

STATE OF OKLAHOMA

1st Session of the 48th Legislature (2001)

HOUSE BILL HB1880

By: Sweeden

AS INTRODUCED

An Act relating to torts; amending 76 O.S. 1991, Sections 10, 12 and 13, as amended by Section 1, Chapter 38, O.S.L. 1994 (76 O.S. Supp. 2000, Section 13), which relate to landowner liability; modifying definitions; limiting liability of landowner; providing for applicability of act to contracts with state; providing for liability in certain circumstances; amending 76 O.S. 1991, Section 15, which relates to damages; limiting duty of care of landowner; providing waiver of liability form for landowner; limiting damages; repealing 76 O.S. 1991, Sections 11, 14 and 15.1, which relate to landowner liability; providing for codification; and providing an effective date.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY 76 O.S. 1991, Section 10, is amended to read as follows:

Section 10. As used in this act:

~~(a)~~ 1. "Land" means ~~land which~~ real property that is used primarily for farming or ranching activities, and includes roads, water, watercourses, private ways ~~and,~~ buildings, ~~and structures,~~ ~~and machinery or equipment when attached to realty which is used primarily for farming or ranching activities.~~ that are appurtenant to or used in conjunction with the real property;

~~(b)~~ 2. "Owner" means the possessor of a fee interest, a tenant, lessee, occupant or other person in lawful control of ~~the premises.~~ land;

~~(c)~~ 3. "Recreational purpose" includes, but is not limited to, any of the following, or any combination thereof: hunting, fishing, swimming, boating, camping, picnicking, hiking, horseback riding,

pleasure driving, nature study, water skiing, winter sports, and viewing or enjoying historical, archaeological, scenic, or scientific sites-;

~~(d)~~ 4. "Charge" means the admission price or monetary fee asked in return for ~~invitation or permission to enter or go upon the land~~ the right of an entrant to use land for recreational purpose, but does not include:

- a. the sharing of game, fish or other product derived from the recreational purpose,
- b. contributions in kind, services, or cash to reduce or offset the cost of an owner of improving land for its use as a recreational purpose, or
- c. any consideration received where land is leased by an owner to the State of Oklahoma, or a subdivision thereof;

5. "Farming or ranching activities" means the production of plants, fruits, wood, or farm or ranch animals to be sold off the premises; and

6. "Entrant" means any person that is granted permission to use the land of an owner for a recreation purpose.

SECTION 2. AMENDATORY 76 O.S. 1991, Section 12, is amended to read as follows:

Section 12. Except as ~~specifically recognized by or~~ provided in Section ~~5~~ 14 of this ~~act~~ title, an owner of land which is used ~~primarily for farming or ranching activities, who either directly or indirectly invites or permits without charge any person to use such property,~~ who without charge, allows an entrant to use land for recreational purposes, does not thereby:

~~(a)~~ 1. Extend any assurance that the ~~premises are~~ land is safe for ~~any purpose.~~ the recreational purpose;

~~(b)~~ 2. Confer upon ~~such person~~ the entrant the legal status of an invitee or licensee-;

~~(e)~~ 3. Assume responsibility for or incur liability for any injury to ~~person~~ the entrant or property of the entrant caused by ~~an~~ the act or omission of ~~such persons~~ the entrant; or

4. Owe a duty of care to the entrant to keep the land free of dangers, or to give any warning of dangerous or hidden defects in or upon the land.

SECTION 3. AMENDATORY 76 O.S. 1991, Section 13, as amended by Section 1, Chapter 38, O.S.L. 1994 (76 O.S. Supp. 2000, Section 13), is amended to read as follows:

Section 13. Unless otherwise agreed in writing, the provisions of ~~Sections 11 and~~ Section 12 of this title shall be deemed applicable to ~~the duties and liability of an owner of land which is used by the owner primarily for farming or ranching activities, is on or that~~ adjoins land real property entered upon the National Register of Historic Places ~~and~~ for which an easement has been granted to the Oklahoma Historical Society, or is leased to the state or any subdivision thereof ~~for recreational purposes.~~

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 14.1 of Title 76, unless there is created a duplication in numbering, reads as follows:

An owner remains liable for:

1. Any injury or damage to an entrant that is caused by the intentional, willful, or wanton acts of an owner; or

2. An injury or damage to an entrant that is charged for the use of land for a recreational purpose unless the entrant signs a written release as prescribed in Section 6 of this act.

SECTION 5. AMENDATORY 76 O.S. 1991, Section 15, is amended to read as follows:

Section 15. Nothing in this act shall be construed to:

~~(a)~~ 1. Create a new or heightened duty of care or ground of liability for injury to persons or property-; or

~~(b) 2. Relieve any person using the land of another for recreational purposes from any an entrant from the obligation which he may have in the absence of this act to exercise reasonable care in ~~his~~ the use of ~~such~~ the land and in ~~his~~ the activities of the entrant thereon, or from the legal consequences of failure to employ such care.~~

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 15.2 of Title 76, unless there is created a duplication in numbering, reads as follows:

A. Any owner that charges an entrant for the use of land for a recreational purpose may limit the liability to the entrant by obtaining a written release or waiver of liability from the entrant.

B. The release or waiver shall be deemed valid if it is signed by the entrant and includes the definitions contained in Section 1 of this act along with language that substantially conforms to the following:

1. Entrant acknowledges that the use of land for a recreational purpose exposes the entrant to substantial and serious hazards and risks of property damage, personal injury or death. In consideration for the opportunity to use the land for a recreational purpose, entrant agrees to assume such hazards and risks; and

2. Entrant agrees to discharge, waive and release owner from all claims, demands and liabilities, whether known, unknown, foreseen or unforeseen, for any and all property damage, personal injury or death arising from the use of the land for a recreational purpose by the entrant.

SECTION 7. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 15.3 of Title 76, unless there is created a duplication in numbering, reads as follows:

A. Subject to subsection B of this section, the liability of an owner, or occupant of agricultural land used for recreational purposes for an act or omission by the owner, lessee, or occupant

relating to the premises that results in damages to a person who has entered the premises is limited to a maximum amount of Five Hundred Thousand Dollars (\$500,000.00) for each person and One Million Dollars (\$1,000,000.00) for each single occurrence of bodily injury or death and One Hundred Thousand Dollars (\$100,000.00) for each single occurrence for injury to or destruction of property. In the case of agricultural land, the total liability of an owner, lessee, or occupant for a single occurrence is limited to One Million Dollars (\$1,000,000.00), and the liability is also subject to the limits for each single occurrence for injury to or destruction of property stated in this subsection.

B. This section applies only to an owner, lessee, or occupant of agricultural land used for recreational purposes who has liability insurance coverage in effect on an act or omission described by subsection A of this section and in the amounts equal to or greater than those provided by subsection A of this section. The coverage may be provided under a contract of insurance or other plan of insurance authorized by statute. The limit of liability insurance coverage applicable with respect to agricultural land may be a combined single limit in the amount of One Million Dollars (\$1,000,000.00) for each single occurrence.

C. This section does not affect the liability of an insurer or insurance plan in an action for bad faith conduct, breach of fiduciary duty, or negligent failure to settle a claim.

SECTION 8. REPEALER 76 O.S. 1991, Sections 11, 14 and 15.1, are hereby repealed.

SECTION 9. This act shall become effective November 1, 2001.

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