

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 2201

Session of
1993

INTRODUCED BY HASAY AND JAROLIN, NOVEMBER 22, 1993

AS AMENDED ON THIRD CONSIDERATION, HOUSE OF REPRESENTATIVES,
MAY 17, 1994

AN ACT

1 Amending Title 30 (Fish) of the Pennsylvania Consolidated
2 Statutes, providing for use of waters of the Pennsylvania
3 Fish and Boat Commission for swimming purposes.

4 The General Assembly of the Commonwealth of Pennsylvania
5 hereby enacts as follows:

6 Section 1. Title 30 of the Pennsylvania Consolidated
7 Statutes is amended by adding a section to read:

8 § 748. Use of waters for swimming.

9 (a) General rule.--Except as provided in subsections (b) and
10 (c), swimming is prohibited in waters leased, owned or otherwise
11 under the control of the Pennsylvania Fish and Boat Commission.

12 (b) Municipal and other agreements.--The commission may
13 enter into agreements with municipalities, political
14 subdivisions or nonprofit corporations for such entities to
15 provide and manage designated swimming areas on waters under the
16 ownership or control of the commission when the commission finds
17 that such use will not interfere with fishing or boating
18 activities and the municipality, political subdivision or

1 nonprofit corporation assumes all responsibility for operating
2 the swimming area and all liability for any claims, of any
3 nature, arising out of or related to operation of the area or
4 swimming in the waters. The municipality, political subdivision
5 or nonprofit corporation shall be solely responsible for
6 compliance with all Federal, State or local laws or ordinances
7 respecting public swimming or bathing.

8 ~~(c) Private landowners whose developed lands adjoin~~ <—
9 ~~commission waters.~~

10 ~~(1) This subsection applies only to commission owned~~
11 ~~lakes where a portion of the waters of the lake is recognized~~
12 ~~by the commission to be under private ownership and control~~
13 ~~and where the party with ownership and control of the~~
14 ~~noncommission portion of the lake permits swimming. This~~
15 ~~subsection applies only to private landowners whose~~
16 ~~properties adjoin, abut and share a common boundary line with~~
17 ~~lands or waters owned by the Commonwealth, for use of the~~
18 ~~commission whose property contains a permanent dwelling or~~
19 ~~cottage in which the landowner actually resides for all or~~
20 ~~part of the year. This subsection applies only to private~~
21 ~~landowners who acquired their properties from the same~~
22 ~~grantor who conveyed lands and waters to the commission and~~
23 ~~their successors in title and who can demonstrate that, prior~~
24 ~~to conveyance, the grantor permitted them or their~~
25 ~~predecessors in title to swim in the waters conveyed to the~~
26 ~~commission.~~

27 ~~(C) PRIVATE LANDOWNERS.--~~ <—

28 (1) SWIMMING BY PRIVATE LANDOWNERS AND THEIR BONA FIDE
29 GUESTS SHALL BE PERMITTED IN COMMONWEALTH WATERS UNDER THE
30 OWNERSHIP OR CONTROL OF THE COMMISSION WHERE ALL OF THE

1 FOLLOWING CRITERIA ARE MET:

2 (I) THE PROPERTY OF THE PRIVATE LANDOWNER ADJOINS,
3 ABUTS AND SHARES A COMMON BOUNDARY LINE WITH LANDS OR
4 WATERS CONTROLLED BY THE COMMONWEALTH.

5 (II) THE PROPERTY OF THE PRIVATE LANDOWNER CONTAINS
6 A PERMANENT DWELLING OR COTTAGE IN WHICH THE LANDOWNER
7 ACTUALLY RESIDES FOR ALL OR PART OF THE YEAR.

8 (III) THE PRIVATE LANDOWNER OR HIS SUCCESSORS IN
9 TITLE CAN DEMONSTRATE THAT THE PRIVATE PROPERTY WAS
10 CONVEYED FROM THE SAME GRANTOR WHO CONVEYED LANDS AND
11 WATERS TO THE COMMISSION, AND THAT SWIMMING WAS PERMITTED
12 IN SUCH WATERS PRIOR TO CONVEYANCE TO THE COMMISSION.

13 (2) It shall not be a violation of subsection (a) for
14 private landowners whose properties meet all the criteria set
15 forth in paragraph (1) to swim in waters immediately adjacent
16 to their properties or to permit their bona fide guests to
17 swim in waters immediately adjacent to their properties so
18 long as the swimming does not interfere with fishing or
19 boating. The commission shall not be liable or responsible
20 for swimming by private landowners and their bona fide guests
21 under this subsection. The landowner shall be solely
22 responsible for compliance with all Federal, State or local
23 laws or ordinances respecting public swimming or bathing.

24 (d) Immunity not waived.--Notwithstanding any other
25 provision of law, the sovereign immunity of the Commonwealth is
26 not waived with respect to any action against Commonwealth
27 parties, including the commission, its members, officials,
28 employees, successors and assigns, for damages arising out of,
29 or in any way related to, swimming on or in any waters under the
30 ownership, lease or control of the commission.

1 (e) Penalty.--Any person violating this section commits a
2 summary offense of the third degree.

3 (f) Definitions.--As used in this section, the following
4 words and phrases shall have the meanings given to them in this
5 subsection:

6 "Bona fide guest." A member of the family or personal guest
7 of a landowner who pays the landowner no fee or consideration of
8 any kind or type whatsoever to swim or engage in any activity on
9 the landowner's premises.

10 "Immediately adjacent." An area within no more than 100 feet
11 from the boundary line between the landowner's property and
12 Commonwealth property.

13 Section 2. This act shall take effect in 60 days.