

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 1029 Session of 2011

INTRODUCED BY FOLMER, FONTANA, SOLOBAY, BOSCOLA, EICHELBERGER, WAUGH, ORIE, ROBBINS, KASUNIC, D. WHITE, EARLL, SCARNATI, BREWSTER, WOZNIAK, PICCOLA AND MENSCH, MAY 13, 2011

REFERRED TO ENVIRONMENTAL RESOURCES AND ENERGY, MAY 13, 2011

AN ACT

1 Amending the act of February 2, 1966 (1965 P.L.1860, No.586),  
 2 entitled "An act encouraging landowners to make land and  
 3 water areas available to the public for recreational purposes  
 4 by limiting liability in connection therewith, and repealing  
 5 certain acts," further providing for liability for landowners  
 6 to recreational users; and providing for attorney fees and  
 7 court costs.

8 The General Assembly of the Commonwealth of Pennsylvania  
 9 hereby enacts as follows:

10 Section 1. Section 1 of the act of February 2, 1965  
 11 (P.L.1860, No.586), entitled "An act encouraging landowners to  
 12 make land and water areas available to the public for  
 13 recreational purposes by limiting liability in connection  
 14 therewith, and repealing certain acts," amended June 30, 2007  
 15 (P.L.42, No.11), is amended to read:

16 Section 1. The purpose of this act is to encourage owners of  
 17 land to make land and water areas available to the public for  
 18 recreational purposes by limiting their liability[.] to:

19 (1) recreational users; and

20 (2) persons or property, wherever located, based on:

1 (i) acts of omission by landowners; or

2 (ii) acts or acts of omission by recreational users.

3 Section 2. Section 2 of the act, amended March 26, 1992  
4 (P.L.27, No.10), is amended to read:

5 Section 2. As used in this act:

6 (1) "Land" means land, roads, water, watercourses, private  
7 ways and buildings, amenities, structures, boating access and  
8 launch ramps, bridges, fishing piers, boat docks, ramps, paths,  
9 paved or unpaved trails, hunting blinds, and areas providing  
10 access to, or parking for, lands and waters, including, but not  
11 limited to, access ramps, trails or piers for use by persons  
12 with disabilities, and machinery or equipment when attached to  
13 the realty. The term applies to such areas and physical objects  
14 whether they are in an unimproved condition or a condition  
15 improved by manmade effort, whether they are large or small in  
16 size and whether they are located in a rural or an urban area.

17 (2) "Owner" means the possessor of a fee interest, a tenant,  
18 lessee, occupant or person in control of the premises.

19 (3) "Recreational purpose" means any activity undertaken or  
20 viewed for exercise, sport, education, recreation, relaxation or  
21 pleasure and includes, but is not limited to, any of the  
22 following, or any combination thereof: hunting, fishing,  
23 swimming, boating, camping, picnicking, hiking, pleasure  
24 driving, snowmobiling, all-terrain vehicle and motorcycle  
25 riding, nature study, water skiing, water sports, cave  
26 exploration and viewing or enjoying historical, archaeological,  
27 scenic, or scientific sites.

28 (4) "Charge" means the admission price or fee asked in  
29 return for invitation or permission to enter or go upon the  
30 land. The term shall not include in-kind contributions or

1 contributions made to an owner of real property which are de  
2 minimis and given in consideration for making the real property  
3 available for recreation purposes.

4 (5) "Recreational user" means any person who enters or uses  
5 land for a recreational purpose.

6 (6) "Willful or malicious" means, in reference to an owner  
7 of real property, an actual or deliberate intention by the owner  
8 to cause harm or which, if not intentional, shows an utter  
9 indifference to or conscious disregard for the safety of others.

10 Section 3. Section 3 of the act is amended to read:

11 Section 3. Except as specifically recognized or provided in  
12 section 6 of this act, an owner of land owes no duty of care to  
13 keep the premises safe for entry or use by [others for  
14 recreational purposes] recreational users, or to give any  
15 warning of a dangerous condition, use, structure, or activity on  
16 such premises to [persons entering for such purposes]  
17 recreational users.

18 Section 4. Section 4 of the act, amended June 30, 2007  
19 (P.L.42, No.11), is amended to read:

20 Section 4. Except as specifically recognized by or provided  
21 in section 6 of this act, an owner of land who either directly  
22 or indirectly invites or permits without charge any [person]  
23 recreational user to use such property [for recreational  
24 purposes] does not thereby:

25 (1) Extend any assurance that the premises are safe for any  
26 purpose.

27 (2) Confer upon such [person] recreational user the legal  
28 status of an invitee or licensee to whom a duty of care is owed.

29 (3) Assume responsibility for or incur liability for any  
30 injury to persons or property, wherever the persons or property

1 is located, caused by an act or an act of omission of [such  
2 persons] a recreational user or an act of omission of a  
3 landowner.

4 (4) Assume responsibility for or incur liability for any  
5 injury to persons or property, wherever such persons or property  
6 are located, caused while hunting as defined in 34 Pa.C.S. § 102  
7 (relating to definitions).

8 Section 5. Sections 6 and 7 of the act are amended to read:

9 Section 6. Nothing in this act limits in any way any  
10 liability which otherwise exists:

11 (1) For wilful or malicious failure to guard or warn against  
12 a dangerous condition, use, structure, or activity.

13 (2) For injury suffered in any case where the owner of land  
14 charges the [person or persons] recreational user or users who  
15 enter or go on the land [for the recreational use thereof],  
16 except that in the case of land leased to the State or a  
17 subdivision thereof, any consideration received by the owner for  
18 such lease shall not be deemed a charge within the meaning of  
19 its section.

20 Section 7. Nothing in this act shall be construed to:

21 (1) Create a duty of care or ground of liability for injury  
22 to persons or property.

23 (2) Relieve any [person using the land of another for  
24 recreational purposes] recreational user from any obligation  
25 which he may have in the absence of this act to exercise care in  
26 his use of such land and in his activities thereon, or from the  
27 legal consequences of failure to employ such care.

28 Section 6. The act is amended by adding a section to read:

29 Section 7.1. The court shall award attorney fees and direct  
30 legal costs to an owner, lessee, manager, holder of an easement

1 or occupant of real property who is found not to be liable for  
2 the injury to a person or property pursuant to this act.

3 Section 7. This act shall take effect in 60 days.