

Stricken language would be deleted from and underlined language would be added to the law as it existed prior to this session of the General Assembly.

1 State of Arkansas  
2 85th General Assembly  
3 Regular Session, 2005  
4

As Engrossed: H2/25/05 H3/9/05

# A Bill

SENATE BILL 447

5 By: Senator T. Smith  
6 By: Representatives Mathis, Saunders  
7  
8

## For An Act To Be Entitled

10 AN ACT TO EXTEND IMMUNITY TO PROPERTY OWNERS WHO  
11 MAKE PROPERTY AVAILABLE FOR MUNICIPAL WATER  
12 SUPPLY PURPOSES; AND FOR OTHER PURPOSES.  
13

### Subtitle

15 AN ACT TO EXTEND IMMUNITY TO PROPERTY  
16 OWNERS WHO MAKE PROPERTY AVAILABLE FOR  
17 MUNICIPAL WATER SUPPLY PURPOSES.  
18  
19

20 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:  
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22 SECTION 1. Arkansas Code § 18-11-301 is amended to read as follows:  
23 18-11-301. Purpose.

24 The purpose of this subchapter is to encourage owners of land to make  
25 land and water areas available to the public for recreational purposes and  
26 municipal water supply purposes by limiting their liability toward persons  
27 entering thereon for such purposes.  
28

29 SECTION 2. Arkansas Code § 18-11-302 is amended to read as follows:  
30 18-11-302. Definitions.

31 As used in this subchapter:

32 (1) "Charge" means an admission fee for permission to go upon or  
33 use the land, but does not include:

34 (A) The sharing of game, fish, or other products of  
35 recreational use; or

36 (B) Contributions in kind, services, or cash paid to



1 reduce or offset costs and eliminate losses from recreational use or  
2 municipal water supply use;

3 (2) "Land" means land, roads, water, watercourses, private ways  
4 and buildings, structures, and machinery or equipment when attached to the  
5 realty;

6 (3) "Municipal water supply purpose" includes, but is not  
7 limited to, any of the following, separately or any combination:

8 (A) Construction or maintenance of a water intake  
9 structure;

10 (B) Maintenance of a water intake source;

11 (C) Research concerning a water intake source or  
12 structure; and

13 (D) Other activity associated with a water intake source  
14 or structure;

15 ~~(3)~~(4) "Owner" means the possessor of a fee interest, a tenant,  
16 lessee, occupant, or person in control of the premises; and

17 ~~(4) "Public" and "person" includes the Young Men's Christian~~  
18 ~~Association (Y.M.C.A.), Young Women's Christian Association (Y.W.C.A.), Boy~~  
19 ~~Scouts of America, Girl Scouts of the United States of America, Boys Clubs of~~  
20 ~~America, Girls Clubs of America, churches, religious organizations, fraternal~~  
21 ~~organizations, and other similar organizations; and~~

22 (5) "Recreational purpose" includes, but is not limited to, any  
23 of the following, or any combination thereof:

24 (A) Hunting;

25 (B) Fishing;

26 (C) Swimming;

27 (D) Boating;

28 (E) Camping;

29 (F) Picnicking;

30 (G) Hiking;

31 (H) Pleasure driving;

32 (I) Nature study;

33 (J) Water skiing;

34 (K) Winter sports;

35 (L) Spelunking;

36 (M) Viewing or enjoying historical, archeological, scenic,

1 or scientific sites; and

2 (N) Any other activity undertaken for exercise, education,  
3 relaxation, or pleasure on land owned by another.

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5 SECTION 3. Arkansas Code § 18-11-303 is amended to read as follows:

6 18-11-303. Construction.

7 Nothing in this subchapter shall be construed to:

8 (1) Create a duty of care or ground of liability for injury to  
9 persons or property; or

10 (2) Relieve any person using the land of another for  
11 recreational purposes or municipal water supply purposes from any obligation  
12 which he or she may have in the absence of this subchapter to exercise care  
13 in his or her use of the land and in his or her activities thereon or relieve  
14 any person from the legal consequences of failure to employ such care.

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16 SECTION 4. Arkansas Code § 18-11-304 is amended to read as follows:

17 18-11-304. Duty of care.

18 Except as specifically recognized by or provided in § 18-11-307, an  
19 owner of land owes no duty of care to keep the premises safe for entry or use  
20 by others for recreational purposes or municipal water supply purposes or to  
21 give any warning of a dangerous condition, use, structure, or activity on the  
22 premises to persons entering for recreational purposes or municipal water  
23 supply purposes.

24  
25 SECTION 5. Arkansas Code § 18-11-305 is amended to read as follows:

26 18-11-305. Owner's immunity from liability.

27 Except as specifically recognized by or provided in § 18-11-307, an  
28 owner of land who, either directly or indirectly, invites or permits without  
29 charge any person to use his or her property for recreational purposes or  
30 municipal water supply purposes does not thereby:

31 (1) Extend any assurance that the lands or premises are safe for  
32 any purpose;

33 (2) Confer upon the person the legal status of an invitee or  
34 licensee to whom a duty of care is owed;

35 (3) Assume responsibility for or incur liability for any injury  
36 to person or property caused by an act or omission of such persons; or

1 (4) Assume responsibility for or incur liability for injury to  
2 the person or property caused by any natural or artificial condition,  
3 structure, or personal property on the land.  
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5 SECTION 6. Arkansas Code § 18-11-306 is amended to read as follows:

6 18-11-306. Land leased to state.

7 Unless otherwise agreed in writing, the provisions of §§ 18-11-304 and  
8 18-11-305 shall be deemed applicable to the duties and liability of an owner  
9 of land leased to the state, or any subdivision thereof, for recreational  
10 purposes or municipal water supply purposes.  
11

12 SECTION 7. Arkansas Code § 18-11-307 is amended to read as follows:

13 18-11-307. Exceptions to owner's immunity.

14 Nothing in this subchapter limits in any way liability which otherwise  
15 exists:

16 (1) For ~~malicious, but not mere negligent~~, failure to guard or  
17 warn against an ultra-hazardous condition, structure, personal property, use,  
18 or activity ~~actually known~~ foreseeable to the owner to be dangerous; and

19 (2) For injury suffered in any case in which the owner of land  
20 charges the person or persons who enter or go on the land for the  
21 recreational use thereof, except that, in the case of land leased to the  
22 state, a subdivision thereof, or to a third person, any consideration  
23 received by the owner for the lease shall not be deemed a charge within the  
24 meaning of this section.  
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26 SECTION 8. EMERGENCY CLAUSE. It is found and determined by the  
27 General Assembly of the State of Arkansas that there is nothing currently in  
28 the law that grants immunity from liability to persons who make property  
29 available for municipal water supply purposes; that this act provides sound  
30 public policy for the State of Arkansas; and that this act is immediately  
31 necessary because the state should encourage property owners to make property  
32 available for municipal water supply purposes. Therefore, an emergency is  
33 declared to exist and this act being immediately necessary for the  
34 preservation of the public peace, health, and safety shall become effective  
35 on:

36 (1) The date of its approval by the Governor;

1                   (2) If the bill is neither approved nor vetoed by the Governor,  
2 the expiration of the period of time during which the Governor may veto the  
3 bill; or

4                   (3) If the bill is vetoed by the Governor and the veto is  
5 overridden, the date the last house overrides the veto.

6   /s/ T. Smith

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