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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) 'Charge' means a price or fee asked for services, entertainment,
recreation performed, or products offered for sale on land or in return
for an invitation or permission to enter upon land, except as otherwise
excluded in this Chapter.

- 1 (2) 'Educational purpose' means any activity undertaken as part of a
2 formal or informal educational program, and viewing historical,
3 natural, archaeological, or scientific sites.
- 4 (3) 'Land' means real property, land, and water, but does not mean a
5 dwelling and the property immediately adjacent to and surrounding
6 such dwelling that is generally used for activities associated with
7 occupancy of the dwelling as a living space.
- 8 (4) 'Owner' means any individual or nongovernmental legal entity that has
9 any fee, leasehold interest, or legal possession, and any employee or
10 agent of such individual or nongovernmental legal entity.
- 11 (5) 'Recreational purpose' means any activity undertaken for recreation,
12 exercise, education, relaxation, refreshment, diversion, or pleasure.

13 **"§ 38A-3. Exclusions.**

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

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

27 **"§ 38A-4. Limitation of liability.**

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

37 Sec. 2. Within 45 days after ratification of this act, the Department of Public
38 Instruction shall notify, in writing, each local board of education of this act, including
39 its application to school activities held on premises covered by this act and its effect on
40 students, parents, teachers, and others participating in those activities on behalf of the
41 school.

42 Sec. 3. Section 1 of this act becomes effective October 1, 1995, and applies
43 to all causes of action arising after that date. The remainder of this act is effective upon
44 ratification. All insurance policies providing liability coverage for land, as defined in

- 1 G.S. 38A-2(3), covered by Section 1 of this act shall be rerated on the anniversary dates
- 2 of the policies next following the effective date of Section 1 of this act, to reflect the
- 3 added limitation of liability contained in G.S. 38A-4.