

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

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HOUSE DRH10267-MH-93A (03/07)

Short Title: Reform Recreational Use Statute. (Public)

Sponsors: Representatives McGrady, Whitmire, Faircloth, and Harrison (Primary Sponsors).

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO IMPROVE THE NORTH CAROLINA RECREATIONAL USE STATUTE BY
3 CLARIFYING THAT NONCOMMERCIAL EQUINE RECREATIONAL ACTIVITIES
4 FOR WHICH THE LANDOWNER RECEIVES NO COMPENSATION ARE SUBJECT
5 TO THE RECREATIONAL USE STATUTE AND NOT THE EQUINE ACTIVITY
6 LIABILITY STATUTE; BY CLARIFYING THAT CONTRACTUAL RELEASES ARE
7 NOT ABROGATED OR INVALIDATED BY THE RECREATIONAL USE STATUTE;
8 BY ALLOWING A CHARGE FOR ACTIVITIES SUBJECT TO THE RECREATIONAL
9 USE STATUTE WHEN THE CHARGE IS IMPOSED BY CERTAIN ACTIVITY
10 SPONSORS AND NOT THE LANDOWNER; AND BY PROVIDING FOR AN AWARD
11 OF ATTORNEYS' FEES TO A PREVAILING LANDOWNER IN ACTIONS RELATED
12 TO EDUCATIONAL OR RECREATIONAL USES OF THE LANDOWNER'S
13 PROPERTY.

14 The General Assembly of North Carolina enacts:

15 SECTION 1.(a) G.S. 38A-2(5) reads as rewritten:

16 "§ 38A-2. Definitions.

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

18 ...
19 (5) "Recreational purpose" means any activity undertaken for recreation,
20 exercise, education, relaxation, refreshment, diversion, or ~~pleasure~~ pleasure
21 or sport, including equestrian recreation as defined in G.S. 99E-1."

22 SECTION 1.(b) G.S. 99E-1 reads as rewritten:

23 "§ 99E-1. Definitions.

24 As used in this Article, the term:

25 ...
26 (3) "Equine activity" means any activity involving an equine. Actions to
27 preserve, maintain, or regulate the use of land for equestrian recreation shall
28 not be considered an equine activity.

29 (4) "Equine activity sponsor" means an individual, group, club, partnership, or
30 corporation, whether the sponsor is operating for profit or nonprofit, which
31 sponsors, organizes, or provides the facilities for an equine activity. The
32 term includes operators and promoters of equine facilities. A landowner who
33 allows equine recreation activities on the landowner's property shall not be
34 considered an equine activity sponsor."

35 ...



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(5a) "Equine recreation" means noncommercial use of a landowner's property (i) that involves neither an equine activity sponsor nor an equine professional and (ii) when the landowner permits use of the property without charge. For purposes of this subdivision, "charge" has the meaning set forth in G.S. 38A-2 and G.S. 38A-3.

...."

SECTION 1.(c) Article 1 of Chapter 99E of the General Statutes is amended by adding a new section to read:

"§ 99E-4. Exception.

The liability of a landowner for injury or death associated with participation in equine recreation activities shall be subject to the limitation set forth in G.S. 38A-4, and shall not be subject to this Article."

SECTION 2.(a) G.S. 38A-4 reads as rewritten:

"§ 38A-4. Limitation of liability.

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

(b) Nothing in this section shall be construed to conflict with or render ineffectual a liability release, indemnification, assumption, or acknowledgment of risk agreement between the landowner and a person who uses the land for educational or recreational purposes."

SECTION 2.(b) G.S. 99E-2 is amended by adding a new subsection to read:

"§ 99E-2. Liability.

...

(d) Nothing in this section shall be construed to conflict with or render ineffectual a liability release indemnification, assumption, or acknowledgment of risk agreement between an equine activity sponsor or an equine professional and a participant."

SECTION 3. G.S 38A-3 reads as rewritten:

"§ 38A-3. Exclusions.

For purposes of this Chapter, the term "charge" does not include:

- (1) Any contribution in kind, services or cash contributed by a person, legal entity, nonprofit organization, or governmental entity other than the owner, whether or not sanctioned or solicited by the owner, the purpose of which is to (i) remedy damage to land caused by educational or recreational use; ~~or~~ (ii) provide warning of hazards on, or remove hazards from, land used for educational or recreational ~~purposes; or~~ (iii) pay expenses related to the use of land for a recreational or educational purpose.
- (2) Unless otherwise agreed in writing or otherwise provided by the State or federal tax codes, any property tax abatement or relief received by the owner from the State or local taxing authority in exchange for the owner's agreement to open the land for educational or recreational purposes.
- (3) Dues or fees charged by an individual, group, club, partnership, corporation, or governmental entity sponsoring the educational or recreational use when (i) the sponsor is operating as a nonprofit or in a nonprofit capacity and (ii)

1 the dues or fees are used to pay expenses relating to the educational or
2 recreational use or to raise funds to support the sponsor's mission."

3 **SECTION 4.** Chapter 38A of the General Statutes is amended by adding a new
4 section to read:

5 **"§ 38A-5. Attorneys' fees for prevailing defendants.**

6 In any civil action brought against a landowner seeking damages for injuries or death
7 caused by use of the landowner's property for educational or recreational purposes, the court
8 shall award to a prevailing defendant reasonable attorneys' fees resulting from the successful
9 defense of any civil action. For purposes of this section, "successful defense" means (i) the
10 defendant prevailed after trial or in a motion for summary judgment pursuant to Chapter 1A-1,
11 Rule 56 of the General Statutes, with respect to all claims presented by plaintiff, (ii) the
12 defendant prevailed in a motion under Chapter 1A-1, Rule 50 of the General Statutes, with
13 respect to all claims presented by plaintiff, or (iii) the action was dismissed pursuant to Chapter
14 1A-1, Rule 12(b)(6), Rule 12(c), or Rule 41(b) of the General Statutes."

15 **SECTION 5.** This act becomes effective October 1, 2013, and applies to civil
16 actions filed on or after that date.