

AN ACT

ENTITLED, An Act to address comprehensibly the liability relationship between a trespasser and a person with a possessory interest in land.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

Section 1. No person with a possessory interest in land, including an owner, lessee, or other occupant, owes any duty of care to a trespasser nor is subject to liability for any injury to a trespasser except as provided in this Act.

Section 2. A person with a possessory interest in land may be subject to liability if the trespasser's physical injury or death was intentionally caused, including by entrapment, and if the injury or death was not justifiable pursuant to § 22-18-4.

Section 3. A person with a possessory interest in land may be subject to liability for physical injury or death to a child thirteen years of age or younger resulting from an artificial condition on the land if:

- (1) The person knew or had reason to know that children of that age were likely to trespass at the location of the artificial condition; and
- (2) The condition is one the person knew or reasonably should have known involved an unreasonable risk of death or serious bodily harm to such children; and
- (3) The injured child did not discover the artificial condition or realize the risk involved in the artificial condition or the risk coming within the area made dangerous by it; and
- (4) The utility to the person of maintaining the artificial condition and the burden of eliminating the danger were slight as compared with the risk to the child involved; and
- (5) The person failed to exercise reasonable care to eliminate the danger or otherwise protect the injured child.

Section 4. A person with a possessory interest in land may be subject to liability for physical

injury or death to a trespasser if the possessor knows, or from facts within the possessor's knowledge should have known, that trespassers consistently intrude upon a limited area of the possessor's land and:

- (1) The trespasser's harm was caused by the possessor's failure to carry on an activity involving a risk of death or serious bodily harm with reasonable care for the trespasser's safety; or
- (2) The trespasser's harm was caused by an artificial condition and:
  - (a) The artificial condition was created or maintained by the person;
  - (b) The person knew the artificial condition was likely to cause death or serious bodily injury to such a trespasser;
  - (c) The artificial condition was of such a nature that the possessor had reason to believe that the trespasser would not discover it; and
  - (d) The person failed to exercise reasonable care to warn the trespasser of the artificial condition and the risk involved.

Section 5. A person with a possessory interest in land may be subject to liability for physical injury or death to a known trespasser if:

- (1) The trespasser was harmed as a result of the person's failure to carry on dangerous activities on the land with reasonable care for the trespasser's safety;
- (2) The trespasser was harmed as a result of the possessor's failure to exercise reasonable care to warn the trespasser about an artificial condition maintained by the person, the artificial condition involved a risk of death or serious bodily injury, and the artificial condition was of such a nature that the person had reason to believe the trespasser would not discover the artificial condition or realize the risk involved; or
- (3) The person knew or had reason to know that the trespasser was in dangerous proximity

to a moving force in the person's immediate control just before the harm occurred, and the trespasser was harmed as a result of the person's failure to exercise reasonable care so as to prevent the force from harming the trespasser or failed to exercise reasonable care to provide a warning that was reasonably adequate to allow the trespasser to avoid the harm.

Section 6. For the purposes of this Act, a trespasser is any person who enters on the property of another without permission and without an invitation, express or implied.

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I certify that the attached Act  
originated in the  
  
HOUSE as Bill No. 1087  
  
\_\_\_\_\_  
Chief Clerk  
=====

\_\_\_\_\_  
Speaker of the House

Attest:

\_\_\_\_\_  
Chief Clerk

\_\_\_\_\_  
President of the Senate

Attest:

\_\_\_\_\_  
Secretary of the Senate

House Bill No. 1087  
File No. \_\_\_\_\_  
Chapter No. \_\_\_\_\_

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Received at this Executive Office  
this \_\_\_\_\_ day of \_\_\_\_\_ ,  
  
20\_\_\_\_ at \_\_\_\_\_ M.  
  
By \_\_\_\_\_  
for the Governor  
=====

The attached Act is hereby  
approved this \_\_\_\_\_ day of  
\_\_\_\_\_, A.D., 20\_\_\_\_

\_\_\_\_\_  
Governor

=====  
STATE OF SOUTH DAKOTA,  
ss.  
Office of the Secretary of State

Filed \_\_\_\_\_, 20\_\_\_\_  
at \_\_\_\_\_ o'clock \_\_ M.

\_\_\_\_\_  
Secretary of State

By \_\_\_\_\_  
Asst. Secretary of State