

SUBSTITUTE FOR
HOUSE BILL NO. 5335

A bill to codify the liability of possessors of land for injuries to trespassers.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1. This act shall be known and may be cited as the
2 "trespass liability act".

3 Sec. 3. (1) A possessor of a fee, reversionary, or easement
4 interest in land, including an owner, lessee, or other lawful
5 occupant, owes no duty of care to a trespasser and is not liable to
6 a trespasser for physical harm caused by the possessor's failure to
7 exercise reasonable care to put the land in a condition reasonably
8 safe for the trespasser or to carry on activities on the land so as
9 not to endanger trespassers.

10 (2) Notwithstanding subsection (1), a possessor of land may be
11 subject to liability for physical injury or death to a trespasser

1 if any of the following apply:

2 (a) The possessor injured the trespasser by willful and wanton
3 misconduct.

4 (b) The possessor was aware of the trespasser's presence on
5 the land, or in the exercise of ordinary care should have known of
6 the trespasser's presence on the land, and failed to use ordinary
7 care to prevent injury to the trespasser arising from active
8 negligence.

9 (c) The possessor knew, or from facts within the possessor's
10 knowledge should have known, that trespassers constantly intrude on
11 a limited area of the land and the trespasser was harmed as a
12 result of the possessor's failure to carry on an activity in that
13 limited area involving a risk of death or serious bodily harm with
14 reasonable care for the trespasser's safety.

15 (d) The trespasser is a child injured by an artificial
16 condition on the land and all of the following apply:

17 (i) The possessor knew or had reason to know that a child would
18 be likely to trespass on the place where the condition existed.

19 (ii) The possessor knew or had reason to know of the condition
20 and realized or should have realized that the condition would
21 involve an unreasonable risk of death or serious bodily harm to a
22 child.

23 (iii) The injured child, because of his or her youth, did not
24 discover the condition or realize the risk involved in
25 intermeddling with it or in coming within the area made dangerous
26 by it.

27 (iv) The utility to the possessor of maintaining the condition

1 and the burden of eliminating the danger were slight as compared
2 with the risk to the child.

3 (v) The possessor failed to exercise reasonable care to
4 eliminate the danger or otherwise to protect the child.

5 (3) This section does not increase the liability of a
6 possessor of land and does not affect any immunity from or defenses
7 to civil liability established by or available under the statutes
8 or common law of this state to which a possessor of land is
9 entitled.