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SENATE BILL NO. 1224

Offered January 11, 2017

Prefiled January 10, 2017

A BILL to amend and reenact § 29.1-509 of the Code of Virginia, relating to landowner liability; recreational access.

Patron—Stuart

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, but does not include license fees, insurance fees, handling fees, transaction fees, administrative fees, rentals or similar fees received by a landowner from governmental, not-for-profit, or private 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 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. Nothing contained in this section shall relieve any sponsor or operator of any sporting event or
60 competition including but not limited to a race or triathlon of the duty to exercise ordinary care in such
61 events. Nothing contained in this section shall limit the liability of an owner of a low-head dam who
62 fails to implement safety measures described in subsection F.

63 E. For purposes of this section, whenever any ~~person enters~~ *landowner has entered* into an agreement
64 with, or grants an easement or license to, the Commonwealth or any agency thereof, any locality, any
65 not-for-profit organization granted tax-exempt status under § 501(c)(3) of the Internal Revenue Code, or
66 any local or regional authority created by law for public park, historic site, or recreational purposes,
67 concerning the use of, or access over, his land by the public for any of the purposes enumerated in
68 subsections B and C, *such landowner shall be immune from liability to any member of the public*
69 *arising out of such member's use of such land for any such purpose, and* the government, agency
70 locality, not-for-profit organization, or authority with which the agreement is made shall indemnify and
71 hold the landowner harmless from all liability and be responsible for providing, or for paying the cost
72 of, all reasonable legal services required by any person entitled to the benefit of this section as the result
73 of a claim or suit attempting to impose liability. Any action against the Commonwealth, or any agency
74 thereof, ~~for negligence arising out of a use of land or railroad rights-of-way covered by this section~~ shall
75 be subject to the provisions of the Virginia Tort Claims Act (§ 8.01-195.1 et seq.). Any provisions in a
76 lease or other agreement which purports to waive the benefits of this section shall be invalid, and any
77 action against any county, city, town, or local or regional authority shall be subject to the provisions of
78 § 15.2-1809, where applicable.

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