

House File 2183 - Introduced

HOUSE FILE 2183

BY WILLS

A BILL FOR

1 An Act relating to litigation involving the public use of
2 private lands and waters.

3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. Section 461C.2, Code 2016, is amended by adding
2 the following new subsection:

3 NEW SUBSECTION. 1A. *“Educational activities”* means any
4 activity undertaken as part of a formal or informal educational
5 program.

6 Sec. 2. NEW SECTION. **461C.6A Pleading — affirmative**
7 **defenses.**

8 1. A cause of action, the defense of which may lie within
9 this chapter, shall affirmatively plead that there is no
10 limitation of liability under this chapter.

11 2. An answer to a cause of action, the defense of which may
12 lie within this chapter, shall affirmatively plead as a defense
13 that there is a limitation of liability under this chapter.

14 Sec. 3. NEW SECTION. **461C.6B Required joinder.**

15 1. Except as otherwise provided by law, any cause of action,
16 the defense of which may lie within this chapter, shall join as
17 defendants all holders of the land on which the cause of action
18 is alleged to have arisen.

19 2. If the cause of action does not join all holders of the
20 land on which the cause of action is alleged to have arisen,
21 the court, upon motion or on its own initiative, shall do one
22 of the following:

23 a. Dismiss the action.

24 b. Join the required holders and assess the costs of such
25 joinder against the plaintiff.

26 Sec. 4. NEW SECTION. **461C.6C Presumptions and burden of**
27 **proof.**

28 1. If a holder of land affirmatively pleads as a defense
29 to a cause of action that there is a limitation of liability
30 under this chapter, there is a presumption that this chapter
31 is applicable to the cause of action pled. The burden of proof
32 is on the plaintiff to rebut this presumption based on clear
33 and convincing evidence.

34 2. The fact that a holder of land possesses a policy of
35 insurance on the land on which the cause of action is alleged

1 to have arisen, which insurance protects the holder from
2 liability to persons engaging in recreational activities and
3 urban deer control on that land, shall not constitute evidence
4 that the provisions of this chapter are not applicable and
5 shall not be introduced as evidence of control over the land.

6 Sec. 5. NEW SECTION. **461C.6D Dismissal — costs.**

7 1. The court may, at any time during the course of
8 litigation of a cause of action, upon motion or on the court's
9 own initiative, determine that the subject matter of the cause
10 of action is subject to the provisions of this chapter and
11 that there is no claim upon which relief can be granted. Upon
12 making such a determination, the case shall be dismissed with a
13 statement from the court stating the reasons for the dismissal.

14 2. If a case is dismissed as provided in subsection 1, the
15 court shall also make a timely finding of whether the cause
16 of action was brought for frivolous, malicious, willful, or
17 groundless reasons or purposes. If such a finding is made, the
18 court shall do both of the following:

19 a. Award the defendant reasonable costs of litigation,
20 including attorney fees.

21 b. Charge the plaintiff or the plaintiff's attorney with
22 any other penalty that may be charged upon such a finding, as
23 prescribed by the laws of this state.

24 EXPLANATION

25 The inclusion of this explanation does not constitute agreement with
26 the explanation's substance by the members of the general assembly.

27 This bill relates to litigation involving the public use
28 of private lands and waters. Code chapter 461C limits the
29 liability of certain holders of private lands and waters
30 to members of the public who enter onto such lands for
31 recreational purposes and for urban deer control. The bill
32 amends Code chapter 461C to define "educational activities"
33 that are included as recreational purposes under current Code
34 chapter 461C.

35 The bill requires a cause of action which may involve a

1 defense that liability is limited under Code chapter 461C
2 to affirmatively plead that the chapter is not applicable.
3 The bill also requires the answer to such a cause of action
4 to affirmatively plead as a defense that the chapter is
5 applicable.

6 The bill requires that a cause of action which may be
7 limited by Code chapter 461C must join all holders of the land
8 on which the cause of action is alleged to have arisen. If
9 the plaintiff does not include the required joinder of such
10 defendants, the court may dismiss the action or join the
11 required holders and assess the costs of that joinder to the
12 plaintiff.

13 The bill provides that if a holder of land affirmatively
14 pleads as a defense that the plaintiff's liability is limited
15 under Code chapter 461C, there is a presumption that this
16 limitation is applicable. The burden of proof is on the
17 plaintiff to rebut this presumption based on clear and
18 convincing evidence. The fact that a holder of land has an
19 insurance policy on the land protecting the holder against
20 liability to persons engaging in recreational activities and
21 urban deer control on that land is not evidence that Code
22 chapter 461C is not applicable and cannot be introduced as
23 evidence of control over the land.

24 The bill provides that a court may determine at any time
25 during litigation of a cause of action that Code chapter 461C
26 applies and that there is no claim upon which relief can be
27 granted and may dismiss the case. If the case is dismissed,
28 the court must make a timely finding of whether the case
29 was brought for frivolous, malicious, willful, or groundless
30 reasons or purposes. If so, the court shall award the
31 defendant reasonable costs of litigation, including attorney
32 fees, and charge the plaintiff or the plaintiff's attorney with
33 any other penalty prescribed by law that may be charged upon
34 such a finding.