



WISCONSIN LEGISLATIVE COUNCIL ACT MEMO

2011 Wisconsin Act 93
[September 2011 Special Session
Senate Bill 22]

Duty of Care for Trespassers

Under *current case law*, Wisconsin courts have recognized that a possessor of land generally has no duty of care with respect to a trespasser, other than to refrain from willfully or intentionally injuring the trespasser. However, courts have recognized that a possessor owes a duty of reasonable care to child trespassers in certain circumstances.

2011 Wisconsin Act 93 provides that a possessor of real property owes no duty of care to a trespasser. However, the Act provides that a possessor of real property may be liable for injury or death to a trespasser if the possessor of real property willfully, wantonly, or recklessly caused the injury or death. This exception does not apply if the possessor used reasonable and necessary force for the purpose of self-defense or the defense of others or used reasonable and necessary force for the protection of property.

The Act also provides that a possessor of real property may be liable for injury or death to a trespasser if the person who was injured or killed was a child and all of the following apply:

- The possessor of real property maintained, or allowed to exist, an artificial condition on the property that was inherently dangerous to children.
- The possessor of real property knew or should have known that children trespassed on the property.
- The possessor of real property knew or should have known that the artificial condition he or she maintained or allowed to exist was inherently dangerous to children and involved an unreasonable risk of serious bodily harm or death to children.

This memo provides a brief description of the Act. For more detailed information, consult the text of the law and related legislative documents at the Legislature's Web site at: <http://www.legis.state.wi.us/>.

- The injured or killed child, because of his or her youth or tender age, did not discover the condition or realize the risk involved in entering onto the property, or in playing in close proximity to the inherently dangerous artificial condition.
- The possessor of real property could have reasonably provided safeguards that would have obviated the inherent danger without interfering with the purpose for which the artificial condition was maintained or allowed to exist.

The Act also provides that the statute created by the Act does not create or increase any liability on the part of a possessor of real property for circumstances not specified in the statute and does not affect any immunity from or defenses to liability available to a possessor of real property under common law or another statute.

Effective date: The Act takes effect on December 21, 2011, and first applies to actions that are filed on that date.

Prepared by: Jessica Karls-Ruplinger, Senior Staff Attorney

December 13, 2011

JKR:ksm