CLASS DISMISSED: FORTY-NINE YEARS LATER, RECREATIONAL USE STATUTES FINALLY ALIGN WITH LEGISLATION'S ORIGINAL INTENT

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I. INTRODUCTION

In *Sallee v. Stewart*, the Iowa Supreme Court held Iowa's recreational use immunity statute did not apply to farm owners with respect to negligence claims brought against them by chaperones accompanying students on a field trip.[1] Further, the court held the activities that occurred in the farm's hayloft did not constitute a recreational use because the injury was not incidental to a recreational activity.[2] Recreational use statutes limit the liability of landowners when they allow for others to use their land for recreational purposes.[3] By narrowing the situations in which the recreational use statute applies, states will effectively deter farmers and private individuals from offering educational endeavors in fear of impending litigation, an outcome contrary to the original intent of the statute. The *Sallee* decision clarified and offered much needed guidance, welcomed or not, in order to right the misplaced assumptions that have been surrounding the statute since its adoption in 1967.[4]

Today, Iowa has limited public space for recreational activities due to the

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1. Sallee v. Stewart, 827 N.W.2d 128, 131 (Iowa 2013).

2. *Id.* at 145.

3. *Public Recreation on Private Lands: Limitations on Liability: Suggested State Legislation*, 24 COUNCIL OF STATE GOVERNMENTS 150, 150 (1965).

4. *See* Public Recreation on Private Lands and Waters Act, 1967 Iowa Acts 270 § 2; *Sallee*, 827 N.W.2d at 142.

vast amount of farmland throughout the state. So limited that the state ranks 49th in the amount of public land in relation to private land, a mere 0.12% shy of last place Kansas.[5] Additionally, of the twelve states that make up the Midwest, six are ranked in the bottom ten for the amount of public land in relation to private land.[6] This ratio is the exact issue recreational use statutes were formulated to combat.[7] Similarly, at the time of the Act's inception, the demand for access to land for outdoor recreation was increasing, while the amount of land available for such purposes was decreasing due in large part to the nation's desire for infrastructure.[8]

Iowa farmers and organizations alike have relied upon an assumption of immunity when it comes to providing the public with "hands-on" farm experiences. Such an experience can prove vital to the sustainability of an authentic culture, which appreciates the intangible values of agriculture, within the state of Iowa and the Midwest. Additional guidance or reform is needed to ensure protection is in place for landowners who graciously open their land to educate, and advocate for, the future of the state.

Recent state decisions in the Midwest suggest many current recreational use statutes incontestably ignore the very principles upon which they were founded. Given the gradual decline in public knowledge about the farming practices and their associated culture in America's breadbasket, attention should be given to revising these recent strict limitations to recreational use statutes.[9]

While the Iowa Supreme Court offered guidance on an otherwise indistinct statute, the court left open several issues crucial to farmers and organizations alike. One pressing concern was whether the statute applied only to land open to the public at large or whether it likewise applied to events that may be limited to specific groups or specific hours of operation.[10]

In the closing pages of the Iowa Supreme Court's decision, the court

5. Edward Cox, *Iowa Recreational Use Statute and Sallee v. Stewart*, DRAKE UNIV. AGRIC. LAW CTR. (Apr. 3, 2013), http://sustainablefarmlease.org/2013/04/iowa-recreational-use-statute-and-sallee-v-stewart/; *Public Land Ownership by State*, NATURAL RES. COUNCIL OF ME., http://www.nrcm.org/documents/publiclandownership.pdf (last visited Oct. 5, 2015).

6. *See Public Land Ownership by State*, *supra* note 5.

7. OUTDOOR RECREATION RES. REVIEW COMM'N., OUTDOOR RECREATION FOR AMERICA: A REPORT TO THE PRESIDENT AND TO THE CONGRESS BY THE OUTDOOR RECREATION RESOURCES REVIEW COMMISSION 1 (1962), *available at* http://www.gpo.gov/fdsys/pkg/CZIC-gv53-a545-1962/html/CZIC-gv53-a545-1962.htm [hereinafter OUTDOOR RECREATION FOR AMERICA].

8. *Sallee*, 827 N.W.2d at 133; *see* OUTDOOR RECREATION FOR AMERICA, *supra* note 7.

9. *See* Cox, *supra* note 5.

10. *See id.*

acknowledges its own inability to rewrite existing law.[11] Further, the court encouraged citizens and organizations alike to take the issue of reform up with their respective legislators if they feel so inclined. In May 2013, the Iowa Legislature did just that. The Iowa House and Senate unanimously passed a bill that would expand the definition of "recreational use" and resolve the dilemma imposed by chaperones and volunteers.[12]

This Note asserts that limited liability on holders of land is in sync with the original purpose of recreational use statutes and should be adopted in states that have a strong interest in farm education. Education increases with limited liability as farmers and landowners alike feel more comfortable opening up their land to the public without the fear of tort liability. This Note will begin by explaining the relevant facts of the Iowa Supreme Court case *Sallee*. With this factual backdrop, the Note will explain the history of recreational use immunity statutes, primarily focusing on states in the Midwest. In Part II, the Note will discuss the legislative initiative adopted by Iowa after the *Sallee* ruling. This section will also address the importance of recreational immunity for land owners and its relation to educational efforts. Lastly, Part III will argue for the adoption of the Iowa Legislature's approach by the remaining Midwestern states so the injustice resulting from *Sallee* can be preempted, addressing counterarguments and considering new concerns that may arise as a result of legislative adoption.

II. FACTS OF SALLEE V. STEWART

Matthew and Diana Stewart own Stewartland Holsteins located in Oelwein, Iowa.[13] Historically, the Stewarts had not opened their dairy farm to the public; however, if classes or individuals wished to tour the farm, they scheduled a visit.[14] It is the Stewart family's general practice for a member of the Stewart family to accompany each visiting group.[15]

On May 18, 2010, Sacred Heart School students, teachers, and several parents serving as chaperones arrived at Stewartland Holsteins for their annual vis-

11. *Sallee*, 827 N.W.2d at 150.

12. Carolyn Orr, *Iowa Bill Adds Liability Protection for Recreational-Use Landowners*, COUNCIL OF ST. GOV'TS (June 2013), http://www.csgmidwest.org/policyresearch/0613recusestatutes.aspx

13. *Sallee*, 827 N.W.2d at 131; Dennis Magee, *Lawsuit Involving Fall from Hayloft Returned to Fayette County*, WATERLOO CEDAR FALLS COURIER Feb. 15, 2013, http://wcfcourier.com/news/local/lawsuit-involving-fall-from-hayloft-returned-to-fayette-county/article_d3585366-77a0-11e2-bb24-0019bb2963f4.html.

14. *Sallee*, 827 N.W.2d at 131.

15. *Id.*

it.[16] The two organizations had developed close relations as a result of 25 years' worth of annual visits.[17] The trip to the Stewart farm had become a staple of the kindergarten experience at Sacred Heart Elementary.[18] Throughout the visit, students learn about a typical day on the farm by participating in multiple stations guided by the Stewarts.[19] Matthew Stewart supervised the entire process, while adult chaperones were positioned at each of the stations prearranged by the Stewarts.[20] The Stewarts routinely verbalized students were not to go into cattle pens or other places where the Stewarts believed the students could be put in harm's way.[21]

For the tour, the Stewarts prearranged three stations for the students: (1) riding a horse in a round pen; (2) feeding a calf a bottle of milk; and (3) viewing a tractor.[22] Once the students had rotated through each of the three stations, the students got to see several cows and a bull.[23] Lastly, the Stewarts guided the students to the barn to allow the children to play in the hayloft.[24]

The plaintiff in this case, Kim Sallee, accompanied her daughter's class on the annual farm visit.[25] In the Court's opinion, Sallee is described as "a very large woman."[26]

At the hayloft station, Matthew Stewart instructed Sallee and another chaperone to climb into the loft ahead of the students so they could assist the children in getting to the top of the ladder.[27] Once the group was assembled in the loft, Matthew advised Sallee to keep the students away from the hole in the floor where the ladder was located.[28] Additionally, Matthew warned the students not to climb too high on the bales of hay piled to one side of the loft.[29]

16. *Id.*

17. Erika K. Eckley & Roger A. McEowen, *Iowa's Recreational Use Immunity – Now You See It, Now You Don't*, IOWA ST. UNIV. CTR. FOR AGRIC. L. & TAXATION (March 6, 2012), http://www.calt.iastate.edu/system/files/CALT%20Legal%20Brief%20-%20Iowa%20Recreational%20Use%20Immunity.pdf.

18. *Sallee*, 827 N.W.2d at 131.

19. *Id.*

20. *Id.*

21. *Id.*

22. *Id.*

23. *Id.*

24. *Id.*

25. *Id.*

26. *Id.* at 154.

27. *Id.*

28. *Id.*

29. *Id.*

The Stewarts' hayloft is equipped with "hay drops."[30] Hay drops are rectangular holes in the floor of haylofts, which serve the purpose of throwing hay more easily down to the animals below.[31] It is common practice for the Stewarts to stack bales of hay across the drops when they are not in use in an attempt to insulate the barn.[32] The presence of hay drops was unbeknownst to Sallee, as well as the rest of the tour group.[33] Prior to the kindergarten tour, the Stewarts inspected the hay drops' susceptibility to weight by standing on the bales of hay covering the holes.[34] When Sallee stood on top of a bale covering one of the hay drops, the bale gave way.[35] Sallee fell through the hole, breaking both her wrist and leg.[36]

In response to her injuries, Sallee filed suit against the Stewarts, claiming their negligence caused her injuries.[37] This Note will focus on the Stewarts's affirmative defense—Iowa Code chapter 461C (2009)—Iowa's recreational use statute.[38]

Pursuant to a motion for summary judgment, "[t]he district court concluded the recreational use statute barred Sallee's claim," by finding that the Stewarts' farm qualified as "land within the meaning of the statute."[39] Additionally, the court found that because the students participated in horseback riding and nature study, their activities fell under the statute's definition of "recreational purpose," regardless of whether the injury was a result of the recreational activity.[40] Lastly, the district court found the "willful and malicious" exception to the recreational use statute did not apply based on the evidence presented.[41]

On appeal, the Iowa Supreme Court transferred the case to the Iowa Court of Appeals.[42] In Iowa, district court decisions are first sent to the constitutional head of the Iowa Judicial Branch, the Iowa Supreme Court. The Court then has the option of either accepting appeals from the district court level at the outset, or

30. *Id.*
31. *Id.*
32. *Id.* at 131-32.
33. *Id.* at 131.
34. *Id.* at 132.
35. *Id.*
36. *Id.*
37. *Id.*
38. *See* IOWA CODE § 461C (2013); *Sallee*, 827 N.W.2d at 132.
39. *Sallee*, 827 N.W.2d at 132.
40. *Id.*
41. *See id.*
42. *Id.*

the Court may transfer the appeal to the Iowa Court of Appeals.[43] A majority of the Iowa Court of Appeals judges agreed with the district court that the recreational use statute covered the Stewarts' farm land.[44] In addition, the court of appeals found that Sallee was engaged in a recreational purpose.[45] The court of appeals argued the legislature intended an expansive definition of recreational purpose that would encompass Sallee's role as a chaperone.[46] In contrast to the lower court's ruling, however, the court of appeals held the recreational use immunity did not extend so far as to cover the Stewarts' once they placed themselves in a supervisory position.[47]

A. An Overview of Recreational Use Statutes

The late 1940s marked a time of substantial economic expansion for the United States. Soldiers were returning home from the Second World War, labor unions were growing in strength, and the Golden Era of American capitalism was in its early stages. This economic boom brought along with it public cries for more housing subdivisions, industrial sites, highways, schools, and airports.[48] As a natural consequence, the demands substantially decreased the availability of land for outdoor recreational purposes.[49]

As Americans became increasingly obese, ironic to the facts of the *Sallee* case, public health advocates looked for ways to expand the recreational opportunities provided to the American people.[50] Legislatures around the United States responded to this increasing need by considering a tradeoff that would lessen the exposure of landowners to liability for persons entering their land for recreational purposes while still providing an ample amount of protection to the public.[51]

At common law, the extent of a landlord's duty to an individual injured

43. IOWA JUDICIAL BRANCH, ABOUT THE COURTS – COURT OF APPEALS, http://www.iowacourts.gov/About_the_Courts/Court_of_Appeals/ (last visited Oct. 5, 2015).

44. *Sallee*, 827 N.W.2d at 132.

45. *Id.*

46. *Id.*

47. *Id.*

48. *See* OUTDOOR RECREATION FOR AMERICA, *supra* note 7.

49. *Id.*

50. *Sallee*, 827 N.W.2d at 133; *see* Michael S. Carroll et al., *Recreational User Statutes and Landowner Immunity: A Comparison Study of State Legislation*, 17 J. LEGAL ASPECTS SPORT 163, 178 (2007).

51. Dean P. Laing, Comment, *Wisconsin's Recreational Use Statute: A Critical Analysis*, 66 MARQ. L. REV. 312, 315-16 (1983), *available at* http://scholarship.law.marquette.edu/cgi/viewcontent.cgi?article=1971&context=mulr.

while on the premises typically depended on the injured party's status in relation to the landowner. Three classifications developed in relation to status: trespasser, licensee, and invitee.[52] A trespasser is a person on the land of another without the owner's express or implied consent.[53] The duty owed to a trespasser by a land owner is nearly nonexistent; a land owner must only refrain from intentional, willful, or wanton conduct that injures the trespasser or the trespasser's property.[54] The second classification, a licensee, is defined as someone who goes on to the property of another by either an express or implied invitation.[55] Unlike with trespassers, land owners owe licensees a considerable amount of protection. Land owners, to the best of their knowledge, must warn licensees of potentially dangerous hazards, whether those hazards are hidden or in plain sight.[56] Lastly, an invitee is an individual who is either expressly or impliedly invited onto the owner's land to pursue some commercial or other interest of the owner and the entering individual.[57] A land owner is subject to liability for injury caused to invitees if he knows or should have known about the condition and fails to exercise reasonable care to protect the invitee against the danger.[58] This is often cited as the "reasonable care" standard.[59] It is the duty of the landowner to continuously update and check their property for any dangerous conditions in the event of having an invitee on their premises.[60]

Early recreational immunity statutes used the aforementioned classification approach for imposing landowner liability.[61] This approach imposed a duty on owners and occupiers of land to warn users of the hazards that might reasonably be on the property.[62] With the classification approach, owners of large tracts of land were put at a huge disadvantage from the start. Even if landowners wanted to comply with legislation, damage control quickly becomes a full-time job when your acres hold several attractive options for recreation seekers and trespassers are frequent. Once the landowner comes to this realization, what was formerly a trespasser now points in favor of a new classification as licensee. In this scenario, complying with the duty to warn would prove to be expensive, and complete

52. Koenig v. Koenig, 766 N.W.2d 635, 638 (Iowa 2009).

53. RESTATEMENT (SECOND) OF TORTS § 329 (1965).

54. Champlin v. Walker, 249 N.W.2d 839, 842 (Iowa 1977).

55. Wilson v. Goodrich, 252 N.W. 142, 144 (Iowa 1934).

56. Christopher Reinhart, *Trespassers, Invitees, and Licensees on Private Property*, OLR RES. REP. (Mar. 27, 2002), http://www.cga.ct.gov/2002/rpt/2002-R-0365.htm.

57. RESTATEMENT (SECOND) OF TORTS § 332 (1965).

58. RESTATEMENT (SECOND) OF TORTS § 343 (1965).

59. *See id.*

60. *See id.*

61. *See* Carroll, *supra* note 50, at 165.

62. *See id.*

compliance would be difficult to attain. Over time, courts began abandoning this system due to the confusion, judicial waste, and harsh results from focusing on the injured party's status.[63]

With the decreasing amount of land for recreational activities and the burgeoning issues created by premises liability classifications in mind, Congress established the Outdoor Recreation Resources Review Commission (ORRRC) in 1962.[64] The Commission's sole purpose was to conduct an extensive nationwide study of outdoor recreation across America.[65] The outcome of the study was a report submitted to Congress that gave an extensive list of outdoor pursuits Americans sought access to, including leisure driving, walking, boating, swimming, fishing, bicycling, and sightseeing.[66] Among the many recommendations to federal and state governments was the creation of a national outdoor recreation policy, as well as the addition of the Bureau of Outdoor Recreation within the Department of the Interior.[67] The Bureau of Outdoor Recreation was assigned the primary objective of providing leadership in meeting the recreational opportunity demands of the American people.[68]

In 1965, the Council of State Governments proposed a Model Act relating to recreational use.[69] The Model Act emphasized that while the acquisition and operation of government sponsored recreational facilities was on the rise, large plots of private land could substantially impact the amount of accessible recreational services.[70] The proposed act argued private landowners would need to be incentivized to open up their land for public use, as opposed to doing so on a business basis; the theory being it is unreasonable to expect landowners to take on the added risk of personal injury liability for trespassers when such an accommodating land owner receives no benefit in return.[71] The Council found that potential liability was a considerable disincentive for landowners to make their private land available for public use.[72]

Recreational use immunity does not provide blanket immunity to landown-

63. *See* Mile High Fence Co. v. Radovich, 489 P.2d 308, 311 (Colo. 1971).
64. OUTDOOR RECREATION FOR AMERICA, *supra* note 7, at 1-2.
65. *Id.*
66. *Id.* at 24.
67. *Id.* at 7, 121-26.
68. *Id.* at 121-26.
69. Council of State Governments, *supra* note 3.
70. *Id.*
71. *Id.*
72. *Id.*

ers against claims of persons entering their land for recreational use.[73] Section 6(a) of the 1965 Model Act explained the statutory immunity would not extend to injuries caused by "willful or malicious failure to guard or warn against a dangerous condition, use, structure, or activity."[74] If a landowner directly or indirectly permitted any person to use the property for recreational purposes without charge, the landowner did not assure the safety of the premises, and did not extend any classification titles to the visitor.[75] This added caveat resembled the crux of the tradeoff and distinguished farmland from local businesses whose sole purpose was to earn a profit.

In 1953, twelve years before the Model Act was introduced, Michigan became the first of the Midwestern states to enact a recreational use statute.[76] The original purpose of the Michigan statute was to promote traditional outdoor recreation, such as fishing, hunting or trapping, while simultaneously limiting the liability of landowners who opened their lands to public use.[77] Similar to the 1965 Model Act, the original text of Michigan's recreational use statute explicitly mentioned land owners, tenants, and lessees of the premises.[78]

In 1963, Wisconsin followed suit, enacting its own recreational use statute with wording similar to the Michigan statute.[79] The Wisconsin statute carried with it immense support from backwoods owners who wished to invite deer hunters on to their lands with the hope of preventing the damage brought by herds of deer, but land owners were initially cautious due to the looming fear of tort liability if one of the hunters was injured.[80]

After a decade of experience under the 1965 Model Act, several advocates of outdoor recreation such as the National Rifle Association and the National Wildlife Federation sought out Professor William L. Church of the University of Wisconsin Law School to administer a new study.[81] The results of this study fo-

73. *Sallee*, 827 N.W.2d at 136.

74. Council of State Governments, *supra* note 3, at 151.

75. *Id.* at 150.

76. *See* Wymer v. Holmes, 412 N.W.2d 213, 217 (Mich. 1987) *overruled by* Neal v. Wilkes, 685 N.W.2d 648 (Mich. 2004).

77. *Id.*; 1953 Mich. Pub. Acts 201.

78. *See id.*

79. *Compare* WIS. STAT. ANN. §26.68 (West 1963), *repealed by* 1983 Act 428, § 2, *with* 1953 Mich. Pub. Acts 201.

80. *See* Goodson v. City of Racine, 213 N.W.2d 16, 19 (Wis. 1973); Copeland v. Larson, 174 N.W.2d 745 (Wis. 1970).

81. *See Sallee*, 827 N.W.2d at 137 (Iowa 2013); W.L. CHURCH, PRIVATE LANDS AND PUBLIC RECREATION: A REPORT AND PROPOSED NEW MODEL ACT ON ACCESS, LIABILITY AND TRESPASS 3 (1979).

cused on two major deficiencies held by the 1965 Model Act: (1) liability law weighs inexcusably in the favor of the recreational user; and (2) liability and trespass laws are too complex and confusing to be predictable or understood.[82]

Professor Church concluded the protective measure caused landowners to refrain from opening up their land for public use for fear of liability.[83] Subsequently, Professor Church created the 1979 Proposed Model Act.[84] The 1979 Proposed Model Act resolved the 1965 Model Act's deficiencies by implementing a new standard for "recreational trespass."[85] Recreational trespass would come to be defined as entry onto the land of another for "recreational use without the expressed or implied consent of the owner."[86] The burden of proof on the issue of consent rested with the trespasser.[87] If a landowner were to post restricted or private property signs, consent could not be considered implied.[88] The signs had to be placed in a position that afforded a reasonable opportunity for a conscientious person to detect them.[89]

Professor Church limited recreational use to any activities for the purpose of exercise, education, relaxation, or pleasure.[90] Church credited landowner confusion to the specific listing of enumerated activities.[91] He rectified this confusion by using the general terms listed above.[92]

General terms are preferred to an extensive list of recreational activities for a number of reasons. An expansive, non-specific definition of "recreational use" avoids the significant risk brought forth by *Sallee*—the elimination of immunity for landowners when an entrant is injured while on their property for a legitimate, but non-listed recreational purpose.[93] A general listing with broad language also

82. *See* Sallee v. Stewart, 827 N.W.2d 128, 131 (Iowa 2013); CHURCH, *supra* note 81, at 10-13; John C. Becker, *Landowner or Occupier Liability for Personal Injuries and Recreational Use Statutes: How Effective is the Protection?*, 24 IND. L. REV. 1587, 1591-92 (1991).

83. *See Sallee*, 827 N.W.2d at 137; CHURCH, *supra* note 81, at 15.

84. *See* Becker, *supra* note 82, at 1591-92.

85. *See* CHURCH, *supra* note 81, at 18, 29; Becker, *supra* note 82, at 1593.

86. *See* CHURCH, *supra* note 81, at 29; Becker, *supra* note 82, at 1593.

87. Becker, *supra* note 82, at 1593.

88. *See* CHURCH, *supra* note 81, at 30, §6.

89. *Id.*

90. *See id.* at 29, §2(3); *Sallee*, 827 N.W.2d at 137.

91. CHURCH, *supra* note 81, at 11-12.

92. *See id.* at 29.

93. *See* Bryan Endres & D. L. Uchtmann, *Survey of Illinois Law: The Latest Twist on the Illinois Recreational Use of Land and Water Areas Act: Clamping Down on Landowner Immunities*, 29 S. ILL. U. L.J. 579, 595-96 (2005).

prevents the continuous need for updates by the legislature.[94] As the Court in *Sallee* notes, while legal decisions can offer clarity or try to examine the original intent of the legislature, "when a legislature models a statute after a uniform act, but does not adopt particular language, courts conclude the omission was 'deliberate' or 'intentional,' and that legislature rejected a particular policy of the uniform act."[95]

Presently, all fifty states have a recreational use statute by one definition or another – for simplicity; this includes agritourism statutes.[96] While there is not a uniform recreational use statute, most of the statutes fall into one of four general categories with respect to the manner in which the statute defines "recreational purpose."[97]

The first category defines "recreational purpose" using the broad "includes, but is not limited to" language of the 1965 Model Act.[98] The second category includes statutes that are patterned after the expansive general language as seen in the 1979 Model Act.[99] The third category combines the previous two and takes a catch-all hybrid approach to recreational immunity.[100] The fourth category takes a restrictive approach and typically limits which outdoor activities qualify to a specific list of recreational uses—if the activity is not enumerated, the recreational use statute does not cover it.[101]

Very few state statutes contain language that justifies its placement in the fourth, and strictest, category.[102] The most restrictive approach, prior to 2014, could be seen in Illinois.[103] In 2005, the Illinois Legislature adopted a new definition of "recreational purpose" to only include "hunting or recreational shooting."[104]

Although the Iowa Legislature based its statute on the 1965 Model Act, the legislature made distinct alterations prior to its enactment in 1967.[105] These dis-

94. *See id.*

95. *Sallee*, 827 N.W.2d at 142; 2B NORMAN J. SINGER & J.D. SHAMBIE SINGER, STATUTES & STATUTORY CONSTRUCTION § 52:5, 370 (rev. 7th ed. 2012).

96. *See infra* pp. 31-40.

97. Singer & Singer, *supra* note 95.

98. *See, e.g.*, ALA. CODE § 35-15-21(3) (1981).

99. *See, e.g.*, N.C. GEN. STAT. § 38A-2(5) (2013).

100. *See, e.g.*, MICH. COMP. LAWS § 324.73301(1) (2007).

101. *See, e.g.*, Bragg v. Genesee Cnty. Agric. Soc'y, 644 N.E.2d 1013, 1016 (N.Y. 1994).

102. *Sallee*, 827 N.W.2d at 140.

103. *See* 745 ILL. COMP. STAT. 65/2 (2005).

104. *Id.*

105. *Sallee*, 827 N.W.2d at 141.

tinct alterations are crucial to the court's decision in *Sallee*.[106] Omissions from uniform acts are typically seen as deliberate or intentional and should be interpreted accordingly.[107]

In 1967, given the expressed recommendation from the Council of State Governments, Iowa's legislature declined to follow the "includes, but is not limited to" language put forth in the 1965 Model Act.[108] When presented with the opportunity, the legislature also declined to adopt the 1979 Proposed Model Act, which argued for even more expansive language.[109] This resistance to change was concerning for the future of farm owners and educators alike. The court in *Sallee* noted that while policy reasons may support action, any such action must be taken by the legislature as the court may not add, or subtract, from the legislative definition.[110]

Historically, the Iowa Legislature has been receptive to progressive movements for action in several fields.[111] Property rights are no exception—the Iowa Legislature has amended the definition of "recreational purpose" several times in the past.[112] In 1971, the legislature expanded the definition to include "horseback riding," "motorcycling," "snowmobiling," and "other summer . . . sports."[113] As recently as 2012, the legislature added "all-terrain vehicle riding."[114] Coincidentally, the 2012 amendment was made in lieu of the *Scott v. Wright* case that gave rise to the issue in *Sallee*.[115] After *Scott*, the inquiry became whether the recreational use claim was based on human error or natural standards; if the accident was based upon natural hazards, the statute barred the claim.[116] None of the revisions in the 2012 Act coined the "includes, but is not limited to" expansive reading provided by the 1979 Proposed Model Act.[117]

106. *See id.* at 142.

107. Singer & Singer, *supra* note 95.

108. *Sallee*, 827 N.W.2d at 142.

109. *Id.*

110. *Id.* at 150; *see* State v. Spencer, 737 N.W.2d 124, 130 (Iowa 2007); Auen v. Alcoholic Beverages Div., 679 N.W.2d 586, 590 (Iowa 2004).

111. *See Iowa's Progressive History*, COUNCIL BLUFFS CMTY. ALLIANCE, http://councilbluffscommunityalliance.wordpress.com/iowa/iowas-progressive-history/ (last visited Oct. 5, 2015).

112. *See* Public Recreation on Private Lands, 1971 Iowa Acts 243-44; Taking of Animals, 1988 Iowa Acts 377, § 46; Regulation of Snowmobiles, All-Terrain Vehicles, and Watergraft, 2012 Iowa Acts 363-76, § 58.

113. 1971 Iowa Acts at 243-44.

114. 2012 Iowa Acts at 363-76, § 58.

115. *See id.*

116. *See* Scott v. Wright, 486 N.W.2d 40, 42 (Iowa 1992).

117. *Compare* 2012 Iowa Acts at 363-76 *with* Becker, *supra* note 82, at 151-92.

Instead of the expansive language used by Arizona, Colorado, North Dakota, and several others, Iowa provides that "'recreational purpose' means the following or any combination thereof."[118] It has read this way since its enactment in 1967.[119] The court in *Sallee* claims this language creates a closed universe of outdoor activities that trigger the protections of the statute, meaning if any activity outside the scope of the list provide is to be considered a recreational purpose, legislative action is required.[120]

Both the 1965 and 1979 Model Acts impose liability in cases of willful or malicious failure to guard or warn against dangerous conditions.[121] Thus, the interpretation of each state's statute is crucial to evaluating the concept's significance. The lack of consensus between the two Model Acts creates confusion among those whom the act is intended to benefit; extending protection too liberally could potentially benefit landowners at the land user's expense.[122] If landowners are only liable for willful or malicious actions, the concern shifts back to what actions constitute classification of willful or malicious, concerns originally voiced by critics of the classification system.

B. Limitations on the Reach of Recreational Use Statutes

The Iowa Supreme Court outlines four general limitations on the reach of recreational use statutes in *Sallee*.[123] First, the landowner must make their land open to the general public in order to be entitled to immunity.[124] Second, the recreational purpose of the activity needs to be associated with the true outdoors.[125] Third, there must be a causal link between the injury and the recreational use, meaning even if the injured individual is on land available for recreational use, that individual may not have been using the land in a recreational fashion, which in turn removes the injury from the purview of the statute.[126] Lastly, injuries occurring in buildings and structures will not typically be covered, subject to the nature of the land upon which the building sits and the activity occurring within the structure.[127]

118. *See* IOWA CODE § 461C.2(5) (2013).
119. *See* IOWA CODE § 461C.2(5); Sallee v. Stewart, 827 N.W.2d 128, 142.
120. *Sallee*, 827 N.W.2d at 142.
121. CHURCH, *supra* note 81, at 12, 30.
122. Becker, *supra* note 82, 1596.
123. *Sallee*, 827 N.W.2d at 143-46.
124. *Id.* at 143.
125. *Id.* at 143-44.
126. *Id.* at 144-45.
127. *Id.* at 146.

The first approach to limiting the scope of the recreational use statute is commonly accredited to the Delaware Supreme Court decision in *Gibson v. Keith*, which held that Delaware's statute only applied to landowners who invite or permit without charge the public at large to use property for recreational purposes.[128]

A lot of scrutiny plagued the Iowa Supreme Court following their adaption of the "true outdoors" test. The court associated its reasoning with a Louisiana Supreme Court case, *Keelen v. State*.[129] In *Keelen*, an eight-year-old boy drowned in a swimming pool in Fountainbleu State Park.[130] While swimming was an enumerated activity in the Louisiana statute, the court held the statute only covered "swimming in lakes, rivers, ponds, or other similar bodies of water;" i.e., recreation pursued in the true outdoors.[131] The Michigan Supreme Court decidedly removed ponds from the list of recreational activities covered, arguing in *Wymer v. Holmes*, the commonality among all enumerated uses is that they generally require large tracts of open, vacant land in a relatively natural state.[132] This would essentially remove any activity done inside of barns from protection, further limiting educational and economic opportunities for farmers.

Surprisingly, the Nebraska Supreme Court has gone so far as to imply a physical requirement, with which the Iowa Supreme Court seemingly agrees.[133] In *Dykes v. Scotts Bluff County Agricultural Society, Inc.*, the Nebraska Supreme Court held viewing livestock events at a county fair was not a recreational purpose.[134] Conjointly, it is clear these cases hold recreational use statutes do not offer blanket coverage for tort liability, and unclear as to just what kind of activities are covered.[135]

The causal link between injury and recreational use limits such statutes even further by holding persons entering land to engage in activities outside the scope of the activities outlined in the statute are not classified as recreational users.[136] This would effectively rule out injuries to chaperones whose ultimate pur-

128. Gibson v. Keith, 492 A.2d 241, 244 (Del. 1985).

129. *Sallee*, 827 N.W.2d at 143.

130. Keelen v. State, Dep't of Culture, Recreation & Tourism, 463 So. 2d 1287, 1288 (La. 1985).

131. *Id.* at 1290-91.

132. *See Wymer*, 412 N.W.2d at 215-20.

133. *See* Dykes v. Scotts Bluff Cnty. Agric. Soc'y, Inc., 617 N.W.2d 817, 823 (Neb. 2000); *Sallee*, 827 N.W.2d at 144.

134. *Dykes*, 617 N.W.2d at 823.

135. *Sallee*, 827 N.W.2d at 144.

136. *Id.*; *see* Carroll, *supra* note 50, at 178-79.

pose is to watch over students or children, not to pursue their own recreation.[137] The Iowa Supreme Court interpreted this to mean the activity should be a "necessary incident" to the listed activity if immunity is to apply.[138] For example, a chaperone that stands at the ready would not be considered within the statute, but saddling and preparing a horse for riding would be within the statute, as it is incidental to horseback riding.[139] The picture provided by such a narrow interpretation begins to look comical. A statute meant to foster safe recreational activity would now seemingly stand for unaccompanied minors to be left to roam freely on educational field trips.

Additionally, under the narrow interpretation given in *Sallee*, recreational immunity only lasts as long as the participation in an activity is covered under the statute.[140] If an individual were to enter a premises for the sole purpose of fishing, the fisherman would be covered during set-up, while fishing, and packing up.[141] However, when leaving, if the fisherman happened to be injured while climbing onto a structure or fixture of the property, his activity would no longer be covered within the scope of the statute.[142] The Supreme Court of New York aligns with this scenario in their decision of *James v. Metro North Commuter Railroad*.[143] In *James*, a man fishing on a railroad bank was not found to be engaging in recreational use when he was injured crossing train tracks in an effort to rescue his dog.[144]

Whether or not a structure associated with the private land falls under the statute's protection seems to rest upon what type of activity is occurring within the structure and the nature of the land upon which the building sits.[145] Typically, recreational use statutes refrain from including enclosed recreational facilities in urban regions, such as indoor swimming pools, but allow for ancillary structures attached to open space lands made available for recreation.[146] Ultimately, activities occurring within a structure might give rise to immunity under the stat-

137. *See* Rintelman v. Boys & Girls Clubs of Greater Milwaukee, Inc., 707 N.W.2d 897, 905-06 (Wis. Ct. App. 2005).

138. *See Sallee*, 827 N.W.2d at 151.

139. Cox, *supra* note 5 (noting that horseback riding is expressly covered by the statute).

140. *See Sallee*, 827 N.W.2d at 145.

141. *See* Smith v. Scrap Disposal Corp., 158 Cal. Rptr. 134, 137 (Ct. App. 1979).

142. *See id.*

143. *See* James v. Metro N. Commuter R.R., 560 N.Y.S.2d 459, 462 (App. Div. 1990).

144. *See id.*

145. *See* Rivera v. Philadelphia Theological Seminary of St. Charles Borromeo, Inc., 507 A.2d 1, 8 (Pa. 1986); Drake *ex rel*. Drake v. Mitchell Cmty. Sch., 649 N.E.2d 1027, 1030 (Ind. 1995).

146. *Rivera*, 507 A.2d at 8.

ute, but there must be activity occurring within the structure that serves a recreational purpose.[147] While the statute is designed to protect activities traditionally undertaken outdoors, the Iowa Supreme Court held the statutory language of "structures" and "buildings" are only used to shield liability when the activities that occur within the structure or building are incidental to an activity listed in the statute.[148]

III. LEGISLATIVE INITIATIVE ADOPTED BY IOWA IN LIGHT OF *SALLEE*

The decision in *Sallee* left many farmers questioning whether to, and how they should, allow hunters, fishermen, and school children on their property. Before closing the doors to the State Capitol for the 2013 legislative session, the Iowa Legislature responded to the public outcry from Iowa farmers and others interested in recreational activities and educational tours alike.

Agricultural law expert Roger McEowen explained that the newly minted bill "basically throws out the [*Sallee*] case."[149] McEowen is the head of the Iowa State University Center for Agricultural Law and Taxation.[150] Alongside Erika Eckley, Former Staff Attorney at the Iowa State University Center for Agricultural Law and Taxation, McEowen composed a critique of the *Sallee* decision subsequent to its release.[151] The paper offered several gaps the Legislature should address in their dealing with the ruling.[152] One of those gaps being the public policy message that it is apparently better to encourage land owners to leave invited entrants to their own devices while on their land instead of risking liability by taking appropriate measures to ensure the purpose of the visit is safely fulfilled.[153] While this logic is not correctly drawn from the ruling, lawmakers sided with the duo and closed several of the gaps.[154]

Governor Terry Branstad signed House File 649 into law on June 17, 2013.[155] The measure unanimously passed the Iowa House and Senate.[156] Back-

147. Sallee v. Stewart, 827 N.W.2d 128, 131 (Iowa 2013).

148. *See* Cox, *supra* note 5.

149. Gene Lucht, *Farmers' Liability for Visitors Cleared up by Iowa Legislature*, IOWA FARMER TODAY (June 6, 2013), http://www.iowafarmertoday.com/news/crop/farmers-liability-for-visitors-cleared-up-by-iowa-legislature/article_224815b6-ce12-11e2-9b6b-001a4bcf887a.html.

150. *Id.*

151. *See* Eckley & McEowen, *supra* note 17, at 1-8.

152. *See id.* at 7.

153. *Id.* at 5.

154. 2013 Iowa Acts 490-92.

155. Letter from Terry Branstad, Governor, State of Iowa, to Matt Schultz, Secretary of State, Iowa (June 17, 2013) [hereinafter Letter from Terry Branstad].

ing the bill was the state's largest grassroots farm organization, the Iowa Farm Bureau Federation (IFBF).[157] The passing of the bill was seen as a big win for Iowa farmers and all Iowans who want to experience and learn more about life on the farm. IFBF President, Craig Hill, said the Legislature restored a liability protection farmers have enjoyed for four decades.[158] "Not only does HF 649 restore liability protection for previous activities, it also includes educational activities, directs broad interpretation, eliminates public access concerns and removes the peril from the 'tour guide' role of landowners."[159]

House File 649 is an act "relating to the liability of a land holder for the public use of private lands and waters for a recreational purpose or urban deer control."[160] House File 649 was specifically aimed to broaden the narrow interpretation given to Iowa's recreational use immunity statute by the Court in *Sallee*.[161] The bill states "[t]he provisions of this chapter shall be construed liberally and broadly in favor of private holders of land to accomplish the purposes of this chapter."[162] Additionally, House File 649 expanded the definition of land—providing protection to the exterior as well as the interiors of buildings, clearing up the "true outdoors" debacle from *Sallee*.[163]

The definition of "recreational purpose" was also altered to reflect the legislature's clear disdain for the *Sallee* ruling.[164] Not only did House File 649 add "educational activities" to the list of activities covered by the recreational use immunity statute, the legislature took educational activities a step farther by including "the activity of accompanying another person who is engaging in such activities."[165] The bill provides that "a holder of land does not owe or assume a duty of care to others solely because the holder is guiding, directing, supervising, or participating in any 'recreational purpose.'"[166] This addition alleviates the

156. Andrew Wheeler, *Iowa Farm Bureau Applauds Legislature for Restoring Recreational Statute for Farmers, Landowners*, IOWA FARM BUREAU (May 17, 2013), http://www.rcreader.com/news-releases/iowa-farm-bureau-applauds-legislature-for-restoring-recreational-statute-for-farmers-landowners/.

157. *Id.*

158. *Id.*

159. *Id.*

160. Letter from Terry Branstad, *supra* note 155.

161. *See* Wheeler, *supra* note 156.

162. IOWA CODE § 461C.1 (2013).

163. IOWA CODE § 461C.2.

164. *Id.*

165. *Id.*

166. Erin Herbold-Swalwell, *Legislature Takes up Liability, Leases in Ag Bills*, WALLACES FARMER (June 2013), http://magissues.farmprogress.com/WAL/WF06Jun13/wal028.pdf.

concern of several farmers who routinely offered their land for educational purposes. It would seem in just three months Iowa's recreational use statutes would go from the most restrictive to one of the most liberal in the country.

In handling the chaperone aspect of *Sallee*, the Iowa Supreme Court revisited a 2005 case decided by the Wisconsin Court of Appeals.[167] In *Rintelman v. Boys & Girls Clubs of Greater Milwaukee, Inc.*, a chaperone slipped and fell while moving from one housing shelter to another.[168] Like Mrs. Sallee, Mrs. Rintelman "did not participate in any of the recreational activities—either planned or unplanned."[169] The Wisconsin court went on to hold "mere presence on property suitable for recreational activity when a plaintiff is injured does not, *ipso facto*," trigger recreational use immunity.[170] The new "liberally and broadly in favor of private holders" coupled with expanding recreational purpose to "entry, use of, passage over, and presence on any part of the land in connection with the activities planned" language of the Iowa statute would seemingly now cover extended visits to camps as long as the overall purpose of the trip was recreational.[171] The amendments render the material considerations in determining whether the statute applies to a particular activity meaningless.

In *Sallee*, the Iowa Supreme Court acknowledged the ambiguity associated with the recreational use immunity statute.[172] This ambiguity led farmers to believe they had the rights and protections now associated with the new amendments, since the 1970s.[173]

Wisconsin, North Dakota, and South Dakota were previously the only states in the Midwest to include educational activities in their liability-limiting laws for landowners.[174] Illinois would joined this faction on January 1, 2014 with the passing of Public Act 98-522.[175]

As the Iowa statute currently stands, recreational purpose is not limited to being actively engaged in the activities listed.[176] The statute now "includes entry onto, use of, passage over, and presence on any part of the land in connection

167. *See Sallee*, 827 N.W.2d at 145.
168. *Rintelman*, 707 N.W.2d at 900.
169. *Id.* at 906.
170. *Id.*
171. IOWA CODE § 461C.1 (2013).
172. *See Sallee*, 827 N.W.2d at 148-53.
173. *See id.*
174. Orr, *supra* note 12.
175. Civil Law—Recreational Use Of Land—Invite/Permit, 2013 Ill. Legis. Serv. 98-522 (West).
176. IOWA CODE § 461C.2.

with or during the course of such activities."[177] Take the prior example of the fisherman—after the passing of House File 649, if the fisherman is injured while passing through to get to a fishing pond, the possessor of the private land is now shielded from liability.

The Iowa Legislature also broadened who qualifies for protection under the recreational use immunity statute.[178] The original language of the statute held only landowners would qualify for protection.[179] The new bill replaced the wording of land "owner" with "holder."[180] The change in the wording essentially shares the immunity with tenants, as well as anyone who legally possesses private land in Iowa.[181] This is consistent with the views held by Iowa's neighboring states, with the exception for governmental entities.

A great majority of recreational use statutes apply to "persons entering [holder's land] for such purposes."[182] Ohio takes a slightly different approach by limiting the applicability of their recreational use statute to licensees and trespassers, but not invitees.[183] The Ohio approach, commonly referred to as the invited guest exception, was the same analysis handed down by the Iowa Supreme Court, on remand, in *Sallee*.[184] Ohio ranks 13th in percentage of farmland per acre and 43rd in public land to private land.[185] In order to cultivate a new generation of farmers, it would be wise for Ohio to adopt changes similar to Iowa and Illinois in the coming years to avoid the issues presented in *Sallee*.

IV. AGRITOURISM

While several states struggle with liability as it pertains to recreational use statutes, Oklahoma, Idaho, and Florida have recently passed legislation targeted at the growing area of law entitled "agritourism."[186] In a sense, recreational stat-

177. *Id.*

178. *See id.*

179. H.F. 649, 85th Gen. Assemb. (Iowa 2013).

180. IOWA CODE § 461C.2.

181. Herbold-Swalwell, *supra* note 166.

182. *See, e.g.*, IOWA CODE § 461C.1.

183. *See* OHIO REV. CODE ANN. §§ 1533.18, 1533.181 (West 2013).

184. *See* Sallee v. Stewart, 827 N.W.2d 128, 146 (Iowa 2013); Eckley & McEowen, *supra* note 17, at 5.

185. *States by Percentage of Farmland-2004*, STUFF ABOUT STATES, http://stuffaboutstates.com/agriculture/farm_by_percent.htm; *Public Land Ownership by State*, *supra* note 5.

186. Dayna J. Sondervan, *Agritourism Thrives While the Law Strives to Catch Up*, GROWING GA. (July 12, 2013), http://growinggeorgia.com/features/2013/07/agritourism-thrives-while-law-strives-catch/.

utes can be seen as a precursor to agritourism laws.[187]

Typically, agritourism is defined as "the act of visiting a working farm or any agricultural, horticultural or agribusiness operation to enjoy, be educated or be involved in activities."[188] These activities often include farm visits, winery tours, cut-your-own Christmas tree farms, rural bed & breakfasts, and temporary outdoor recreation activities.[189] Additionally, an activity is an agritourism activity whether or not the participant paid to participate in the activity.[190] Supporters of agritourism legislation point out its economic, social, and cultural benefits provided to consumers.[191] Agritourism allows producers to generate additional income and provides an avenue for direct marketing to consumers.[192] Agritourism ventures also allow communities to increase their local tax bases while simultaneously fostering new employment opportunities.[193]

It is estimated that 62 million Americans visited farms one or more times in the year 2000.[194] That is roughly 30% of the population.[195] With numbers like these it is no wonder why farmers have begun to explore the viability of alternative economic strategies. Agritourism statutes are increasing in popularity and directly address the issues discussed in *Sallee*. "Over half of the states in the United States have enacted statutes that address agritourism."[196] Agritourism statutes promote education by protecting farmers from liability if they take certain precaution, such as posting warning signs.[197]

"The recent growth in agritourism is both demand and supply driven."[198]

187. *Id.*

188. *Agritourism*, AGRIC. MKTG. RES. CTR. http://www.agmrc.org/commodities__products/agritourism/ (last visited Oct. 5, 2015).

189. DEL. CODE ANN. tit. 9, § 306 (West 2008); *Agritourism—An Overview*, NAT'L AGRIC. L. CTR, http://nationalaglawcenter.org/overview/agritourism/ (last visited Sept. 4, 2015) [hereinafter *Agritourism—An Overview*].

190. DEL. CODE ANN. tit. 9, § 306.

191. Elizabeth Dooley, Note, *Watch Where You're Steppin' Out Here: Why States Should Adopt Legislation to Promote the Diversified Farming Practice of Agritourism*, 15 DRAKE J. AGRIC. L. 455, 456 (2010).

192. *Agritourism – An Overview*, *supra* note 189.

193. *Id.*

194. Carlos E. Carpio et al., *The Demand for Agritourism in the United States*, 33 J. OF AGRIC. & RES. ECON. 254, 255 (2008), *available at* http://www.ces.ncsu.edu/depts/agecon/pubs/demandtourism.pdf.

195. *Id.*

196. Shannon Mirus, *States' Agritourism Statutes*, NAT'L AGRIC. L. CTR., http://nationalaglawcenter.org/state-compilations/agritourism/ (last visited Oct. 5, 2015).

197. Sondervan, *supra* note 186.

198. Carpio, *supra* note 194.

Economic pressures have forced farmers to augment their income through diversification, which has led farmers to pursue both agricultural and nonagricultural options.[199] Luckily for farmers, the typical consumer's interest and support for local farm activities, and farmers' markets in particular, have increased in recent years.[200]

Future projections show continued increases in the number of participants, trips, and activity days for outdoor recreation as well as the increase of shorter trips with multiple activities involved.[201] A similar study showed people are doing more traveling as a family, by car, and are looking for recreational experiences to fill their free time.[202] This growing interest in rural life has been observed since the early 1990s in the United States as well as other developed countries such as Japan.[203]

Agritourism is often used interchangeably with agricultural tourism, farm tourism, agritainment, and farm visits.[204] Having multiple labels causes problems for stakeholder groups; farm visitors are often confused with the types of activities offered; farmers are not reaching the targeted tourism markets; and extension faculty experience difficulty in communicating and researching agritourism.[205] Not reaching the targeted tourism markets hamper farmers' ability to increase their revenues and create positive word of mouth marketing about their attractions.

Regardless of whether states choose to fine tune their recreational use statutes or implement new agritourism laws, possessors of land need to be aware of the legal standards for landowner liability that applies in their jurisdiction. In jurisdictions that do not have recreational use statutes, farmers need to be cognizant of their farm insurance policies, as some may not cover recreational activities.

A. Instruction to Farm Owners in Narrowly Tailored Recreational Use States

The decision in *Sallee* should not deter farm owners or organizations from promoting agricultural education on their land; rather, landowners should take a few necessary steps to minimize their exposure to liability in states holding nar-

199. *Id.*

200. *See id.*

201. *Id.*

202. *Id.*

203. *Id.*

204. *Agritourism—An Overview*, *supra* note 189; *see* John Colton & Glyn Bissix, *Developing Agri-tourism in Nova Scotia: Issues and Challenges*, ACADIA UNIV., *available at* http://lin.ca/sites/default/files/attachments/CCLR10-17.pdf.

205. Colton & Bissix, *supra* note 204.

rowly tailored recreational use statutes.

Recreational use statutes generally bar claims brought against landowners for activities expressly listed in the statute. The court in *Sallee*, however, addressed one caveat to this rule: a landowner can be found liable for a willful or malicious failure to warn or guard against an inherent danger.[206] In order to prove a landowner acted willfully, an actor must demonstrate "disregard of a known or obvious risk that was so great as to make it highly probable that harm would follow."[207] The Iowa Supreme Court infers that this is an increasingly hard threshold to prove.[208] The Iowa Supreme Court noted that while Sallee was a very large woman, there was insufficient evidence in the record to support a finding that she "would likely sit or stand on the hay bales covering the hole in the loft or that it was highly probable that the hay bales would almost assuredly collapse as a consequence, thereby causing serious injury."[209]

It is important to note that the court in *Sallee* addressed premises liability. Focusing on premises liability, landowners are not restricted from interacting with visitors—the statute applies to accidents occurring due to conditions of the property, not negligent acts by landowners or their employees.[210] Landowners and farmers alike need to be aware of this when arranging for visitors—the more activities and machinery used, the higher risk of negligence. Thus, landowners and farmers should be sure to have competent staff in control of these higher risk options.

First and foremost, to avoid liability, landowners must avoid negligent acts or omissions.[211] In relation to the previously discussed notion of the duty of care owed to trespassers, licensees, and invitees, even without the immunity offered through the recreational use statutes, landowners are not liable for trespasser or licensee accidents that occur on their land.[212] In order for a landowner to be held responsible for injury there must be a showing of negligence.[213] Avoiding negligent acts and omissions may significantly lower the probability that a lawsuit

206. Sallee v. Stewart, 827 N.W.2d 128, 153 (Iowa 2013).

207. *Id.* at 154; Brokaw v. Winfield-Mt. Union Cmty. Sch. Dist., 788 N.W.2d 386, 396 (Iowa 2010).

208. *See Sallee,* 827 N.W.2d. at 154.

209. *Id.* at 154.

210. Cox, *supra* note 5.

211. *Id.*

212. *See id.*

213. *See id.*; *Determination of Status*, USLEGAL, http://premisesliability.uslegal.com/determination-of-status/ (last visited Oct. 5, 2015) [hereinafter *Determination of Status*].

against a landowner will be successful.[214] In the case of a trespasser, a landowner does not owe a duty of care.[215] This is subject, however, to the landowner's knowledge of the trespasser being on his or her property.[216] Once knowledge is obtained, landowners must warn the trespasser of any artificial danger.[217] Similarly, landowners must warn invitees of hidden hazardous conditions.[218] In addition to warning of hazardous conditions, the duty owed to an invitee generally includes the duty to actively make the premises safe, to routinely inspect, and if dangerous conditions are discovered, a landowner must repair the condition in a timely manner.[219]

Second, the purpose of the visit should be made known to visitors before they ever set foot on the property.[220] It has been suggested that a waiver may limit the liability placed on a particular visit, and while this may be the case, waivers are only as good as the paper they are written on in most scenarios.[221] For larger groups, simply reiterating what activities the property may be solely used for should suffice.[222]

Lastly, land owners should know the state statute and individualized farm insurance plan forwards and back.[223] While no insurance plan may provide a catch all, agents have a duty to provide enough information for an informed decision. Bring an extra pair of eyes to policy discussions if need be. Decide on a plan that covers a reasonable amount of activities and stick to this limited field. Some education and hands-on experience is better than none. Knowledge is key in states with strict interpretations. Decisions made on a more informed and knowledgeable basis produce better decisions overall and lead to safer outcomes when deciding which activities will be held on premises.

214. *See Premises Liability: Who is Responsible?*, FINDLAW, http://injury.findlaw.com/accident-injury-law/premises-liability-who-is-responsible.html (last visited Oct. 5, 2015) [hereinafter *Premises Liability*].

215. Cox, *supra* note 5.

216. *Premises Liability*, *supra* note 214.

217. *Id.* The requirement of duty to provide reasonable warning only attaches when the presence of an artificial condition, or a condition the landowner "has created or maintains, and knows may be likely to cause serious injury or death." However, such a warning may not need to be given if the condition is obvious or obvious and natural to the premises.

218. *Determination of Status*, *supra* note 213.

219. Cox, *supra* note 5.

220. *Id.*

221. *Id.*

222. *See id.*

223. *Id.*

V. PREVENTING INJUSTICE IN RESTRICTIVE STATES

Until 2014, Illinois could be considered hailed as one of the strictest states in which recreational immunity can be obtained. The Illinois Supreme Court took a much different approach to recreational immunity in *Hall v. Henn*.[224] The issue before the Court in *Hall* was the extent to which a landowner must open his or her land to the public in order to qualify for the Recreational Use Act's protections.[225] The claim arose after a neighbor slipped on the stairs leading up to a sled run created by the plaintiff.[226] The sled run was only made available to friends and neighbors after they had received permission.[227]

The Illinois Supreme Court reversed a seemingly well-settled interpretation stating that recreational use immunity is only available to landowners who open their property to the general public.[228] The court reasoned that an act which immunized landowners from negligence liability with respect to any person who enters their property for recreational purposes would encompass just about every purpose for which a person is invited onto another's property.[229] The Court further argued that this would "largely eliminate premises liability in the state."[230]

The rationale behind premises liability laws is to encourage holders of land to maintain their property in a reasonably safe condition. When an individual enters the land of another, they have a reasonable expectation of not getting injured.[231] "The legal theory of 'premises liability' holds owners and occupiers of property legally responsible for accidents and injuries that occur on that property."[232]

Similar to Iowa, Illinois's agricultural sector and landowners alike responded by supporting a bill to overrule the Court's decision in *Hall* by amending the Recreational Use Act.[233] When considering the wording of the bill, the Illinois Legislature wrestled with the competing interests of providing incentives for landowners to open private land to the general public while still preserving

224. *See generally* Hall v. Henn, 802 N.E.2d 797 (Ill. 2003) (interpreting the Illinois Recreation Use Act).

225. *Id.* at 798.

226. *Id.*

227. *Id.*

228. *Id.* at 800.

229. *Id.*

230. *Id.*

231. *See Premises Liability*, *supra* note 214.

232. *Id.*

233. H.B. 334, 94th Gen. Assemb., Reg. Sess. (Ill. 2005).

some form of premises liability within the state.[234]

It is economically sound and in line with the original intent of the Model Act to place the liability of recreational use on the users themselves. Families across the Midwest, like the Stewarts, have little to no incentive to spur education on their lands if it comes at a cost of liability. When asked about the *Sallee* decision, Steve Swenka, a farmer in rural Iowa said, "[w]e're farmers, we're not lawyers, so we can't determine if every situation falls under those parameters . . . [T]he best solution for me is to close the door and say sorry I can't allow any more people on my farm. That way [I] know [my] bases are covered."[235]

Had the Iowa Legislature not passed House File 649, multiple facets of on-farm education in Iowa would be drastically different. Iowa State University, College of Agriculture and Life Sciences, either owns or has partnered with thirteen major farms in the state of Iowa.[236] Without House File 649, Iowa State University and its professors in their individual capacity could each be held liable for students visiting these farms.[237] Similarly, the kindergarten class, which had visited the Stewart farm for twenty-five years, would be hard pressed to find another farm willing to take on the added responsibility of providing educational tours for them. These scenarios not only impact the children's educational experience, but jeopardize the agricultural future of the state.

VI. CONCLUSION

The overall goal of recreational use statutes is to encourage private landowners to make their lands available to the general public. Prior to 2014, it would seem states across the Midwest had lost sight of this goal. Narrowly tailored recreational use statutes can have the added side effect of retarding agricultural education, while hampering farmers' ability to increase their revenues and create positive word of mouth marketing about their attractions at the same time. Giving students and consumers alike an opportunity for hands-on experience at the farm is an intricate step in rekindling the flame extinguished by mass-produced commodity crops and modern technology. Together, liberal recreational use and agritourism statutes "bolster agriculture's reorientation toward more local, sustainable approaches" and provide "alternatives in our environmen-

234. *See* Endres & Uchtmann, *supra* note 93, at 588.

235. Cassidy Riley, *Iowa Supreme Court Case has Farmers Shutting Their Doors*, THE DAILY IOWAN (April 11, 2013), http://www.dailyiowan.com/2013/04/11/Metro/32777.html

236. *See ISU Research and Demonstration Farms*, COLL.OF AGRIC.& LIFE SCI.,IOWA STATE UNIV., http://www.ag.iastate.edu/farms/ (last visited Oct. 5, 2015).

237. Lucht, *supra* note 149.

tally and economically shortsighted global food system."[238] As addressed by the Court in *Sallee*, the courts are not an avenue that leads to reform. If farmers and agricultural organizations alike wish to allow their property to be used as educational outlets, supporters of a more liberal definition in recreational use statutes must contact local legislators and voice their opinion. Alternatively, farmers could contribute their opinions on establishing agritourism statutes, which would provide economic incentives, thereby increasing the incentive to open their private land for public use. Both options contribute to accomplishing the goals and original intent of recreational statutes.

238. Dooley, *supra* note 191, at 459.