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## SENATE BILL NO. 81

Senate Amendments in [ ] - January 16, 2018

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

Patrons Prior to Engrossment—Senator Hanger; Delegate: Kory

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~~ *subsection B and or 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 subsection B or C~~ *subsection B or 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~~ *that* might be located on such real property, waters, boats, private ways, and natural growth.

"Landowner" means the legal title holder, any easement holder, lessee, *or* 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 any educational activity;* 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 *[ with respect to such hazardous conditions or uses of, structures on, or activities on such land or premises of which the landowner knows or should know, and ]* as provided in subsection D. The provisions of this subsection apply ~~without regard to whether or not~~ *without regard to whether or not* the landowner has given permission to a person to use ~~their~~ *his* land for recreational purposes *or to a person to use his land for the purpose of an educational activity.*

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, *or* 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;~~ *to engage in any educational activity; or to use 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~~ *that* 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

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60 provisions of this section shall not limit the liability of a landowner ~~which~~ *that* may otherwise arise or  
61 exist when the landowner receives a fee ~~for use of~~ *to use* the premises or to engage in any activity  
62 described in ~~subsections~~ *subsection B and or C*. Nothing contained in this section shall relieve any  
63 sponsor or operator of any sporting event or competition, including ~~but not limited to~~ a race or triathlon,  
64 of the duty to exercise ordinary care in such events. Nothing contained in this section shall limit the  
65 liability of an owner of a low-head dam who fails to implement safety measures described in subsection  
66 F.

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

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