

By: Seliger

S.B. No. 1160

A BILL TO BE ENTITLED

AN ACT

relating to the liability of a landowner for harm to a trespasser.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Chapter 75, Civil Practice and Remedies Code, is amended by adding Section 75.007 to read as follows:

Sec. 75.007. TRESPASSERS. (a) In this section, "trespasser" means a person who enters the land of another without any legal right, express or implied.

(b) 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) Notwithstanding Subsection (b), an owner, lessee, or occupant of land may be liable for injury to a child 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;

1 (3) the injured child, because of the child's youth,
2 did not discover the condition or realize the risk involved in
3 intermeddling with the condition or coming within the area made
4 dangerous by the condition;

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

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

12 (d) An owner, lessee, or occupant of land whose actions are
13 justified under Subchapter C or D, Chapter 9, Penal Code, is not
14 liable to a trespasser for damages arising from those actions.

15 (e) This section does not affect Section 75.001, 75.002,
16 75.0021, 75.003, or 75.004 or create or increase the liability of
17 any person.

18 SECTION 2. The change in law made by this Act applies only
19 to a cause of action that accrues on or after the effective date of
20 this Act. A cause of action that accrues before the effective date
21 of this Act is governed by the law in effect immediately before the
22 effective date of this Act, and that law is continued in effect for
23 that purpose.

24 SECTION 3. This Act takes effect immediately if it receives
25 a vote of two-thirds of all the members elected to each house, as
26 provided by Section 39, Article III, Texas Constitution. If this
27 Act does not receive the vote necessary for immediate effect, this

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1 Act takes effect September 1, 2011.