

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 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

1 harm to such children;

2 (3) the injured child did not discover the condition  
3 or realize the risk involved in intermeddling with the condition or  
4 coming within the area made 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) A child who is at least 14 years of age is presumed to  
13 appreciate the risk of highly dangerous artificial conditions on  
14 land, but this presumption may be overcome if the claimant proves  
15 that the child, at the time of the injury, did not have the ability  
16 to appreciate the risk.

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

20 (f) This section does not affect Sections 75.001, 75.002,  
21 75.0021, 75.003, or 75.004 or create or increase the liability of  
22 any person.

23 SECTION 2. The change in law made by this Act applies only  
24 to a cause of action that accrues on or after the effective date of  
25 this Act. A cause of action that accrues before the effective date  
26 of this Act is governed by the law in effect immediately before the  
27 effective date of this Act, and that law is continued in effect for

1 that purpose.

2           SECTION 3. This Act takes effect immediately if it receives  
3 a vote of two-thirds of all the members elected to each house, as  
4 provided by Section 39, Article III, Texas Constitution. If this  
5 Act does not receive the vote necessary for immediate effect, this  
6 Act takes effect September 1, 2011.