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SENATE BILL NO. 40

Offered January 13, 2010

Prefiled January 4, 2010

A *BILL to amend and reenact § 29.1-509 of the Code of Virginia, relating to the duty of care and liability of owners of flying fields and landing areas.*

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 of this section, but does not include rentals or similar fees received by a landowner from governmental sources or payments received by a landowner 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, *privately owned flying fields and landing areas*, whether rural or urban, waters, boats, private ways, natural growth, trees and any building or structure which might be located on such real property, *privately owned flying fields and landing areas*, waters, boats, private ways and natural growth.

"Landowner" means the legal title holder, lessee, occupant or any other person in control of land or premises.

"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, *operating aircraft and ultralight vehicles of any type*, horseback riding, foxhunting, racing, bicycle riding or collecting, gathering, cutting or removing firewood, for any other recreational use, or for use of an easement granted to the Commonwealth or any agency thereof 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.

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, rock climb, hang glide, skydive, *operate aircraft and ultralight vehicles of any type*, 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 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 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 and C of this section. Nothing contained in this section shall relieve any sponsor or operator of any sporting event or competition including but not limited to a race or triathlon of the duty to exercise ordinary care in such events. Nothing contained in this section shall limit the liability of an owner of a low-head dam who fails to implement safety measures described in subsection F.

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59 E. For purposes of this section, whenever any person enters into an agreement with, or grants an
60 easement to, the Commonwealth or any agency thereof, any county, city, or town, or with any local or
61 regional authority created by law for public park, historic site or recreational purposes, concerning the
62 use of, or access over, his land by the public for any of the purposes enumerated in subsections B and
63 C of this section, the government, agency, county, city, town, or authority with which the agreement is
64 made shall hold a person harmless from all liability and be responsible for providing, or for paying the
65 cost of, all reasonable legal services required by any person entitled to the benefit of this section as the
66 result of a claim or suit attempting to impose liability. Any action against the Commonwealth, or any
67 agency, thereof, for negligence arising out of a use of land covered by this section shall be subject to
68 the provisions of the Virginia Tort Claims Act (§ 8.01-195.1 et seq.). Any provisions in a lease or other
69 agreement which purports to waive the benefits of this section shall be invalid, and any action against
70 any county, city, town, or local or regional authority shall be subject to the provisions of § 15.2-1809,
71 where applicable.

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