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Short Title: Landowner Protection Act.

(Public)

Sponsors:

Referred to:

February 8, 1995

A BILL TO BE ENTITLED

AN ACT TO LIMIT THE LIABILITY OF LANDOWNERS TO MEMBERS OF THE PUBLIC ENTERING THE LAND FOR EDUCATIONAL AND RECREATIONAL PURPOSES.

The General Assembly of North Carolina enacts:

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

"CHAPTER 38A.

"LANDOWNER LIABILITY.

"§ 38A-1. Purpose.

The purpose of this Chapter is to encourage owners of land to make land and water areas available to the public at no cost for educational and recreational purposes by limiting the liability of the owner to persons entering the land for those purposes.

"§ 38A-2. Definitions.

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

- 1 (1) 'Charge' means a price or fee asked for services, entertainment,
2 recreation performed, or products offered for sale on land or in return
3 for an invitation or permission to enter upon land, except as otherwise
4 excluded in this Chapter.
- 5 (2) 'Educational purpose' means any activity undertaken as part of a formal
6 or informal educational program, and viewing historical, natural,
7 archaeological, or scientific sites.
- 8 (3) 'Land' means real property, land, and water, but does not mean a
9 dwelling and the property immediately adjacent to and surrounding such
10 dwelling that is generally used for activities associated with occupancy
11 of the dwelling as a living space.
- 12 (4) 'Owner' means any individual or nongovernmental legal entity that has
13 any fee, leasehold interest, or legal possession, and any employee or
14 agent of such individual or nongovernmental legal entity.
- 15 (5) 'Recreational purpose' means any activity undertaken for recreation,
16 exercise, education, relaxation, refreshment, diversion, or pleasure.

17 **"§ 38A-3. Exclusions.**

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

- 19 (1) Any contribution in kind, services or cash contributed by a person, legal
20 entity, nonprofit organization, or governmental entity other than the
21 owner, whether or not sanctioned or solicited by the owner, the purpose
22 of which is to (i) remedy damage to land caused by educational or
23 recreational use; or (ii) provide warning of hazards on, or remove
24 hazards from, land used for educational or recreational purposes.
- 25 (2) Unless otherwise agreed in writing or otherwise provided by the State or
26 federal tax codes, any property tax abatement or relief received by the
27 owner from the State or local taxing authority in exchange for the
28 owner's agreement to open the land for educational or recreational
29 purposes.

30 **"§ 38A-4. Limitation of liability.**

31 Except as specifically recognized by or provided for in this act, an owner of land who
32 either directly or indirectly invites or permits without charge any person to use such land
33 for educational or recreational purposes owes the person the same duty of care that he
34 owes a trespasser, except nothing in this act shall be construed to limit or nullify the
35 doctrine of attractive nuisance and the owner shall inform direct invitees of artificial or
36 unusual hazards of which the owner has actual knowledge. This section does not apply to
37 an owner who invites or permits any person to use land for a purpose for which the land
38 is regularly used and for which a price or fee is usually charged even if it is not charged
39 in that instance, or to an owner whose purpose in extending an invitation or granting
40 permission is to promote a commercial enterprise."

41 Sec. 2. Within 45 days after ratification of this act, the Department of Public
42 Instruction shall notify, in writing, each local board of education of this act, including its
43 application to school activities held on premises covered by this act and its effect on

1 students, parents, teachers, and others participating in those activities on behalf of the
2 school.

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