

1 H.771

2 Introduced by Representative Chesnut-Tangerman of Middletown Springs

3 Referred to Committee on

4 Date:

5 Subject: Limitations on landowner liability; unmarked access control devices

6 Statement of purpose of bill as introduced: This bill proposes to provide that
7 landowners may be held liable for injuries or damage caused by the owner's
8 failure to properly mark access control devices (ACD) such as gates, chains,
9 ropes, and fences. This bill also proposes to require that the Department of
10 Motor Vehicles conduct a public outreach campaign on the potential for
11 landowner liability for failure to properly mark ACDs and recommended
12 methods to properly mark ACDs.

13 An act relating to landowner liability for unmarked and improperly marked
14 access control devices

15 It is hereby enacted by the General Assembly of the State of Vermont:

16 Sec. 1. 12 V.S.A. § 5793 is amended to read:

17 § 5793. LIABILITY LIMITED

18 (a) Land.

19 (1) An owner shall not be liable for property damage or personal injury
20 sustained by a person who, without consideration, enters or goes upon the

1 owner's land for a recreational use unless the damage or injury is the result of
2 the willful or wanton misconduct of the owner.

3 (2) An owner commits willful or wanton misconduct under this
4 subsection if the owner uses an access control device on the owner's land that
5 is not marked to promote visibility.

6 (3) As used in this subsection:

7 (A) "Access control device" means a device, marked to promote
8 visibility, that is used by a landowner to control the flow of traffic in, out of,
9 and on the owner's land, including a gate, chain, rope, wire, or fence.

10 (B) "Marked to promote visibility" includes marked with a sign, flag,
11 or reflective tape.

12 (b) Equipment, fixtures, machinery, or personal property.

13 (1) Unless the damage or injury is the result of the willful or wanton
14 misconduct of the owner, an owner shall not be liable for property damage or
15 personal injury sustained by a person who, without consideration and without
16 actual permission of the owner, enters or goes upon the owner's land for a
17 recreational use and proceeds to enter upon or use:

18 (A) equipment, machinery, or personal property; or

19 (B) structures or fixtures not described in subdivision 5792(2)(A)(iii)
20 or (iv) of this title.

1 (2) Permission to enter or go upon an owner’s land shall not, by itself,
2 include permission to enter or go upon structures or to go upon or use
3 equipment, fixtures, machinery, or personal property.

4 (c) Posting. An owner may post a sign warning against dangers on the
5 owner’s land or water. An owner who posts a sign pursuant to this subsection
6 shall not be liable for any damage or injury allegedly arising out of the posting
7 unless the damage or injury is the result of the willful or wanton misconduct of
8 the owner.

9 Sec. 2. LANDOWNER LIABILITY FOR UNMARKED ACCESS

10 CONTROL DEVICES; OUTREACH CAMPAIGN

11 (a) The Department of Motor Vehicles, in consultation with the
12 Departments of Fish and Wildlife, of Forests, Parks and Recreation, and of
13 Public Safety; the Vermont ATV Sportsman’s Association (VASA); and the
14 Vermont Association of Snow Travelers (VAST), shall implement a public
15 outreach campaign not later than September 1, 2024 that, at a minimum,
16 addresses:

17 (1) the potential for landowner liability for failure to mark an access
18 control device (ACD) to promote visibility in accordance with 12 V.S.A.
19 § 5793 as amended by this act; and

20 (2) recommended methods to properly mark an ACD to promote
21 visibility.

1 (b) The public outreach campaign shall disseminate information on ACDs
2 through the Department of Motor Vehicles' web page and direct
3 correspondence to VASA and VAST clubs and through other mediums such as
4 social media platforms, community posting websites, radio, television, and
5 printed materials.

6 Sec. 3. EFFECTIVE DATES

7 (a) This section and Sec. 2 (outreach campaign) shall take effect on
8 passage.

9 (b) Sec. 1 (12 V.S.A § 5793; landowner liability) shall take effect on
10 January 1, 2025.