

**The South Carolina Recreational Use Statute:
an Analysis, Comparison and Critique**
Environmental Advocacy Seminar
By: Doug Webb
April 25, 2005

The South Carolina Legislature enacted the “South Carolina Recreational Use Statute”, originally referred to as the Limitation on Liability of Landowners Act, in 1962 to promote and encourage land owners to allow public access for recreational use by the public on their property. See S.C. Code Ann. § 27-3-10 to § 27-3-60 (2004). The legislature enacted the Recreational Use Statute, or SCRUS, to reduce the concerns of individual land owners that faced liability for injuries sustained by the public while using or crossing the land owner’s property. *Id.* The statute plays an integral role in sustaining the public’s use of trails, lakes and other private property. In sustaining the use and enjoyment of the environment, the statute also has the secondary effects of promoting physical and mental health of the general public.

The focus of this paper is to review in detail the South Carolina Recreational Use Statute, examine how the courts have interpreted the statute and propose changes to the statute that would provide more incentive for private landowners to make property available to others for recreational use. The first section will analyze the legal impact of each clause within the Statute. The second section will discuss the role of the South Carolina Torts Act with respect to the Recreational Use Statute. The third section will analyze and explain South Carolina case law on land owner liability. The fourth section will compare and contrast the different recreational use statutes of selected states with South Carolina’s Recreational Use Statute. The fifth and final section will discuss possible additions and amendments that would strengthen the legislature’s intended goal of limiting landowner liability while ensuring the continued use of private property

by the public for recreational purposes.

I. THE RECREATIONAL USE STATUTE EXPLAINED

S.C. Code Ann. § 27-3-10 states that the primary purpose of the South Carolina Recreational Use Statute is to encourage owners of land to make land and water available for recreational purposes by limiting their liability toward persons entering for such purposes. This declaration reinforces the South Carolina Legislature's intent to limit landowner liability and promote recreation on private property

S.C. Code Ann. § 27-3-20 defines the important terms of the statute. The definitions are broad and all-encompassing. "Land" means any land, roads, water, watercourses, private ways and buildings, structures, and machinery when attached. "Owner" means the possessor of a fee interest, a tenant, lessee, occupant or person in control of premises. However, a contractor is not considered an owner and not entitled to the protection of the SCRUS. See Corbett v. City of Myrtle Beach, 336 S.C. 601, 521 S.E.2d 276 (S.C. App. 1999). "Recreational purpose" includes, but is not limited to, any of the following, or any combination thereof: hunting, fishing, swimming, boating, camping, picnicking, hiking, pleasure driving, nature study, water skiing, summer and winter sports and viewing or enjoying historical, archaeological, scenic, or scientific sites. This litany of activities, coupled with the legislature's intention not to exclude other recreational activities, establishes a wide range of activity that would be governed by the statute. However, in considering similar statutes, courts have not typically limited landowner liability for the use of attractive nuisances, such as trampolines. Smith v. Arizona Board of Regents, 986 P.2d 247 (Ariz. Ct. App. 1999). In addition, courts have not allowed the statute to protect landowners from injuries sustained while observing livestock exhibits at a county fair. Dykes v.

Scotts Bluff Agricultural Society, Inc., 260 Neb. 375, 617 N.W.2d 817 (2000). “Charge” means the admission price or fee asked in return for invitation or permission to enter or go upon the land. However, charges for vehicle parking and not for actual admission onto property does not constitute a “fee” for purposes of the statute. Cole v. South Carolina Electric and Gas, Inc., 608 S.E.2d 859 (S.C. 2005). “Persons”, the final important term, means any individual regardless of age.

S.C. Code Ann. § 27-3-30 establishes the duty of care, or the lack of, that is required by landowners. The section provides that an owner owes no duty of care to keep the premises safe for entry or use by persons who have sought and obtained permission to use it for recreational purposes or to give warning of a dangerous use, structure or activity. The statute, by establishing no duty of care, excuses the landowner from simple negligence. For example, a landowner who did not post a sign to warn a fisherman of the danger of falling from rocks along a shoreline while fishing was negligent but was protected from liability because negligence is excused under the statute. See Chrisley v. United States, 626 F.Supp. 285 (D.C.S.C 1985). However, if a person does not obtain permission to use property and then injures his or herself, then the landowner may be liable. Id. In addition, as of 1998, landowners in South Carolina can no longer assert “assumption of risk” in response to a claim as an affirmative defense. See Davenport v. Cotton Hope Plantation Horizontal Prop. Regime, 333 S.C. 71, S.E.2d 565 (1998).

S.C. Code Ann. § 27-3-40 is closely connected to Section 27-3-20 in detailing the effect of permission, without charge, for the use of property for recreational purposes. The section confirms that the landowner does not 1) extend any assurance that the premises are safe for any purpose, 2) confer upon such a person the legal status of an invitee or licensee to whom a duty of

care would be owed and 3) incur liability for any injury to a person or property caused by an act of omission. As discussed above, the “without charge” clause of the provision has been given some leeway by the Supreme Court of South Carolina. In 2005, the court decided that an owner of land who charged parking fees for vehicles, not for actual admission onto premises, should fall under the protection of the SCRUS. Cole, 608 S.E.2d at 864.

S.C. Code Ann. § 27-4-50 deals with a landowner leasing land to the state or political subdivisions. The section states that the landowner is still governed by S.C. Code Ann. 27-3-30 and 27-3-40 of the SCRUS even when leasing to the government. This section is a precursor to S.C. Code Ann § 27-3-60(b) which is discussed below.

S.C. Code Ann. § 27-3-60(a) establishes an exception to the “no duty of care” ordinarily required under the statute. The section provides that the statute does not limit liability for grossly negligent, willful or malicious failure to guard or warn against a dangerous condition, use, structure or activity. Landowners are liable for intentional or grossly negligent actions. Grossly negligent has been defined as the “intentional, conscious failure to do something which one ought to do or the doing of something one ought not to do.” Brooks v. Northwood Little League, Inc., 327 S.C. 400, 407, 489 S.E.2d 647, 650 (S.C. App. 1997). Another definition given by the Supreme Court for “gross negligence” under the SCRUS is the failure to exercise even slight care. Clyburn v. Sumter County Sch. Dist. No. 17, 317 S.C. 50, 451 S.E.2d 885, 887 (1994).

S.C. Code Ann. § 27-3-60(b) provides a private landowner more flexibility with their land. Similar to the allowance of a parking fee under the SCRUS, this section is another exception to the “without charge” clause. This section allows for a landowner to lease their

property for the purpose of recreational use to the government and still acquire the protection of the statute. In addition, the leasing government agency also has the protection of the statute. See Kimsey v. City of Myrtle Beach, 109 F.3d 194 (4th Cir. 1997). The agency can be either from the federal or state government. See Hegg v. United States of America, 817 F.2d 1328 (4th Cir. 1987). This section may provide support and open the door for other exceptions to the “without charge” clause under the SCRUS in the future. With the provisions of the SCRUS explained, the South Carolina Torts Act also warrants further examination.

II. THE SOUTH CAROLINA TORTS ACT EXPLAINED

As previously stated, government entities are able to use the protection of the South Carolina Recreational Use Statute with the same degree and limitations as a private landowner. The South Carolina Torts Act may provide the government collateral protection and immunity from liability. The Torts Act was developed in 1986 after South Carolina abrogated the concept of sovereign immunity which had previously allowed the state to be completely immune from any wrongdoing. S.C. Code Ann. § 15-78-20. Under the Torts Act, the government entity is liable “in the same manner and to the same extent as a private individual under like circumstances.” S.C. Code Ann. § 15-78-40. However, the Torts Act still provides the state a number of protections from liability such as exceptions from street defects, nuisances and weather conditions. See S.C. Code Ann. § 15-78-60. The state is usually immune from defects that employees did not have actual or constructive notice of and fail to remedy. Though, if the state takes on a “special relationship”, such as direct contact with an individual and the reasonable reliance upon the state by that individual results, then the state may be liable. Id.

The South Carolina Torts Act also has three other restrictive measures on claims against

the government. First, there is time limit, or statute of limitations, for a tort claim to be filed against the state within two years after the incident or two years after the incident was discovered. S.C. Code Ann. § 15-78-80. Second, aside from a tort committed by a government licensed physician or dentist, a cap of \$600,000 is imposed by the Act limiting the amount a person can recover from the government due to a single tort or wrong. S.C. Code Ann. § 15-78-120. Third, only compensatory damages and not punitive damages can be recovered under the Act. Id.

III. SOUTH CAROLINA CASE LAW

This section will focus on the South Carolina court cases that have interpreted and applied the South Carolina Recreational Use Statute. Surprisingly, for such a potentially important statute, only a small number of cases have specifically addressed the SCRUS. The first subsection will detail two cases involving the combined use of the SCRUS and the Torts Act. The second subsection will explain the current jurisprudence involving the SCRUS in South Carolina.

A. SOUTH CAROLINA TORTS ACT INTEGRATED WITH THE SCRUS

The Fourth Circuit in 1997 first decided that the SCRUS and the Torts Act could be used in unison with each other. See Kimsey, 109 F.3d at 194. A tourist brought suit against a city alleging negligent construction and maintenance of a wooden walkover bridge on a beach owned by the city. Id. The court ruled that both the SCRUS and Torts Act immunized the city from liability, because the city neither charged the tourist for admission onto the beach nor were the governmental employees aware of any defect with the bridge. Id. at 197. The plaintiff claimed that the South Carolina legislature did not intend for the SCRUS and the Torts Act to be used

concurrently to limit the liability of the state. The plaintiff asserted that the SCRUS was created at a time when South Carolina had sovereign and complete immunity, therefore the statute was not intended to be applied to the state. Id. at 196. However, the court ruled that the Torts Act states that the government should be liable in the same manner as private individuals, and since private individuals are protected under the SCRUS then the government should be afforded the same protection. Id.

The South Carolina Court of Appeals has also ruled that the SCRUS and Torts Act can be construed in such a way that both remain functional. Richardson v. City of Columbia, 340 S.C. 515, 519, 532 S.E.2d 10, 12 (Ct. App. 2000). In that case, a child injured himself while at a municipal baseball field. While retrieving a baseball, the child fell into a ditch and broke his leg. Id. The plaintiff claimed that only the Torts Act was applicable to the injury because that statute was enacted over forty years after the SCRUS and that later legislation takes precedence over earlier legislation. Id. The Court of Appeals followed Kimsey by stating that the SCRUS does apply to government entities because the government should be treated in the same manner as private citizens under the Torts Act. Id. However, in the case, the court decided that the government did not need the additional protection of the SCRUS. Id. at 521, 532 S.E.2d at 13. The court ruled that, under the Torts Act, the government would only be liable for the maintenance, security or supervision of the ditch if they had notice of the defect and did not correct it in a reasonable time. Id. (applying S.C. Code Ann. § 15-78-60) The government did not have notice and was thus held free from liability. Id.

B. SOUTH CAROLINA RECREATIONAL USE STATUTE

In 1997, the South Carolina Court of Appeals applied the SCRUS to an incident

involving a plaintiff who was injured while watching her granddaughter play in a T-ball game on a public field. Brooks, 327 S.C. at 400, 489 S.E.2d 647. The plaintiff injured her ankle while walking from the bleachers to the concession stand. Id. at 405, 489 S.E.2d at 649. Though the field was in an urban setting, the court ruled that the South Carolina legislature intended for the SCRUS to apply to both urban and rural areas. Id. The court stressed that attending and watching a T-ball game qualified as a recreational purpose under the expansive language of Section 27-3-20(c). Id. at 407, 489 S.E.2d at 650. Furthermore, the court also emphasized that the SCRUS was not defeated because the plaintiff did not receive express permission to attend the game. Id. The public was invited free of charge and permission to attend was implied. Id. The plaintiff contended that the government was grossly negligent under the statute by having uneven ground near the bleachers that caused her injury. However, the court found that the uneven ground did not meet the definition of gross negligence which was defined as the “intentional, conscious failure to do something which one ought to do or the doing of something one ought not to do.” Id.

In 1999, the South Carolina Court of Appeals for the first time interpreted “owner” under the South Carolina Recreational Use Statute. Corbett, 336 S.C. at 601, 521 S.E.2d at 276. In that case, the plaintiff’s husband had drowned while swimming at a beach and the city had contracted lifeguards from a separate entity. Id. The plaintiff asserted that though the city was immune under the SCRUS because no admission was charged and no question existed of the city’s ownership of the property, the contractor could not claim protection for the negligence of the lifeguards. Id. at 605, 521 S.E.2d at 276. The court agreed with the plaintiff. The court reasoned that the “relationship of an entity to the premises, not the length and stability of its

presence” should determine whether the entity “occupies” the land. Id. The court relied upon the fact that the City, not the contractor, provided the public access to the beach and that the city had considerable control over the contractor’s actions on the land. Id. at 608, 521 S.E.2d at 280. For example, no signs were allowed to be placed on the beach by the contractor unless previously approved by the city. Id.

The latest case applying the South Carolina Recreational Use Statute was decided by the South Carolina Supreme Court in 2005. The plaintiffs brought a wrongful death suit against South Carolina Electric & Gas(SCE&G). Cole, 608 S.E.2d at 862. The plaintiff’s son had drowned in the recreational lake owned by SCE&G and the plaintiff claimed that the company was both negligent and grossly negligent for failing to provide lifeguards, life-saving equipment and warnings at the site. Id. The court ruled that the SCRUS protected SCE&G from liability. First, the court ruled that the parking fee charged by SCE&G did not constitute a “fee” under the SCRUS. Id. The court interpreted the term “fee” as a charge necessary to gain admission onto the recreational property. Id. However, in this case, a person without a vehicle could have gained access to the property without paying for admission, so parking charges did not constitute a fee under such a definition. Second, the court ruled that SCE&G was not grossly negligent in the death of the child. Id. at 865. The court reasoned that a duty to provide recreational safety features such as lifeguards and lifesaving equipment exceeds the “slight care” standard of gross negligence. Id. Furthermore, the court stressed that a government regulation requiring the use of lifeguards and lifesaving equipment does not affect the interpretation of gross negligence under the SCRUS. Id.

IV. STATUTES IN OTHER STATES

Most recreational statutes across the United States are remarkably similar to one another. Most state statutes, like the South Carolina Recreational Statute, attempt to balance the limited liability of the landowner with the safety of the public. However, there are some states that provide greater incentives for the landowner to make property available for recreational purposes than South Carolina. In contrast, there are states that provide little or no incentive for the landowner to open their property to the public. This section will briefly discuss certain distinctive recreational use statutes of selected states and compare them with the SCRUS.

A. ARIZONA

The Arizona Recreational Use Statute provides less flexibility than South Carolina for landowners in leasing lands to the government, but more flexibility than South Carolina for the use of land for educational purposes. Ariz. Rev. Stat. Ann. §33-1551 (2004). Unlike the SCRUS, the statute does not allow private landowners to lease land to a government entity and still be protected under the recreational use statute. Id. Similar to S.C. Code Ann. § 27-3-20, Arizona allows property to be used for educational purposes. Id. However, in contrast to the SCRUS, Arizona allows nonprofit corporations to collect contributions from the public to offset the educational costs. Id. In addition, both the SCRUS and the Arizona Recreational Use Statute have the same duty of care of “gross negligence.” Furthermore, Arizona is similar to South Carolina in not allowing the recreational use statute to limit liability for injuries caused by an attractive nuisance. Id.

B. COLORADO

The Colorado Recreational Use Statute provides two more incentives to the landowner to

open up property for the public than does the SCRUS. See Colo. Rev. Stat § 33-41-101 to § 33-41-106 (2004). First, under Colorado’s statute, a landowner can only be liable for willful or malicious failure to guard or warn against a known dangerous condition use, structure, or activity likely to cause harm. Colo. Rev. Stat. Ann. § 33-41-104(1)(a). Unlike South Carolina, a landowner in Colorado cannot be held liable for “grossly negligent” actions or a failure to exercise slight care. The second incentive is a limitation on judgements against landowners. In Colorado, monetary damages are capped for a single occurrence at \$150,000. Id. at § 24-10-114. In addition, damages for injuries that occur to more than two individuals is capped at \$600,000. The SCRUS does not limit the monetary liability of a private landowner. Id.

C. GEORGIA

The Georgia Recreational Use statute is very similar to the SCRUS. See Ga. Code Ann. § 51-3-20 (2004). However, the Georgia Legislature has passed corresponding hunting laws that have affected Georgia’s statute. Ga. Code Ann. § 27-3-1. The hunting laws allows for private landowners to charge the public to hunt on their land and be entitled to the same protection from civil liability under the Georgia Recreational Use Statute. Id. The protection afforded to landowners by the Georgia legislature could be interpreted by courts in the future to allow landowners to also charge fees for fishing, trapping, and other wildlife activities and still receive protection under the state’s recreational use statute.

D. NORTH CAROLINA

The North Carolina Recreational Use Statute narrowly protects landowners of the state. N.C. Gen. Stat § 113(A)-6-95 (2004). In contrast to the SCRUS, North Carolina’s statute only applies to the use of nature trails and not to the public’s use of other lands. Similar to Arizona,

North Carolina does allow for educational activities on the trails to be governed by the recreational statute. Id. at § 38A-4. North Carolina has one of the more restrictive recreational statutes in the country and this is surprising given the vast amount of recreational opportunities that exist in the state. Liability and Recreational Use Statutes, available at <http://www.americanwhitewater.org> (last modified Dec. 11, 2001).

E. VIRGINIA

The Virginia Recreational Use Statute is one of more liberal statutes in the country in encouraging landowners to open their property to the public. Va. Code Ann. § 29.1-509 (2004) The recreational statute allows for landowners to collect fees for the cutting and removing of timber by the public and still receive protection under the statute. Id. The statute also provides that the landowner can charge fees for the conservation of the land and still be protected with limited liability. Id. A conservation exception allows for the landowner to charge reasonable fees to maintain or improve the land or access the land for recreational purposes. Id. The remainder of the provisions contained within the statute are identical to the SCRUS.

F. OTHER STATES

There are a number of noteworthy differences in other states' recreational statutes with the SCRUS that also warrant brief recognition. Alabama allows for protection under its recreational statute even if the landowner assesses an admission charge as long as the use of the land is non-commercial. See Ala. Code § 35-15-1 (2004). The Massachusetts Recreational Use Statute allows a landowner to collect voluntary donations from the public. See Mass. Gen. Laws Ann. § I-21-17(C) (2004). Michigan allows the landowner to receive fees and still have immunity under its recreational statute in order to allow the public onto their land to pick crops

for subsequent purchase. See Mich. Comp. Laws. Ann. § 324.73301 (2004). Nebraska's recreational use statute allows a landowner to accept rental fees from an organization, corporation, or the government, but it does not allow a landowner to accept a fee from an individual. See Neb. Rev. Stat. Ann. § 37-730 (2004). South Dakota allows for a landowner to receive nonmonetary gifts up to \$100 from an individual and still be protected from claims made by that person. See S.D. Codified Laws § 20-9-11 (2004). Texas possibly provides the strongest incentive for landowners to open their land to the public for recreational purposes. The Texas Recreational Use Statute allows for landowners to charge individuals admission fees as long as the revenue from the charges do not exceed twice the landowner's property taxes. See Tex. Code Ann. § 4-75.001 (2004). Similar to Texas, Wisconsin's statute allows for charges if the total revenue does not exceed \$2000 annually. See Wis. Stat. Ann. § 895.52 (2004).

As discussed above, many recreational use statutes of other states offer more incentives to landowners than the SCRUS. In order for South Carolina to maintain and increase recreational opportunities for the public, the SCRUS should be amended to incorporate many of the incentives from other states.

V. PROPOSED CHANGES TO THE SCRUS

In order to further enhance and strengthen the desired purpose of encouraging landowners to open up their land to the public for recreational use, changes to the South Carolina Recreational Use Statute are necessary. This sections suggests a number of measures, most of which are currently used in other states, that the South Carolina Legislature could implement to achieve this desired result. Most of the measures would be pecuniary in nature and would involve financial incentives given to the landowners. Other measures would lessen the already

limited duty of care that landowners have under the SCRUS.

A. LAND CONSERVATION

Though the SCRUS allows landowners to receive fees for parking and the lease of land to the government, the statute should also allow landowners to receive compensation from the public for the conservation and upkeep of their land. The compensation to the landowner could be in the form of an admission charge, but used solely to maintain the land. See, e.g., Va. Code Ann. § 29.1-509(A). The conservation fee would minimize the concerns of the landowner that the public's use may devalue their land. The compensation would also allow the landowner to make improvements to the land such as planting trees, removing dangerous brush, or building ramps for safety purposes. The maintenance and upkeep of land would provide a safer and improved habitat for the recreational use of the general public, but still prohibit the landowner from personally profiting.

Aside from fees strictly applied toward land conservation, the SCRUS should also be amended to incorporate a provision allowing a landowner to receive voluntary donations by the public. Similar to the Massachusetts Recreational Use Statute, these donations could be used by the landowner for land conservation or for other purposes. See Mass. Gen. Laws Ann. § I-21-17(C).

B. CAP ON DAMAGES

The South Carolina Recreational Use Statute should also be amended to limit the amount of damages recreational users can recover from the landowner. Similar to the South Carolina Torts Act, the SCRUS should contain provisions disallowing the public from seeking punitive damages against a landowner. See S.C. Code Ann. 15-78-120. Furthermore, similar to

Colorado's Recreational Use Statute, the SCRUS should establish a cap limiting the amount of compensatory damages an injured party may recover. See Colo. Rev. Stat § 24-10-114. Due to the lack of financial resources a private landowner may have in comparison with the government, the cap should be less than the \$600,000 currently provided in the South Carolina Torts Act. See S.C. Code Ann. 15-78-120. Though the landowner would still be liable for grossly negligent, malicious, or willful failure to keep the premises safe for the public, the landowner would be protected from large verdicts in favor of injured users. This cap would also have the secondary effect of making landowners even less of an appealing target for frivolous lawsuits.

C. SHARED RESPONSIBILITY STATUTES

Another amendment to the SCRUS that would allow greater flexibility for South Carolina landowners to open their property to the public is the passage of a “shared responsibility” provision. A shared responsibility provision, which a majority of states have adopted, allows a private or commercial landowner to offer high-risk sporting activities such as skiing, whitewater rafting, and horseback riding to the general public. Terence J. Center, Revising State Recreational Use Statutes to Assist Private Property Owners and Providers of Outdoor Recreational Activities, 9 Buff. Env't'l L.J. 1, 15 (2001). The landowner can collect fees from participants and still receive limited liability protection if certain minimum responsibilities are met such as warning and providing sufficient safety precautions to participants. Id. At the same time, the public assumes the risk of injury by participating in the inherently dangerous activities. Id.

South Carolina currently has a shared responsibility statute for horseback riding. See S.C.

Ann. § 47-9-710. More commonly known as the equine liability immunity provisions, the statute provides landowners and businesses the protection of limited liability while providing any services relating to horseback riding or training. Id. However, similar to the grossly negligent standard of the SCRUS, the statute does not protect a landowner who fails to warn the instructors or participants of a dangerous condition that has a strong likelihood of causing injury. S.C. Code Ann. § 47-9-720. Furthermore, the South Carolina statute requires strict adherence to safety guidelines. A landowner is only granted immunity if warning signs are placed in a clearly visual location where equine activity would normally occur. S.C. Code Ann. § 47-9-730. In addition, the sign must be in black letters with each letter a minimum of one inch in height. Id. The statute also provides that a written contract between participants and providers must contain mandatory language detailing the inherent risk of equine activity. Id. The contract must also reference the immunity granted to providers in the shared responsibility statute. Id.

Though South Carolina has generally abolished the affirmative defense of “assumption of the risk,” the legislature should expand the current shared responsibility statute from horseback riding to also include other dangerous activities. See Davenport, 333 S.C. 71, 508 S.E.2d 565. However, in order to ensure the safety of the public, the specific provisions of the current shared responsibility should be retained. A shared responsibility provision would provide an incentive for landowners to allow high-risk recreational activities such as whitewater rafting, skiing, and the use of all-terrain vehicles on their property. In addition, the shared responsibility statute would be limited to the injuries stemming from the participation in a narrow class of high-risk activity. Furthermore, the provision would encourage safety precautions because the landowner would be required to provide a number of safety measures in order to receive protection. The

provision would also have a secondary effect of stabilizing economic conditions for the high-risk sport industry.

D. EDUCATIONAL COSTS

Another addition that would strengthen the purpose of the South Carolina Recreational Use Statute is to allow a landowner to receive compensation to offset educational costs. Similar to land conservation for recreational use, under such an approach a landowner may accrue expenses in providing a habitat that is ideal for educational purposes. A landowner would have more of an incentive to allow the public onto their land if contributions could be received to offset these expenses while still having the protection of the SCRUS. Expanding on the Arizona statute which allows nonprofit organizations to receive compensation from the public for educational purposes, South Carolina should allow private landowners to also receive this added protection. See Ariz. Rev. Stat. Ann. §33-1551. By allowing private landowners to offset educational expenses such as hiring a tour guide or providing informative literature, the statute will not only encourage landowners to open their property to the public, but it will also benefit the research and study of the environment. By collecting an “educational fee” a landowner will be able to better preserve the environment for school field trips and for other advanced scholarly study.

E. HUNTING FEES

A landowner should be allowed to collect hunting fees from the public and still receive the liability protection of the South Carolina Recreational Use Statute. South Carolina should amend the SCRUS or enact a law that is similar to the fee prohibition exception of Georgia. See Ga. Code Ann. § 27-3-1 (1997). According to the SCRUS, hunting is one of the desired

recreational pursuits intended to be encouraged by the statute. See S.C. Code Ann. § 27-3-30 (2004). Currently, landowners have little incentive to allow hunters onto their property due to the inherent danger of injury that may occur in hunting. In addition, if a landowner opens up private land to all hunters, it would be extremely difficult to regulate hunting and exercise slight care for the safety of the public that is required by the SCRUS. The public could enter and leave the premises without the knowledge of even minimal safety guidelines. In contrast, a landowner would be much more willing to open their land to hunters if allowed to receive compensation. Moreover, a landowner could better regulate hunter safety because the landowner could provide guidelines and procedures to the hunters when collecting compensation.

F. TAX-BASED COMPENSATION

An additional measure that will encourage landowners to open property for the recreational use of the public is to offer tax incentives. Unlike the Texas statute that allows landowners to charge admission fees up to twice the landowner's property taxes, this amendment would only give the landowner tax relief. See Tex. Code Ann. § 4-75.001 (2004). One proposal is to reduce the landowner's property taxes. A significant reduction in property taxes would be logical since the landowner would be sacrificing personal enjoyment of the land for the use of the property by the general public. A second proposal is to give the landowner a tax credit or tax deduction. Unlike the tax credit that is currently only available to a South Carolina landowner who donates their property or creates an easement specifically for conservation purposes, these tax incentives would be more expansive and be available to a landowner who opens up private property to the public. S.C. Code Ann. § 12-6-3515. The proposed tax incentives under the SCRUS should be similar to the land conservation tax credit by capping the amount a landowner

could receive to \$250 per acre and \$52,000 annually. Id.

G. DUTY OF CARE

One change to the South Carolina Recreational Use Statute that would not offer a financial incentive to landowners is to lessen the duty of care required to be exercised. The SCRUS could be amended to reflect a standard similar to that in the Colorado Recreational Use Statute that does not provide that a landowner is liable for grossly negligent conduct, but only for willful or malicious failure to guard or warn against a known dangerous condition, use, structure, or activity likely to cause harm. See Colo. Rev. Stat. Ann. § 33-41-104(1)(a). This amendment would remove the requirement that a landowner provide at least slight care to the public in the SCRUS and the landowner could only be liable for intentional or malicious conduct.

Removing “grossly negligent” from the SCRUS is likely to have mixed results. Though lessening the already limited duty of care may encourage landowners to make private property available to the public, the impact would be minimal. First, landowners may not even be aware of the SCRUS, much less the removal of “grossly negligent” from the statute. Second, financial incentives are likely to be more appealing to landowners than further limiting liability. Third, and possibly most important, removing “grossly negligent” could jeopardize the safety of the public. Though encouraging recreational use of private property by the public is important, sacrificing the health of the public should not be a result of proposed changes. Financial incentives given to a landowner would more successfully balance the need for private lands to be used for recreational purposes with the continuing safety of the public.

H. PUBLICITY

In order for the South Carolina Recreational Use Statute to be effective, landowners must

be made aware of the statute. The success of the SCRUS and of any future changes to the statute is contingent on the public gaining a better understanding and knowledge of the legislation.

There are a number of measures that when implemented, would raise the public's awareness of the SCRUS. One proposal would be to automatically send information explaining the SCRUS and the statute's advantages to landowners whose land would be ideal for recreational use by the public. Those owning land greater than a specific acreage or land near lakes, rivers or trails should be sent information. A second proposal would be to have pamphlets describing the SCRUS at many state agency buildings that are frequented by the public, including the Department of Motor Vehicles and Register of Deeds. A third proposal would be to develop a website or government link that would be devoted to the SCRUS. With the internet being an increasingly popular method of research, a website would be an invaluable source for the general public to learn more about the SCRUS.

VI. CONCLUSION

The South Carolina Recreational Use Statute plays an integral role in maintaining adequate land and opportunity for recreation by the public. However, the SCRUS does not offer many of the same incentives to a landowner as other states. In order to maximize the potential of the SCRUS, financial incentives and more publicity should be considered and implemented. The incentives would have the result of providing more land for public use, but not sacrifice the safety of the public. In contrast, such financial incentives would give landowners a better opportunity to warn or provide safety guidelines to the public. Most importantly, the proposed changes to the SCRUS will further enhance the statute's secondary effects of promoting physical and mental health through increased recreational opportunity.

BIBLIOGRAPHY

CASES:

Brooks v. Northwood Little League, Inc., 327 S.C. 400, 489 S.E.2d 647 (S.C. App. 1997)
Chrisley v. United States, 626 F.Supp. 285 (D.C.S.C 1985)
Clyburn v. Sumter County Sch. Dist. No. 17, 317 S.C. 50, 451 S.E.2d 885 (1994)
Cole v. South Carolina Electric and Gas, Inc., 608 S.E.2d 859 (S.C. 2005)
Corbett v. City of Myrtle Beach, 336 S.C. 601, 521 S.E.2d 276 (S.C. App. 1999)
Davenport v. Cotton Hope Plantation Horizontal Prop. Regime, 333 S.C. 71, S.E.2d 565 (1998)
Dykes v. Scotts Bluff Agricultural Society, Inc., 260 Neb. 375, 617 N.W.2d 817 (2000)
Hegg v. United States of America, 817 F.2d 1328 (4th Cir. 1987)
Kimsey v. City of Myrtle Beach, 109 F.3d 194 (4th Cir. 1997)
Richardson v. City of Columbia, 340 S.C. 515, 532 S.E.2d 10 (Ct. App. 2000)
Smith v. Arizona Board of Regents, 986 P.2d 247 (Ariz. Ct. App. 1999)

STATUTES:

Ala. Code § 35-15-1 (2004)
Ariz. Rev. Stat. Ann. §33-1551 (2004)
Colo. Rev. Stat § 33-41-101 to § 33-41-106 (2004)
Ga. Code Ann. § 27-3-1 (2004)
Ga. Code Ann. § 51-3-20 (2004)
Mass. Gen. Laws Ann. § I-21-17(C) (2004)
Mich. Comp. Laws. Ann. § 324.73301 (2004)
Neb. Rev. Stat. Ann. § 37-730 (2004)
N.C. Gen. Stat § 113(A)-6-95 (2004)
S.C. Code Ann. § 27-3-10 to § 27-3-60 (2004)
S.C. Code Ann. § 15-78-20 to § 15-78-120 (2004)
S.D. Codified Laws § 20-9-11 (2004)
Tex. Code Ann. § 4-75.001 (2004)
Va. Code Ann. § 29.1-509 (2004)
Wis. Stat. Ann. § 895.52 (2004)

OTHER:

Liability and Recreational Use Statutes, available at <http://www.americanwhitewater.org>.

Terence J. Center, Revising State Recreational Use Statutes to Assist Private Property Owners and Providers of Outdoor Recreational Activities, 9 Buff. Env't'l L.J. 1, 15 (2001)

RECOMMENDED:

9 Buff. Env'tl. L.J. 1, 12582 words, ARTICLE: Revising State Recreational Use Statutes to Assist Private Property Owners and Providers of Outdoor Recreational Activities, Terence J. Centner

22 Hawaii L. Rev. 237, 22926 words, COMMENT: The Hawai'i Recreational Use Statute: A Practical Guide to Landowner Liability, Amy M. Cardwell n311

35 Duq. L. Rev. 783, 9385 words, ARTICLE: The Recreation Use of Land and Water Act Lory v. City of Philadelphia, Debra Wolf Goldstein

<http://classweb.gmu.edu/jkozlows/rus1a.htm>