

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1995

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HOUSE BILL 127
Second Edition Engrossed 2/23/95
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Short Title: Landowner Protection Act.

(Public)

Sponsors: Representatives Shubert; Aldridge, Allred, Baker, Barbee, Berry, Bowen, Bowie, Brawley, J. Brown, Buchanan, Cansler, Capps, Carpenter, Clary, Cocklereece, Culp, Cummings, Davis, Decker, Dickson, Dockham, Eddins, Fox, Gardner, Grady, Hayes, Hiatt, Hill, H. Hunter, Justus, Kiser, Lemmond, Linney, Locke, McComas, McCombs, McMahan, Mitchell, Morgan, Nichols, Owens, Pate, Rayfield, Redwine, Reynolds, Russell, Sexton, Sharpe, Sherrill, Snowden, Tallent, Thompson, Tolson, Weatherly, C. Wilson, G. Wilson, and Yongue.

Referred to: Judiciary I.

February 8, 1995

1 A BILL TO BE ENTITLED
2 AN ACT TO LIMIT THE LIABILITY OF LANDOWNERS TO MEMBERS OF THE
3 PUBLIC ENTERING THE LAND FOR EDUCATIONAL AND RECREATIONAL
4 PURPOSES.

5 The General Assembly of North Carolina enacts:

6 Section 1. The General Statutes are amended by adding a new Chapter to
7 read:

8 **"CHAPTER 38A.**

9 **"LANDOWNER LIABILITY.**

10 **"§ 38A-1. Purpose.**

11 The purpose of this Chapter is to encourage owners of land to make land and water
12 areas available to the public for educational and recreational purposes by:

13 (1) Limiting the liability of the owner to persons entering the land for
14 those purposes; and

- 1 (2) Ensuring that through making one's land available for educational and
2 recreational purposes, an owner need not be subjected to waste or a
3 financial burden.

4 **"§ 38A-2. Definitions.**

5 The following definitions shall apply throughout this Chapter, unless otherwise
6 specified:

- 7 (1) 'Charge' means a price or fee asked for services, entertainment,
8 recreation performed, or products offered for sale on land or in return
9 for an invitation or permission to enter upon land, except as otherwise
10 excluded in this Chapter.
11 (2) 'Educational purpose' means any activity undertaken as part of a
12 formal or informal educational program, and viewing historical,
13 natural, archaeological, or scientific sites.
14 (3) 'Land' means real property, land, and water.
15 (4) 'Owner' means any individual, legal entity, or governmental entity that
16 has any fee or security, and any employee or agent of such individual,
17 legal entity, or governmental entity.
18 (5) 'Recreational purpose' means any activity undertaken for recreation,
19 exercise, education, relaxation, refreshment, diversion, or pleasure.

20 **"§ 38A-3. Exclusions.**

21 For purposes of this act, the term 'charge' does not include:

- 22 (1) Unless otherwise agreed in writing, any lease, dedication, license, or
23 easement, or the proceeds thereof, by an owner of land to a nonprofit
24 organization or governmental entity for educational or recreational
25 purposes.
26 (2) Any action taken by a person, legal entity, nonprofit organization, or
27 governmental entity other than the owner, or any monetary
28 contribution made, in either event, whether or not sanctioned or
29 solicited by the owner, the purpose of which is to (i) improve access to
30 land for educational or recreational purposes; (ii) remedy damage to
31 land caused by educational or recreational use; or (iii) provide warning
32 of hazards on, or remove hazards from, land used for educational or
33 recreational purposes.
34 (3) Unless otherwise agreed in writing or otherwise provided by the State
35 or federal tax codes, any property tax abatement or relief received by
36 the owner from the State or local taxing authority in exchange for the
37 owner's agreement to open the land for educational or recreational
38 purposes.
39 (4) Unless otherwise agreed in writing, any contribution in-kind, services,
40 or cash paid to reduce or offset costs and eliminate losses from
41 educational or recreational use.

42 **"§ 38A-4. Limitation of liability.**

43 Except as specifically recognized by or provided for in this act, an owner of land
44 who either directly or indirectly invites or permits without charge any person to use

1 such land for educational or recreational purposes owes the person the same duty of care
2 that he owes a trespasser."

3 Sec. 1.1. Within 45 days after ratification of this act, the Department of
4 Public Instruction shall notify, in writing, each local board of education of this act,
5 including its application to school activities held on premises covered by this act and its
6 effect on students, parents, teachers and others participating in those activities on behalf
7 of the school.

8 Sec. 2. Section 1 of this act becomes effective October 1, 1995, and applies
9 to all causes of action arising after that date; the remainder of this act is effective upon
10 ratification. All insurance policies providing liability coverage for land, as defined in
11 G.S. 38A-2(3), covered by Section 1 of this act shall be reredated on the anniversary dates
12 of the policies next following the effective date of Section 1 of this act, to reflect the
13 added limitation of liability contained in G.S. 38A-4.