

2011 *Se1* DRAFTING REQUEST

Bill

Received: **09/19/2011**

Received By: **phurley**

Wanted: **As time permits**

Companion to LRB:

For: **Rich Zipperer (608) 266-9174**

By/Representing: **Lucas**

May Contact:

Drafter: **phurley**

Subject: **Courts - torts**
Courts - immunity liability

Addl. Drafters: **tkuczens**

Extra Copies:

Submit via email: **YES**

Requester's email: **Sen.Zipperer@legis.wisconsin.gov**

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

No duty of care owed to trespassers

Instructions:

See attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	phurley 09/21/2011	csicilia 09/22/2011		_____			
/P1	phurley 09/24/2011		jfrantze 09/22/2011	_____	sbasford 09/22/2011		
/1	phurley 09/26/2011	csicilia 09/28/2011	phenry 09/28/2011	_____	mbarman 09/28/2011		
	tkuczens 10/06/2011	csicilia 10/07/2011		_____			

Vers. Drafted Reviewed Typed Proofed Submitted Jacketed Required

/2

jfrantze _____
10/07/2011 _____

mbarman _____
10/07/2011 _____

mbarman _____
10/12/2011 _____

FE Sent For:

None

<END>

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see
attached

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/1	phurley 09/26/2011	csicilia 09/28/2011	phenry 09/28/2011	_____	mbarman 09/28/2011		
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Handwritten notes:
1/2 ejs 10/7
11 10/7
R3 10/7

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By/Representing: **Lucas**

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ljs 9/28
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9/28
ph
<END>

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By/Representing: Lucas

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FE Sent For:

<END>

Hurley, Peggy

From: Kuczenski, Tracy
Sent: Monday, September 19, 2011 11:35 AM
To: Hurley, Peggy
Subject: RE: Drafting Request

Please be my guest! And thank you!

Tracy K. Kuczenski
Legislative Attorney
Wisconsin Legislative Reference Bureau
tracy.kuczenski@legis.wisconsin.gov
(608) 266-9867

From: Hurley, Peggy
Sent: Monday, September 19, 2011 8:46 AM
To: Kuczenski, Tracy
Subject: RE: Drafting Request

Tracy,

I've done something similar. I can take this request if you want me to.

P

From: Vebber, Lucas
Sent: Friday, September 16, 2011 5:07 PM
To: Kuczenski, Tracy
Cc: Hurley, Peggy
Subject: Drafting Request

Tracy,

Regarding our conversation earlier today: this legislation would codify Wisconsin caselaw as it relates to a land possessor's duty of care toward a trespasser.

Please draft this bill to include the following (this language is more for general concepts, and is not specific, please modify as needed to accomplish these goals):

- Define "trespasser" as "a person who enters or remains upon land in the possession of another without a privilege to do so created by the possessor's consent or otherwise." (see Antoniewicz v. Reszcynski, 70 Wis.2d 836, 843 (1975), quoting from 2d Restatement of Torts).
- State that, generally, a possessor of land does not owe a duty of care to a landowner, and is not liable for injury of a trespasser, subject to the following exceptions:
 - **Intentional harms:** If the injury (including death) of the trespasser is intentionally caused by the land possessor, except where the land possessor is using reasonable force to repel a trespasser who has entered the land or building with the intent to commit a crime;
 - **Children:** When the trespasser is a child (16 or younger), and the harm is caused by some artificial condition on the land, and:
 - The possessor knew or should have known that children were likely to trespass at the location of the artificial condition;
 - The condition is one the possessor knew or reasonably should have known involved unreasonable risk of death or serious bodily harm to such children;
 - The injured child did not discover the condition or realize the risk involved until the child already came within the area made dangerous by it;
 - The utility to the possessor of maintaining the artificial condition and the burden of eliminating the danger were slight as compared with the risk to the child involved; and
 - The possessor did not exercise reasonable care to eliminate the danger or otherwise protect the

child.

- **Constant/Regular Trespassers:** If the possessor knows, or should have known, that trespassers consistently intrude upon an area of the possessor's land, and:
 - The trespassers harm was caused by the possessor's failure to carry on an activity involving the risk of death or serious bodily harm with reasonable care for the trespasser's safety; or
 - The trespassers harm was caused by an artificial condition created or maintained by the possessor, the possessor knew the condition was likely to cause death or serious bodily injury to such a trespasser; the condition was of such a nature that the possessor had reason to believe that the trespasser would not discover it; and the possessor failed to exercise reasonable care to warn the trespasser of the condition and the risk involved.
- **Dangerous Activities:** If the trespasser is a "known" trespasser (i.e., the possessor knows or should have known of the trespasser), the possessor may be liable if:
 - The trespasser was harmed as a result of the possessor's failure to carry on dangerous activities on the land with reasonable care for the trespasser's safety; or
 - The trespasser was harmed due to the possessor's failure to exercise reasonable care to warn the trespasser about an artificial condition maintained by the possessor, the condition involved a risk of death or serious bodily injury, and the condition was of such a nature that the possessor had reason to believe the trespasser would not discover the condition or realize the risk involved; or
 - The possessor knew or had reason to know that the trespasser was in dangerous proximity to a moving force in the possessor's immediate control just before the harm occurred and the trespasser was harmed as a result of the possessor'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.

Please note that similar legislation has been enacted in North Dakota (2011 House Bill 1452, available: <http://www.legis.nd.gov/assembly/62-2011/documents/11-0537-01000.pdf>) and South Dakota (2011 House Bill 1087, available: <http://legis.state.sd.us/sessions/2011/Bills/HB1087P.pdf>). Both of those bills/acts would provide language similar to what should be in this proposal.

Thank you for your time and assistance.

Lucas Vebber
Office of Senator Rich Zipperer
33rd Senate District
(608) 266-9174

State of South Dakota

EIGHTY-SIXTH SESSION
LEGISLATIVE ASSEMBLY, 2011

484S0487

HOUSE BILL NO. 1087

Introduced by: Representatives Hunt, Rausch, and Wick and Senator Peters

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

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

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

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

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

13 (1) The person knew or had reason to know that children of that age were likely to
14 trespass at the location of the artificial condition;

15 (2) The condition is one the person knew or reasonably should have known involved an



1 unreasonable risk or death or serious bodily harm to such children;

2 (3) The injured child did not discover the artificial condition or realize the risk involved
3 in the artificial condition or the risk coming within the area made dangerous by it;

4 (4) The utility to the person of maintaining the artificial condition and the burden of
5 eliminating the danger were slight as compared with the risk to the child involved;
6 and

7 (5) The person failed to exercise reasonable care to eliminate the danger or otherwise
8 protect the injured child.

9 Section 4. A person with a possessory interest in land may be subject to liability for physical
10 injury or death to a trespasser if the possessor knows, or from facts within the possessor's
11 knowledge should have known, that trespassers consistently intrude upon a limited area of the
12 possessor's land and:

13 (1) The trespasser's harm was caused by the possessor's failure to carry on an activity
14 involving a risk of death or serious bodily harm with reasonable care for the
15 trespasser's safety; or

16 (2) The trespasser's harm was caused by an artificial condition and:

17 (a) The artificial condition was created or maintained by the person;

18 (b) The person knew the artificial condition was likely to cause death or serious
19 bodily injury to such a trespasser;

20 (c) The artificial condition was of such a nature that the possessor had reason to
21 believe that the trespasser would not discover it; and

22 (d) The person failed to exercise reasonable care to warn the trespasser of the
23 artificial condition and the risk involved.

24 Section 5. A person with a possessory interest in land may be subject to liability for physical

1 injury or death to a known trespasser if:

2 (1) The trespasser was harmed as a result of the persons's failure to carry on dangerous
3 activities on the land with reasonable care for the trespasser's safety;

4 (2) The trespasser was harmed as a result of the possessor's failure to exercise reasonable
5 care to warn the trespasser about an artificial condition maintained by the person, the
6 artificial condition involved a risk of death or serious bodily injury, and the artificial
7 condition was of such a nature that the person had reason to believe the trespasser
8 would not discover the artificial condition or realize the risk involved; or

9 (3) The person knew or had reason to know that the trespasser was in dangerous
10 proximity to a moving force in the person's immediate control just before the harm
11 occurred, and the trespasser was harmed as a result of the person's failure to exercise
12 reasonable care so as to prevent the force from harming the trespasser or failed to
13 exercise reasonable care to provide a warning that was reasonably adequate to allow
14 the trespasser to avoid the harm.

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

HOUSE BILL NO. 1452

Introduced by

Representatives Thoreson, Boehning, Koppelman, Schatz

Senator Krebsbach

1 A BILL for an Act to provide landowner immunity for injuries to trespassers.

2 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

3 **SECTION 1.**

4 **Duty of care to trespasser.**

5 A possessor of land, including an owner, lessee, or other occupant, does not owe a duty of
6 care to a trespasser and is not subject to liability for any injury to a trespasser.

7 **SECTION 2.**

8 **Exceptions to land possessor immunity.**

9 1. Notwithstanding section 1 of this Act, a possessor of land may be subject to liability for
10 physical injury or death to a trespasser in the following situations:

11 a. A land possessor has a duty not to harm the trespasser in a willful and wanton
12 manner, except as permitted under section 12.1-05-06, 12.1-05-07, 12.1-05-07.1,
13 or 12.1-05-07.2;

14 b. A land possessor that knows of the trespasser's presence on the premises has a
15 duty to exercise ordinary care to avoid injuring that trespasser; and

16 c. A land possessor may be subject to liability for physical injury or death to a child
17 trespasser resulting from an artificial condition on the land if:

18 (1) The possessor knew or had reason to know that children were likely to
19 trespass at the location of the condition;

20 (2) The condition is one the possessor knew or reasonably should have known
21 involved an unreasonable risk of death or serious bodily harm to children;

22 (3) The injured child did not discover the condition or realize the risk involved in
23 the condition or coming within the area made dangerous by it;

- 1 (4) The utility to the possessor of maintaining the condition and the burden of
2 eliminating the danger were slight as compared with the risk to the child
3 involved; and
4 (5) The land possessor failed to exercise reasonable care to eliminate the
5 danger or otherwise protect the injured child.
6 2. This section does not affect chapter 53-08.
7 3. This section does not create or increase the liability of any person or entity.



PI
imr

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

9-21-11
b1
9-23-11
Gen Cat

gs

AN ACT ...; relating to: the duty of care owed to trespassers.

Analysis by the Legislative Reference Bureau

This is a preliminary draft. An analysis will be provided in a subsequent version of this draft.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 895.529 of the statutes is created to read:

895.529 Civil liability limitation; duty of care owed to trespassers. (1)

In this section:

(a) "Habitual trespass area" means a particular, limited area within the private property owner's property that a private property owner knows or should know is consistently entered onto by one or more trespassers.

(b) "Known trespasser" means a trespasser that the private property owner knows or should know is trespassing on the private property owner's property.

(c) "Private property owner" means an owner, other than a governmental body or nonprofit organization, of property, and includes a lessee, tenant, or other lawful occupant.

(d) "Property" means real property and buildings, structures, and improvements thereon.

(e) "Trespasser" means a natural person who enters onto the property of another without the express or implied consent of the private property owner.

based on

****NOTE: The definition of "trespasser" is based on the definition found in s. 943.13 (1m) (a), except that it applies to all kinds of private property. The definition of "private property owner" is identical to the definition found in s. 895.52 (recreational activity immunity), and the definition of "property" is based on the definition found in s. 895.52, except that it does not include waterways. Please let me know if any of these definitions do not reflect your intent.

(2) Except as provided in sub. (3), a private property owner owes no duty of care to a trespasser on his or her property and may not be found liable for an act or omission relating to a condition on his or her property that causes injury or death to a trespasser.

(3) A private property owner may be liable for an act or omission relating to a condition on his or her property that causes injury or death to a trespasser under any of the following circumstances:

(a) The private property owner intentionally caused the injury or death. This paragraph does not apply if the private property owner used reasonable and necessary force for the purpose of self-defense or the defense of others under s. 939.48 or used reasonable and necessary force for the protection of property under s. 939.49.

16

(b) The person injured or killed was a child 13 years of age or younger and all of the following apply:

- 1. The injury or death was a result of an artificial condition on the property.

16

2. The private property owner knew or should have known that the artificial condition presented an unreasonable risk of death or serious bodily harm to children 13 years of age or younger.

16

3. The private property owner knew or should have known that a child or children 13 years of age or younger were likely to trespass at the location of the artificial condition.

4. The child injured or killed did not discover the artificial condition or realize the risk involved with the artificial condition until after the child came within the area made dangerous by the artificial condition.

5. The utility to the private property owner of maintaining the artificial condition and the burden of eliminating the danger were slight as compared to the risk to the injured or killed child.

6. The private property owner failed to exercise reasonable care to eliminate the danger or otherwise protect the injured or killed child.

subd.

(c) The injury or death occurred in an habitual trespass area and either 1. or 2. applies:

1. The injury or death was a result of the private property owner's failure to carry on an activity involving a risk of death or serious bodily harm with reasonable care to the safety of the trespasser. for

2. The injury or was a result of an artificial condition and all of the following apply: death

a. The artificial condition was created or maintained by the private property owner.

b. The private property owner knew or should have known that the artificial condition presented an unreasonable risk of death or serious bodily harm to a trespasser.

c. The artificial condition was of such a nature that the private property owner knew or had reason to know that the trespasser would not discover the condition.

d. The private property owner failed to exercise reasonable care to warn the trespasser of the artificial condition and the risk presented by the artificial condition.

(d) The person injured or killed was a known trespasser and any of the following apply:

1. The injury or death was a result of the private property owner's failure to carry on an activity involving a risk of death or serious bodily harm with reasonable care to the safety of the known trespasser. e for

2. The injury or death was a result of an artificial condition and all of the following apply: death

a. The artificial condition was created or maintained by the private property owner.

b. The private property owner knew or should have known that the artificial condition presented an unreasonable risk of death or serious bodily harm to a trespasser.

c. The artificial condition was of such a nature that the private property owner knew or had reason to know that the trespasser would not discover the condition.

d. The private property owner failed to exercise reasonable care to warn the trespasser of the artificial condition and the risk presented by the artificial condition.

3. The private property owner knew or had reason to know that the known trespasser was in dangerous proximity to a moving force in the owner's immediate

SECTION 1

property

control just before the injury or death occurred and the private property owner failed to exercise reasonable care to prevent the force from injuring or killing the known trespasser or failed to exercise reasonable care to provide warning that was reasonably adequate to allow the known trespasser to avoid injury or death.

(4) In determining whether a person has implied consent to enter the land of a private property owner, a trier of fact shall consider all of the circumstances existing at the time the person entered the land, including all of the following:

(a) Whether the private property owner or lawful occupant acquiesced to previous entries by the person or by other persons under similar circumstances.

(b) The customary use, if any, of the land by other persons.

(c) Whether the private property owner or lawful occupant represented to the public that the land may be entered for particular purposes.

(d) The general arrangement or design of any improvements or structures on the land.

****NOTE: This subsection is lifted from s. 943.13 (1s). Please let me know if it does not reflect your intent.

(END)

property

adapted

↑ or improvements

property

buildings

onto

onto

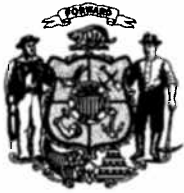
land

or lawful occupant

land

improvements or

structures on



Stays 1M

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

Insert analysis
a-2 bill
seen today a-28

Gen Cat

1
2

AN ACT to create 895.529 of the statutes; **relating to:** the duty of care owed to trespassers.

Analysis by the Legislative Reference Bureau

This is a preliminary draft. An analysis will be provided in a subsequent version of this draft.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

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SECTION 1. 895.529 of the statutes is created to read:

895.529 Civil liability limitation; duty of care owed to trespassers. (1)

In this section:

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(b) "Known trespasser" means a trespasser that the private property owner knows or should know is trespassing on the private property owner's property.

1 (c) “Private property owner” means an owner, other than a governmental body
2 or nonprofit organization, of property, and includes a lessee, tenant, or other lawful
3 occupant.

4 (d) “Property” means real property and buildings, structures, and
5 improvements thereon.

6 (e) “Trespasser” means a natural person who enters onto the property of
7 another without the express or implied consent of the private property owner.

****NOTE: The definition of “trespasser” is based on the definition found in s. 943.13
(1m) (a), except that it applies to all kinds of private property. The definition of “private
property owner” is based on the definition found in s. 895.52 (recreational activity
immunity), and the definition of “property” is based on the definition found in s. 895.52,
except that it does not include waterways. Please let me know if any of these definitions
do not reflect your intent.

8 (2) Except as provided in sub. (3), a private property owner owes no duty of care
9 to a trespasser on his or her property and may not be found liable for an act or
10 omission relating to a condition on his or her property that causes injury or death to
11 a trespasser.

12 (3) A private property owner may be liable for an act or omission relating to
13 a condition on his or her property that causes injury or death to a trespasser under
14 any of the following circumstances:

15 (a) The private property owner intentionally caused the injury or death. This
16 paragraph does not apply if the private property owner used reasonable and
17 necessary force for the purpose of self-defense or the defense of others under s.
18 939.48 or used reasonable and necessary force for the protection of property under
19 s. 939.49.

20 (b) The person injured or killed was a child 16 years of age or younger and all
21 of the following apply:

22 1. The injury or death was a result of an artificial condition on the property.

1 2. The private property owner knew or should have known that the artificial
2 condition presented an unreasonable risk of death or serious bodily harm to children
3 16 years of age or younger.

4 3. The private property owner knew or should have known that a child or
5 children 16 years of age or younger were likely to trespass at the location of the
6 artificial condition.

7 4. The child injured or killed did not discover the artificial condition or realize
8 the risk involved with the artificial condition until after the child came within the
9 area made dangerous by the artificial condition.

10 5. The utility to the private property owner of maintaining the artificial
11 condition and the burden of eliminating the danger were slight as compared to the
12 risk to the injured or killed child.

13 6. The private property owner failed to exercise reasonable care to eliminate
14 the danger or otherwise protect the injured or killed child.

15 (c) The injury or death occurred in an habitual trespass area and either subd.
16 1. or 2. applies:

17 1. The injury or death was a result of the private property owner's failure to
18 carry on an activity involving a risk of death or serious bodily harm with reasonable
19 care for the safety of the trespasser.

20 2. The injury or death was a result of an artificial condition and all of the
21 following apply:

22 a. The artificial condition was created or maintained by the private property
23 owner.

1 b. The private property owner knew or should have known that the artificial
2 condition presented an unreasonable risk of death or serious bodily harm to a
3 trespasser.

4 c. The artificial condition was of such a nature that the private property owner
5 knew or had reason to know that the trespasser would not discover the condition.

6 d. The private property owner failed to exercise reasonable care to warn the
7 trespasser of the artificial condition and the risk presented by the artificial condition.

8 (d) The person injured or killed was a known trespasser and any of the following
9 apply:

10 1. The injury or death was a result of the private property owner's failure to
11 carry on an activity involving a risk of death or serious bodily harm with reasonable
12 care for the safety of the known trespasser.

13 2. The injury or death was a result of an artificial condition and all of the
14 following apply:

15 a. The artificial condition was created or maintained by the private property
16 owner.

17 b. The private property owner knew or should have known that the artificial
18 condition presented an unreasonable risk of death or serious bodily harm to a
19 trespasser.

20 c. The artificial condition was of such a nature that the private property owner
21 knew or had reason to know that the trespasser would not discover the condition.

22 d. The private property owner failed to exercise reasonable care to warn the
23 trespasser of the artificial condition and the risk presented by the artificial condition.

24 3. The private property owner knew or had reason to know that the known
25 trespasser was in dangerous proximity to a moving force in the owner's immediate

1 control just before the injury or death occurred and the private property owner failed
2 to exercise reasonable care to prevent the force from injuring or killing the known
3 trespasser or failed to exercise reasonable care to provide warning that was
4 reasonably adequate to allow the known trespasser to avoid injury or death.

5 (4) In determining whether a person has implied consent to enter onto the
6 property of a private property owner, a trier of fact shall consider all of the
7 circumstances existing at the time the person entered onto the property, including
8 all of the following:

9 (a) Whether the private property owner acquiesced to previous entries by the
10 person or by other persons under similar circumstances.

11 (b) The customary use, if any, of the property by other persons.

12 (c) Whether the private property owner represented to the public that the land
13 may be entered for particular purposes.

14 (d) The general arrangement or design of any buildings, structures, or
15 improvements on the property.

16 ****NOTE: This subsection is adapted from s. 943.13 (1s). Please let me know if it
does not reflect your intent.

(END)

Insert 5.15

INSERT ANALYSIS:

This bill sets forth limits on ^{the} civil liability of private property owner^s to trespassers. Under the bill, a private property owner, including a lawful tenant or other occupant of private property, owes no duty of care to a trespasser on his or her property and may not be found liable for an act or omission relating to a condition on his or her property that causes injury or death to a trespasser, except under certain circumstances. The bill defines a trespasser as anyone who enters onto private property without the express or implied consent of the property owner and sets forth criteria for determining whether the owner gave ~~express or implied~~ permission onto the property. ~~to enter~~

Under the bill, a private property owner may be liable for injuries that he or she intentionally causes to a trespasser, unless the private property owner was acting reasonably in self-defense or in the defense of another.

Under the bill, a private property owner may, under certain circumstances, be liable for injuries to a trespasser who is a child under the age of 16. Liability may attach if the child was injured because of an artificial condition on the property that the owner knew or should have known was unreasonably dangerous and knew or should have known ~~would be appealing to a child~~ and other factors indicate that the owner acted unreasonably in failing to prevent harm to a child. ~~the~~

Under the bill, a private property owner may also be liable if a trespasser was injured in an area that the owner knew or should have known was habitually trespassed. Liability may attach if the trespasser was injured due to the owner's failure to carry on a dangerous activity without reasonable care for the safety of a trespasser, or if the injury was due to an artificial condition that was unreasonably dangerous and other factors indicate that the owner failed to exercise reasonable care to warn trespassers of the dangerous artificial condition.

Under the bill, a private property owner may also be liable if a trespasser was injured while the owner knew the trespasser was present. Liability may attach if the trespasser was injured due to the owner's failure to carry on a dangerous activity without reasonable care for the safety of a trespasser, or if the injury was due to an artificial condition that was unreasonably dangerous and other factors indicate that the owner failed to exercise reasonable care to warn trespassers of the dangerous artificial condition.

INSERT 5.15:

SECTION 1. Initial applicability.

(1) This act first applies to actions that are filed on the effective date of this subsection.

Consent

a child was likely to trespass near

the

the

owner

Kuczenski, Tracy

From: Vebber, Lucas
Sent: Wednesday, October 05, 2011 9:40 AM
To: Kuczenski, Tracy
Subject: LRB 2939

Hi Tracy,

Peggy said you were taking over drafting of LRB 2939 for this week while she is out of town. Here are the changes to make to the LRB:

✓ Page 2:

- Strike definitions of "Habitual Trespass Area" and "Known Trespasser" (lines 4-8)

✓ Page 3:

- Strike "16 years of age or younger" when referring to a child (all references, I believe they are on lines 13, 18, and 20)

Page 4:

- Strike Sub (c) and the rest of section 1 (through the end of page 5) ? Per Lucas T. call: keep sub (4)
re: implied consent

- ✓ Insert a provision stating: This section does not create or increase the liability of any private property owner and does not affect any immunity from or defenses to liability established by another section of the statutes or available at common law to which a private property owner may be entitled under circumstances not covered by this section.

Thank you for your time and assistance, and please call me if you have any questions.

Lucas

Lucas Vebber

Office of Senator Rich Zipperer
33rd Senate District
(608) 266-9174



State of Wisconsin
2011 - 2012 LEGISLATURE



LRB-2939A 2

PJH:cjs:ph

STKK

Insert

RMMR

2011 BILL

10/6/11

Wrote at 10/10/11 a.m.

SAW

Gen Cat

1 AN ACT to create 895.529 of the statutes; relating to: the duty of care owed to
2 trespassers.

Analysis by the Legislative Reference Bureau

This bill sets forth limits on the civil liability of private property owners to trespassers. Under the bill, a private property owner, including a lawful tenant or other occupant of private property, owes no duty of care to a trespasser on his or her property and may not be found liable for an act or omission relating to a condition on his or her property that causes injury or death to a trespasser, except under certain circumstances. The bill defines a trespasser as anyone who enters onto private property without the express or implied consent of the property owner and sets forth criteria for determining whether the owner gave implied consent to enter onto the property.

Under the bill, a private property owner may be liable for injuries that he or she intentionally causes to a trespasser, unless the private property owner was acting reasonably in self-defense or in the defense of another.

X Under the bill, a private property owner may, under certain circumstances, be liable for injuries to a trespasser who is a child under the age of 16. Liability may attach if the child was injured because of an artificial condition on the property that the owner knew or should have known was unreasonably dangerous and knew or should have known a child was likely to trespass near and other factors indicate that the owner acted unreasonably in failing to prevent harm to the child. if

6 Under the bill, a private property owner may also be liable if a trespasser was injured in an area that the owner knew or should have known was habitually

BILL

trespassed. Liability may attach if the trespasser was injured due to the owner's failure to carry on a dangerous activity with reasonable care for the safety of a trespasser, or if the injury was due to an artificial condition that was unreasonably dangerous and other factors indicate that the owner failed to exercise reasonable care to warn trespassers of the dangerous artificial condition.

Under the bill, a private property owner may also be liable if a trespasser was injured while the owner knew the trespasser was present. Liability may attach if the trespasser was injured due to the owner's failure to carry on a dangerous activity with reasonable care for the safety of the trespasser, or if the injury was due to an artificial condition that was unreasonably dangerous and other factors indicate that the owner failed to exercise reasonable care to warn the trespasser of the dangerous artificial condition.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 SECTION 1. 895.529 of the statutes is created to read:

2 **895.529 Civil liability limitation; duty of care owed to trespassers. (1)**

3 In this section:

4 (a) "Habitual trespass area" means a particular, limited area within the private
5 property owner's property that a private property owner knows or should know is
6 consistently entered onto by one or more trespassers.

7 (b) "Known trespasser" means a trespasser that the private property owner
8 knows or should know is trespassing on the private property owner's property.

9 (a) ~~(a)~~ (c) "Private property owner" means an owner, other than a governmental body
10 or nonprofit organization, of property, and includes a lessee, tenant, or other lawful
11 occupant.

12 (b) ~~(b)~~ (d) "Property" means real property and buildings, structures, and
13 improvements thereon.

14 (c) ~~(c)~~ (e) "Trespasser" means a natural person who enters onto the property of
15 another without the express or implied consent of the private property owner.

BILL

1 (2) Except as provided in sub. (3), a private property owner owes no duty of care
2 to a trespasser on his or her property and may not be found liable for an act or
3 omission relating to a condition on his or her property that causes injury or death to
4 a trespasser.

5 (3) A private property owner may be liable for an act or omission relating to
6 a condition on his or her property that causes injury or death to a trespasser under
7 any of the following circumstances:

8 (a) The private property owner intentionally caused the injury or death. This
9 paragraph does not apply if the private property owner used reasonable and
10 necessary force for the purpose of self-defense or the defense of others under s.
11 939.48 or used reasonable and necessary force for the protection of property under
12 s. 939.49.

13 (b) The person injured or killed was a child 16 years of age or younger and all
14 of the following apply:

15 1. The injury or death was a result of an artificial condition on the property.

16 2. The private property owner knew or should have known that the artificial
17 condition presented an unreasonable risk of death or serious bodily harm to children

18 16 years of age or younger.

19 3. The private property owner knew or should have known that a child or
20 children 16 years of age or younger were likely to trespass at the location of the
21 artificial condition.

22 4. The child injured or killed did not discover the artificial condition or realize
23 the risk involved with the artificial condition until after the child came within the
24 area made dangerous by the artificial condition.

BILL

1 5. The utility to the private property owner of maintaining the artificial
2 condition and the burden of eliminating the danger were slight as compared to the
3 risk to the injured or killed child.

4 6. The private property owner failed to exercise reasonable care to eliminate
5 the danger or otherwise protect the injured or killed child.

6 (c) The injury or death occurred in an habitual trespass area and either subd.

7 1. or 2. applies:

8 1. The injury or death was a result of the private property owner's failure to
9 carry on an activity involving a risk of death or serious bodily harm with reasonable
10 care for the safety of the trespasser.

11 2. The injury or death was a result of an artificial condition and all of the
12 following apply:

13 a. The artificial condition was created or maintained by the private property
14 owner.

15 b. The private property owner knew or should have known that the artificial
16 condition presented an unreasonable risk of death or serious bodily harm to a
17 trespasser.

18 c. The artificial condition was of such a nature that the private property owner
19 knew or had reason to know that the trespasser would not discover the condition.

20 d. The private property owner failed to exercise reasonable care to warn the
21 trespasser of the artificial condition and the risk presented by the artificial condition.

22 (d) The person injured or killed was a known trespasser and any of the following
23 apply:

BILL

1 1. The injury or death was a result of the private property owner's failure to
2 carry on an activity involving a risk of death or serious bodily harm with reasonable
3 care for the safety of the known trespasser.

4 2. The injury or death was a result of an artificial condition and all of the
5 following apply:

6 a. The artificial condition was created or maintained by the private property
7 owner.

8 b. The private property owner knew or should have known that the artificial
9 condition presented an unreasonable risk of death or serious bodily harm to a
10 trespasser.

11 c. The artificial condition was of such a nature that the private property owner
12 knew or had reason to know that the trespasser would not discover the condition.

13 d. The private property owner failed to exercise reasonable care to warn the
14 trespasser of the artificial condition and the risk presented by the artificial condition.

15 (4) In determining whether a person has implied consent to enter onto the
16 property of a private property owner, a trier of fact shall consider all of the
17 circumstances existing at the time the person entered onto the property, including
18 all of the following:

19 (a) Whether the private property owner acquiesced to previous entries by the
20 person or by other persons under similar circumstances.

21 (b) The customary use, if any, of the property by other persons.

22 (c) Whether the private property owner represented to the public that the land
23 may be entered for particular purposes.

24 (d) The general arrangement or design of any buildings, structures, or
25 improvements on the property.

**2011-2012 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-2939/2ins
TKK:cjs:ph

1 **Insert 6-1**

2 (5) This section does not create or increase any liability on the part of a private
3 property owner for circumstances not specified under this section and does not affect
4 any immunity from or defenses to liability available to a private property owner
5 under common law or another statute.

Parisi, Lori

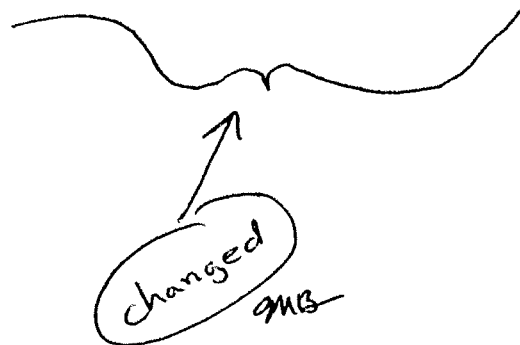
From: Sen.Zipperer

Sent: Tuesday, October 11, 2011 4:52 PM

To: LRB.Legal

Subject: Draft Review: LRB 11-2939/2 Topic: No duty of care owed to trespassers

Please Jacket LRB 11-2939/2 for the SENATE as a **September 2011 Special Session Bill**.



A handwritten note consisting of a wavy line above an arrow pointing to the line. Below the arrow is the word "changed" written inside a hand-drawn oval, with the initials "MB" written below the oval.

10/11/2011