the governmental entity provides the owner with remuneration.

(f) Provisions Apply to Land Subject to a Conservation Easement. Unless otherwise agreed in writing, the provisions of this section shall be deemed applicable to the duties and liability of an owner of land subject to a conservation easement to any governmental entity or nonprofit organization.

(g) Provisions Apply to Funding, Maintenance or Improvements. The provisions of this section shall be deemed applicable to the duties and liability of any governmental entity, nongovernmental organization or person that provides funds, reasonably performs maintenance, reasonably makes or supports improvements, holds conservation easements or takes similar reasonable action regarding land made available to the public without charge for recreational purposes.

(h) Owner Not Required to Keep Land Safe. Nothing in this section shall be construed to:

- (1) Create a duty of care or ground of liability for injury to persons or property.
- (2) Relieve any person using the land of another for recreational purposes from any obligation which he may have in the absence of this section to exercise care in his use of such land and in his activities thereon, or from legal consequences or failure to employ such care.
- (3) Apply to any person or persons who for compensation permit the land to be used for recreational purposes.

(i) User Liable for Damages. Any person using the land of another for recreational purposes, with or without permission, shall be liable for any damage to land, property, livestock or crops that the person may cause while on said land, in addition to all remedies provided in section [6-202](#), Idaho Code, in the event the person has committed a civil trespass.

[36-1604, added 1976, ch. 95, sec. 2, p. 368; am. 1980, ch. 161, sec. 1, p. 349; am. 1988, ch. 230, sec. 1, p. 443; am. 1988, ch. 336, sec. 1, p. 1002; am. 1999, ch. 72, sec. 1, p. 194; am. 2002, ch. 346, sec. 1, p. 981; am. 2003, ch. 265, sec. 1, p. 702; am. 2006, ch. 279, sec. 1, p. 861; am. 2018, ch. 50, sec. 2, p. 130; am. 2018, ch. 350, sec. 12, p. 838; am. 2019, ch. 176, sec. 1, p. 568; am. 2021, ch. 109, sec. 1, p. 350.]