



State of Wisconsin
2011 - 2012 LEGISLATURE

September 2011 Special Session



LRB-3129/1
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ASSEMBLY BILL 22

October 18, 2011 – Introduced by COMMITTEE ON ASSEMBLY ORGANIZATION, by request of Governor Scott Walker, Representative Kuglitsch, and Senator Galloway. Referred to Committee on Judiciary and Ethics.

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.

Under the bill, a private property owner may, under certain circumstances, be liable for injuries to a trespasser who is a child. 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 if other factors indicate that the owner acted unreasonably in failing to prevent harm to the child.

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

7 (b) "Property" means real property and buildings, structures, and
8 improvements thereon.

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

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

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

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

1 939.48 or used reasonable and necessary force for the protection of property under
2 s. 939.49.

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

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

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

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

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

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

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

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

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

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

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

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

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

7 **SECTION 2. Initial applicability.**

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

10 (END)