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SENATE BILL NO. 546

Offered January 13, 2010

Prefiled January 13, 2010

A *BILL to amend and reenact § 29.1-509 of the Code of Virginia, relating to landowner liability arising from recreational activities; railroad rights-of-way.*

Patron—Edwards

Referred to Committee on Agriculture, Conservation and Natural Resources

Be it enacted by the General Assembly of Virginia:

1. That § 29.1-509 of the Code of Virginia is amended and reenacted as follows:

§ 29.1-509. Duty of care and liability for damages of landowners to hunters, fishermen, sightseers, etc.

A. For the purpose of this section:

"Fee" means any payment or payments of money to a landowner for use of the premises or in order to engage in any activity described in subsections B and C of ~~this section~~, but does not include *license fees*, rentals or similar fees received by a landowner from governmental sources, or payments received by a landowner *for rights of ingress and egress* or from incidental sales of forest products to an individual for his personal use, or any action taken by another to improve the land or access to the land for the purposes set forth in subsections B and C of ~~this section~~ or remedying damage caused by such uses.

"Land" or "premises" means real property *or right-of-way*, whether rural or urban, waters, boats, private ways, natural growth, trees, *railroad property, railroad right-of-way, utility corridor*, and any building or structure which might be located on such real property, waters, boats, private ways and natural growth.

"Landowner" means the legal title holder, *any easement holder*, lessee, occupant or any other person in control of land or premises, *including railroad rights-of-way*.

"Low-head dam" means a dam that is built across a river or stream for the purpose of impounding water where the impoundment, at normal flow levels, is completely within the banks, and all flow passes directly over the entire dam structure within the banks, excluding abutments, to a natural channel downstream.

B. A landowner shall owe no duty of care to keep land or premises safe for entry or use by others for hunting, fishing, trapping, camping, participation in water sports, boating, hiking, rock climbing, sightseeing, hang gliding, skydiving, horseback riding, foxhunting, racing, bicycle riding or collecting, gathering, cutting or removing firewood, for any other recreational use, *for ingress and egress over such premises to permit passage to other property used for recreational purposes* or for use of an easement granted to the Commonwealth or any agency thereof or any *not-for-profit organization granted tax-exempt status under § 501(c)(3) of the Internal Revenue Code* to permit public passage across such land for access to a public park, historic site, or other public recreational area. No landowner shall be required to give any warning of hazardous conditions or uses of, structures on, or activities on such land or premises to any person entering on the land or premises for such purposes, except as provided in subsection D. *The provisions of this subsection apply without regard to whether the landowner has given permission to a person to use their land for recreational purposes.*

C. Any landowner who gives permission, express or implied, to another person to hunt, fish, launch and retrieve boats, swim, ride, foxhunt, trap, camp, hike, *bicycle*, rock climb, hang glide, skydive, sightsee, engage in races, to collect, gather, cut or remove forest products upon land or premises for the personal use of such person, or for the use of an easement *or license* as set forth in subsection B does not thereby:

1. Impliedly or expressly represent that the premises are safe for such purposes; or
2. Constitute the person to whom such permission has been granted an invitee *or licensee* to whom a duty of care is owed; or

3. Assume responsibility for or incur liability for any intentional or negligent acts of such person or any other person, except as provided in subsection D.

D. Nothing contained in this section, except as provided in subsection E, shall limit the liability of a landowner which may otherwise arise or exist by reason of his gross negligence or willful or malicious failure to guard or warn against a dangerous condition, use, structure, or activity. The provisions of this section shall not limit the liability of a landowner which may otherwise arise or exist when the landowner receives a fee for use of the premises or to engage in any activity described in subsections B

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59 and C of this section. Nothing contained in this section shall relieve any sponsor or operator of any
60 sporting event or competition including but not limited to a race or triathlon of the duty to exercise
61 ordinary care in such events. Nothing contained in this section shall limit the liability of an owner of a
62 low-head dam who fails to implement safety measures described in subsection F.

63 E. For purposes of this section, whenever any person enters into an agreement with, or grants an
64 easement *or license* to, the Commonwealth or any agency thereof, any ~~county, city, or town~~ *locality*,
65 *any not-for-profit organization granted tax-exempt status under 501(c)(3) of the Internal Revenue Code*,
66 or ~~with~~ any local or regional authority created by law for public park, historic site or recreational
67 purposes, concerning the use of, or access over, his land by the public for any of the purposes
68 enumerated in subsections B and C of this section, the government, agency, ~~county, city, town~~ *locality*,
69 *not-for-profit organization*, or authority with which the agreement is made shall *indemnify and hold a*
70 ~~person~~ *the landowner* harmless from all liability and be responsible for providing, or for paying the cost
71 of, all reasonable legal services required by any person entitled to the benefit of this section as the result
72 of a claim or suit attempting to impose liability. Any action against the Commonwealth, or any agency,
73 thereof, for negligence arising out of a use of land *or railroad rights-of-way* covered by this section
74 shall be subject to the provisions of the Virginia Tort Claims Act (§ 8.01-195.1 et seq.). Any provisions
75 in a lease or other agreement which purports to waive the benefits of this section shall be invalid, and
76 any action against any county, city, town, or local or regional authority shall be subject to the provisions
77 of § 15.2-1809, where applicable.

78 F. Any owner of a low-head dam may mark the areas above and below the dam and on the banks
79 immediately adjacent to the dam with signs and buoys of a design and content, in accordance with the
80 regulations of the Board, to warn the swimming, fishing, and boating public of the hazards posed by the
81 dam. Any owner of a low-head dam who marks a low-head dam in accordance with this subsection
82 shall be deemed to have met the duty of care for warning the public of the hazards posed by the dam.
83 Any owner of a low-head dam who fails to mark a low-head dam in accordance with this subsection
84 shall be presumed not to have met the duty of care for warning the public of the hazards posed by the
85 dam.