

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 *As Engrossed: H2/25/05 H3/9/05 H3/29/05*

2 85th General Assembly

A Bill

3 Regular Session, 2005

SENATE BILL 447

4

5 By: Senator T. Smith

6 By: Representatives Mathis, Saunders

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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

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Subtitle

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AN ACT TO EXTEND IMMUNITY TO PROPERTY
OWNERS WHO MAKE PROPERTY AVAILABLE FOR
MUNICIPAL WATER SUPPLY PURPOSES.

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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~~*

26 *municipal governments for municipal water supply purposes by limiting their*

27 *liability toward persons entering thereon ~~for such purposes.~~*

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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;~~

2 ~~(2)(1) "Land" means land, roads, water, watercourses, private~~
3 ~~ways and buildings, structures, and machinery or equipment when attached to~~
4 ~~the realty;~~

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

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

9 ~~(B) Maintenance of a water intake source;~~

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

12 ~~(D) Other activity associated with a water intake source~~
13 ~~or structure; and~~

14 (3) "Owner" means the possessor of a fee interest, a tenant,
15 lessee, occupant, or person in control of the premises.

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

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

23 ~~(A) Hunting;~~

24 ~~(B) Fishing;~~

25 ~~(C) Swimming;~~

26 ~~(D) Boating;~~

27 ~~(E) Camping;~~

28 ~~(F) Picnicking;~~

29 ~~(G) Hiking;~~

30 ~~(H) Pleasure driving;~~

31 ~~(I) Nature study;~~

32 ~~(J) Water skiing;~~

33 ~~(K) Winter sports;~~

34 ~~(L) Spelunking;~~

35 ~~(M) Viewing or enjoying historical, archeological, scenic,~~
36 ~~or scientific sites; and~~

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

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

5 18-11-303. Construction.

6 Nothing in this subchapter shall be construed to:

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

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

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

16 18-11-304. Duty of care.

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

22
23 SECTION 5. Arkansas Code § 18-11-305 is amended to read as follows:

24 18-11-305. Owner's immunity from liability.

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

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

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

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

35 (4) Assume responsibility for or incur liability for injury to
36 the person or property caused by any natural or artificial condition,

1 structure, or personal property on the land.

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3 SECTION 6. Arkansas Code § 18-11-306 is amended to read as follows:

4 18-11-306. Land leased to ~~state~~ municipality.

5 Unless otherwise agreed in writing, the provisions of §§ 18-11-304 and
6 18-11-305 shall be deemed applicable to the duties and liability of an owner
7 of land leased ~~to the state, or any subdivision thereof, for recreational~~
8 purposes or otherwise provided to a municipality for municipal water supply
9 purposes.

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

12 18-11-307. Exceptions to owner's immunity.

13 Nothing in this subchapter limits in any way liability which otherwise
14 exists, ~~(1) For~~ for malicious, but not mere negligent, failure to guard or
15 warn against an ultra-hazardous condition, structure, personal property, use,
16 or activity actually known to the owner to be dangerous; ~~and.~~

17 ~~(2) For injury suffered in any case in which the owner of land~~
18 ~~charges the person or persons who enter or go on the land for the~~
19 ~~recreational use thereof, except that, in the case of land leased to the~~
20 ~~state, a subdivision thereof, or to a third person, any consideration~~
21 ~~received by the owner for the lease shall not be deemed a charge within the~~
22 ~~meaning of this section.~~

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24 SECTION 8. EMERGENCY CLAUSE. It is found and determined by the
25 General Assembly of the State of Arkansas that there is nothing currently in
26 the law that grants immunity from liability to persons who make property
27 available for municipal water supply purposes; that this act provides sound
28 public policy for the State of Arkansas; and that this act is immediately
29 necessary because the state should encourage property owners to make property
30 available for municipal water supply purposes. Therefore, an emergency is
31 declared to exist and this act being immediately necessary for the
32 preservation of the public peace, health, and safety shall become effective
33 on:

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

35 (2) If the bill is neither approved nor vetoed by the Governor,
36 the expiration of the period of time during which the Governor may veto the

1 bill; or

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

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5 /s/ T. Smith

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