

State of South Dakota

EIGHTY-SIXTH SESSION
LEGISLATIVE ASSEMBLY, 2011

484S0487

HOUSE JUDICIARY ENGROSSED NO. **HB 1087** - 2/9/2011

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; and

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; and

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 and

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

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

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

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

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

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

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

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

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

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

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

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

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

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