

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1991

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HOUSE BILL 1082

Short Title: Landowner Protection.

(Public)

Sponsors: Representatives Anderson; Bowman, McLawhorn, and Warner.

Referred to: Judiciary II.

April 24, 1991

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;
15 (2) Ensuring that through making one's land available for educational and
16 recreational purposes, an owner need not be subjected to waste or a
17 financial burden; and
18 (3) Providing a mechanism by which owners of land may be compensated
19 for expenditures incurred in defense against frivolous or purposeless
20 suits arising from the use of their land.

21 **"§ 38A-2. Definitions.**

22 The following definitions shall apply throughout this Chapter, unless otherwise
23 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
6 formal or informal educational program, and viewing historical,
7 natural, archaeological, or scientific sites.
- 8 (3) 'Land' means all real property, land and water, and all structures,
9 fixtures, equipment, and machinery on that real property.
- 10 (4) 'Owner' means any individual, legal entity, or governmental entity, and
11 any employee or agent, that has any fee or security.
- 12 (5) 'Recreational purpose' means any activity undertaken for recreation,
13 exercise, education, relaxation, refreshment, diversion, or pleasure.

14 **"§ 38A-3. Exclusions.**

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

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

36 **"§ 38A-4. Limitation of liability.**

37 Except as specifically recognized by or provided for in this act, an owner of land
38 who either directly or indirectly invites or permits without charge any person to use
39 such land for educational or recreational purposes does not:

- 40 (1) Extend any assurance that the premises are safe for any purpose;
41 (2) Confer upon such person the legal status of an invitee or licensee to
42 whom a duty of care is owed;

1 (3) Assume responsibility for, or incur liability for, any personal injuries,
2 deaths, or property damage caused by an act or omission of such
3 persons; or

4 (4) Assume responsibility for, or incur liability for, injury to such person
5 or his property caused by any natural or artificial condition, structure,
6 or personal property on the land.

7 **"§ 38A-5. Warning signs.**

8 The following shall not create liability on the part of an owner of land where there is
9 no other basis for such liability:

10 (1) The installation of a sign or other form of warning to guard or warn
11 against a dangerous condition, use, structure, or activity;

12 (2) Any modifications made for the purpose of improving the safety of
13 others; or

14 (3) The failure to maintain or keep in place any sign, other form of
15 warning, or modification made to improve safety.

16 **"§ 38A-6. Willful or malicious conduct.**

17 Nothing in this act limits in any way any liability which otherwise exists for:

18 (1) Willful or malicious failure to guard or warn against an ultrahazardous
19 condition, structure, personal property, use or activity, actually know
20 to such owner to be dangerous; or

21 (2) Injury suffered in any case where the land is used principally for a
22 commercial, for-profit, educational or recreational enterprise. Existing
23 law governing such use is not affected by this act except as provided
24 herein.

25 **"§ 38A-7. Construction.**

26 This act does not:

27 (1) Grant or create a right for any person to go onto the lands of another
28 without the direct or indirect permission of the landowner;

29 (2) Create a duty or care or ground of liability for injury to persons or
30 property;

31 (3) Relieve any person using the land of another for educational or
32 recreational purposes from any obligation which he may have in the
33 absence of this act to exercise care in the persons use of the legal
34 consequences of failure to employ such care; or

35 (4) Prevent an owner of land from placing reasonable restrictions on the
36 time, place, and manner of educational or recreational purposes for
37 which the land may be used.

38 **"§ 38A-8. Complaint - Form.**

39 A cause of action, the defense for which may lie within this act, shall, in one of its
40 counts, state that the cause of action is not within this act.

41 **"§ 38A-9. Answer - Form.**

42 An answer to a cause of action, one defense for which lies within this act, shall, in
43 one of its counts, state that the cause of action is within this act.

44 **"§ 38A-10. Required joinder.**

1 (a) Except as otherwise provided by law, any cause of action, the defense for
2 which may lie within this act, shall join as defendants, all those who may be considered
3 as an 'owner', under this act, of the land in which the cause of action arose.

4 (b) Should plaintiff not join all such 'owners', the court, upon motion by the
5 defendant, may:

6 (1) Dismiss the action, or

7 (2) Join the other 'owners' and assess against the plaintiff any costs
8 associated with doing so.

9 **"§ 38A-11. Presumptions and burdens.**

10 (a) Any action in which it has been affirmatively pleaded that a defense lies
11 within this act shall be so presumed, such presumption not to be overcome except upon
12 clear and convincing evidence.

13 (b) The burden of producing clear and convincing evidence that a cause of action
14 does not lie within this act shall be upon the plaintiff.

15 (c) The possession by an owner/defendant of a policy of insurance, covering the
16 land on which the cause of action arose, insuring such owner/defendant against
17 premises liability to persons pursuing educational or recreational purposes upon such
18 land, shall not be any indication whatever that the defense lies outside of this act, and
19 may not be offered into evidence for any purpose, including the purpose of showing
20 control over the land.

21 **"§ 38A-12. Dismissal, award of costs.**

22 (a) The court may, at any time during the litigation, upon motion and after notice
23 and hearing find that the subject matter of the action lies within this act, and there being
24 no cause to continue, dismiss the action with prejudice.

25 (b) If the suit is so dismissed, the court may also make a timely finding on
26 whether the suit was frivolous, malicious, or groundless. If it was, the court shall award
27 the defendant his reasonable cost of defending the litigation to be paid by the plaintiff."

28 Sec. 2. This act is effective upon ratification.