SFA BILL ANALYSIS

Senate Fiscal Agency • Lansing, Michigan 48909 • (517) 373-5383

Senate Bill 856 (as reported without amendment)
Sponsor: Senator Vern Ehlers
Committee: Natural Resources and Environmental Affairs

Date Completed: 4-3-90

RATIONALE

The recreational land users Act (RUA) limits the liability of certain land owners when persons use their land without paying a "valuable consideration for the purpose of fishing, hunting, trapping, camping, hiking, sightseeing, motorcycling, snowmobiling, or any other outdoor recreational use". In 1987, the Michigan Supreme Court ruled that the Act applied only "to large tracts of undeveloped land suitable for outdoor recreational uses" and that subdivided, suburban, and urban areas "were not intended to be covered" by the Act (Wymer v Holmes and Yahrling v Belle Lake Association, Inc., 429 Mich 66). Some feel that the focus of the Act's grant of limited immunity should be on the recreational use of the land rather than on the type or location of the land and that it should apply to urban, suburban, and subdivided land as well as rural areas. (See BACKGROUND for further discussion of Wymer and Yahrling.)

CONTENT

The bill would amend the recreational land users Act to define "land" as "any tract of land of any size including, but not limited to, urban, suburban, subdivided, and rural land" and to include swimming among the recreational uses covered by the Act. Under the Act, a cause of action cannot arise against the owner, tenant, or lessee of land out of injuries to a person who uses the land for various recreational purposes without paying the owner, lessee, or tenant, unless the injuries were caused by the owner's, tenant's, or lessee's gross negligence or willful and wanton misconduct. The Act also limits liability in regard to various activities on agricultural land.

MCL 300.201

BACKGROUND

The Wymer and Yahrling cases involved unrelated swimming accidents, resulting in the drowning death of six-year-old Jennifer Wymer in a pond at a private home and the paralysis of Greg Yahrling in a subdivision's private lake. The defendants in both cases claimed immunity from liability under the RUA.

In Wymer, the defendants filed for summary judgment, contending that the plaintiff's claim was barred by the RUA. That motion was denied, because the plaintiff was a social guest and the defendant therefore had a duty to warn of a drop in the pond. The trial court jury returned a verdict of no cause of action, and the plaintiff appealed on issues unrelated to the RUA. The defendants cross-appealed on the question of the applicability of the RUA. The Court of Appeals rejected that cross-appeal and held that the Act was "inapplicable to social invitees because such application would not serve the legislative intent to promote tourism or open up private lands to public use".

In Yahrling, suit was brought against more than 200 defendants, including individual lot owners of the Belle Lake Estates subdivision

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and the neighborhood association. The trial court granted summary judgment for the landowners based in part on application of the RUA and the Court of Appeals affirmed that judgment.

In affirming the Court of Appeals in Wymer and reversing it in Yahrling, the Supreme Court outlined the legislative history of the RUA, which in 1953 originally granted limited immunity when injuries arose to a person who was on the lands of another for the purposes of fishing, hunting, or trapping. In 1964, the Legislature added camping, sightseeing, hiking, or other similar outdoor recreational uses; and in 1974 it added snowmobiling, motorcycling "or any other outdoor recreational use".

From this progression and the adoption of similar recreational use statutes in more than 40 states, the Court ruled that it was reasonable to assume that the RUA was meant "to encourage owners of land to make land and water areas available to the public for recreational purposes by limiting their liability toward persons entering thereon for such purposes". Further, the Court held that "the statute was intended to apply to large tracts of undeveloped land suitable for outdoor recreational uses. Urban, suburban, and subdivided lands were not intended to be covered by the RUA." The Court's interpretation of legislative intent was based on the impracticability of keeping such large, open tracts of land safe for public use and the assertion that the same limitation on liability is not necessary where use of land is easily supervised and safety hazards are easily monitored.

FISCAL IMPACT

The bill would have no fiscal impact on State or local government.

ARGUMENTS

Supporting Argument

The RUA grants limited immunity from liability to landowners when another person uses that land, without paying a fee, for recreational purposes. It stands to reason that the Act's applicability should be based on the recreational activity for which the property is used, not on whether the location is rural or urban, developed or undeveloped, or open or subdivided. The bill would ensure that a land owner or lessee received the Act's full protection regardless of the location of the land. Further, an owner or lessee should not be expected to inform every user of potential hazards simply because the land happens to be located in an urban, suburban, or otherwise developed area.

Opposing Argument

Under common law, premises liability hinges on the status of the land user. As the Michigan Supreme Court explained in a footnote in Wymer and Yahrling, if the user is a "trespasser" (i.e., one who enters upon another's land without consent), the landowner owes no duty to the user except to refrain from injuring him or her by willful and wanton misconduct. If the user is a "licensee" (i.e., one who enters with the owner's consent, including a social guest), the user is owed notice of any hidden danger. If the user is an "invitee" (i.e., a person who enters upon an invitation that carries an implied assurance or understanding that reasonable care has been used to make the premises safe), the landowner has a duty to warn of known dangers and to inspect the premises and make necessary repairs to ensure its safety.

The RUA, however, in order to encourage the opening of vast tracts of undeveloped land for recreational purposes, makes no distinction between the types of land users, in effect classifying all users as "trespassers". The RUA's exclusion from user status classifications that traditionally have applied in premises liability cases should be reserved to limited and specific activities and types of land.

Opposing Argument

The bill could completely eliminate landowner liability and result in a total loss of protection for innocent users of all types of land, regardless of how easy it would be to provide adequate safeguards. For instance, if a child living in a suburban area wandered into a neighbor's unfenced yard and were injured falling from a swingset that was in disrepair, under the bill the neighbor could be held harmless even though no attempt was made to warn potential users of a known danger or to deter their use. The Supreme Court's ruling in Wymer and Yahrling acknowledged the

difference between such a situation and the RUA's applicability to vast, undeveloped tracts by recognizing that "the need to limit owner liability does not arise in the case of recreational facilities...[that] are relatively easy to supervise and monitor for safety hazards".

Legislative Analyst: P. Affholter
Fiscal Analyst: B. Bowerman

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