



State of Wisconsin
2011 – 2012 LEGISLATURE

September 2011 Special Session



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**SENATE SUBSTITUTE AMENDMENT 1,
TO SENATE BILL 22**

October 28, 2011 – Offered by Senators GALLOWAY and ZIPPERER.

1 **AN ACT** *to amend* 895.52 (7); and *to create* 895.529 of the statutes; **relating to:**
2 the duty of care owed to trespassers.

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

3 **SECTION 1.** 895.52 (7) of the statutes is amended to read:

4 895.52 (7) NO DUTY OR LIABILITY CREATED. Except as expressly provided in this
5 section, nothing in this section or s. 101.11, or s. 895.529 nor the common law
6 attractive nuisance doctrine creates any duty of care or ground of liability toward any
7 person who uses another's property for a recreational activity.

8 **SECTION 2.** 895.529 of the statutes is created to read:

9 **895.529 Civil liability limitation; duty of care owed to trespassers. (1)**

10 In this section:

11 (a) "Possessor of real property" means an owner, lessee, tenant, or other lawful
12 occupant of real property.

1 (b) “Trespasser” means a natural person who enters or remains upon property
2 in possession of another without express or implied consent.

3 **(2)** Except as provided in sub. (3), a possessor of real property owes no duty of
4 care to a trespasser.

5 **(3)** A possessor of real property may be liable for injury or death to a trespasser
6 under the following circumstances:

7 (a) The possessor of real property willfully, wantonly, or recklessly caused the
8 injury or death. This paragraph does not apply if the possessor used reasonable and
9 necessary force for the purpose of self–defense or the defense of others under s.
10 939.48 or used reasonable and necessary force for the protection of property under
11 s. 939.49.

12 (b) The person injured or killed was a child and all of the following apply:

13 1. The possessor of real property maintained, or allowed to exist, an artificial
14 condition on the property that was inherently dangerous to children.

15 2. The possessor of real property knew or should have known that children
16 trespassed on the property.

17 3. The possessor of real property knew or should have known that the artificial
18 condition he or she maintained or allowed to exist was inherently dangerous to
19 children and involved an unreasonable risk of serious bodily harm or death to
20 children.

21 4. The injured or killed child, because of his or her youth or tender age, did not
22 discover the condition or realize the risk involved in entering onto the property, or
23 in playing in close proximity to the inherently dangerous artificial condition.

