

BILL ANALYSIS

S.B. 1160
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Judiciary & Civil Jurisprudence
Committee Report (Unamended)

BACKGROUND AND PURPOSE

Texas has long maintained clear and sound rules regarding the liability of land possessors to those who trespass on their property. In Texas and most other states, land possessors generally owe no duty of care to trespassers and are not liable for their injuries. These rules have existed for decades, usually as part of the common (court-made) law, but also sometimes in the statutory law. The rules are based on the principle that land possessors are entitled to the free enjoyment of their land.

The American Law Institute's (ALI) latest *Restatement Third of Torts* recommends that courts impose a broad new duty on land possessors to exercise reasonable care for all entrants on their land, including unwanted trespassers. The only exception to the proposed new duty rule would be for harms to so-called "flagrant trespassers," a term that is not defined in the *Restatement* and does not exist in any state's tort law. Instead of following the historical common law approach found in Texas, and providing that land possessors generally owe no duty to trespassers (subject to narrow exceptions), the new *Restatement* imposes liability on land possessors for harm to any entrant except the flagrant trespasser.

The new *Restatement* does not have the force of law by itself, but courts often look to ALI Restatements when developing legal rules. The ALI is highly influential with courts because the ALI is perceived to be objective and is composed of the nation's top-echelon judges, law professors, and practitioners. There are numerous examples where the Supreme Court of Texas has adopted or relied upon provisions of ALI Restatements for authority in reaching its decisions.

S.B. 1160 would freeze current common law in Texas, with the current exceptions, and preempt courts from adopting the new *Restatement* and subjecting land possessors to broad new liability.

As proposed, S.B. 1160 amends current law relating to the liability of a landowner for harm to a trespasser.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

ANALYSIS

SECTION 1. Amends Chapter 75, Civil Practice and Remedies Code, by adding Section 75.007, as follows:

Sec. 75.007. TRESPASSERS. (a) Defines "trespasser" in this section.

(b) Provides that an owner, lessee, or occupant of land does not owe a duty of care to a trespasser on the land and is not liable for any injury to a trespasser on the land, except that an owner, lessee, or occupant owes a duty to refrain from injuring a trespasser wilfully, wantonly, or through gross negligence.

(c) Provides that, notwithstanding Subsection (b), an owner, lessee, or occupant of land may be liable for injury to a child younger than 16 years of age caused by a highly dangerous artificial condition on the land if:

(1) the place where the artificial condition exists is one upon which the owner, lessee, or occupant knew or reasonably should have known that children were likely to trespass;

(2) the artificial condition is one that the owner, lessee, or occupant knew or reasonably should have known existed, and that the owner, lessee, or occupant realized or should have realized involved an unreasonable risk of death or serious bodily harm to such children;

(3) the injured child did not discover the condition or realize the risk involved in intermeddling with the condition or coming within the area made dangerous by the condition;

(4) the utility to the owner, lessee, or occupant of maintaining the artificial condition and the burden of eliminating the danger were slight as compared with the risk to the child involved; and

(5) the owner, lessee, or occupant failed to exercise reasonable care to eliminate the danger or otherwise protect the child.

(d) Provides that a child who is at least 14 years of age is presumed to appreciate the risk of highly dangerous artificial conditions on land, but this presumption may be overcome if the claimant proves that the child, at the time of the injury, did not have the ability to appreciate the risk.

(e) Provides that an owner, lessee, or occupant of land whose actions are justified under Subchapter C (Protection of Persons) or D (Protection of Property), Chapter 9 (Justification Excluding Criminal Responsibility), Penal Code, is not liable to a trespasser for damages arising from those actions.

(f) Provides that this section does not affect Sections 75.001 (Definitions), 75.002 (Liability Limited), 75.0021 (Limited Liability of Certain Public Utilities), 75.003 (Application and Effect of Chapter), or 75.004 (Limitation on Monetary Damages for Private Landowners) or create or increase the liability of any person.

SECTION 2. Makes application of this Act prospective.

EFFECTIVE DATE

Upon passage or September 1, 2011.