

1-1 By: Seliger S.B. No. 1160
1-2 (In the Senate - Filed March 4, 2011; March 16, 2011, read
1-3 first time and referred to Committee on State Affairs;
1-4 March 28, 2011, reported favorably by the following vote: Yeas 8,
1-5 Nays 0; March 28, 2011, sent to printer.)

1-6 A BILL TO BE ENTITLED
1-7 AN ACT

1-8 relating to the liability of a landowner for harm to a trespasser.

1-9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-10 SECTION 1. Chapter 75, Civil Practice and Remedies Code, is
1-11 amended by adding Section 75.007 to read as follows:

1-12 Sec. 75.007. TRESPASSERS. (a) In this section,
1-13 "trespasser" means a person who enters the land of another without
1-14 any legal right, express or implied.

1-15 (b) An owner, lessee, or occupant of land does not owe a duty
1-16 of care to a trespasser on the land and is not liable for any injury
1-17 to a trespasser on the land, except that an owner, lessee, or
1-18 occupant owes a duty to refrain from injuring a trespasser
1-19 wilfully, wantonly, or through gross negligence.

1-20 (c) Notwithstanding Subsection (b), an owner, lessee, or
1-21 occupant of land may be liable for injury to a child younger than 16
1-22 years of age caused by a highly dangerous artificial condition on
1-23 the land if:

1-24 (1) the place where the artificial condition exists is
1-25 one upon which the owner, lessee, or occupant knew or reasonably
1-26 should have known that children were likely to trespass;

1-27 (2) the artificial condition is one that the owner,
1-28 lessee, or occupant knew or reasonably should have known existed
1-29 and that the owner, lessee, or occupant realized or should have
1-30 realized involved an unreasonable risk of death or serious bodily
1-31 harm to such children;

1-32 (3) the injured child did not discover the condition
1-33 or realize the risk involved in intermeddling with the condition or
1-34 coming within the area made dangerous by the condition;

1-35 (4) the utility to the owner, lessee, or occupant of
1-36 maintaining the artificial condition and the burden of eliminating
1-37 the danger were slight as compared with the risk to the child
1-38 involved; and

1-39 (5) the owner, lessee, or occupant failed to exercise
1-40 reasonable care to eliminate the danger or otherwise protect the
1-41 child.

1-42 (d) A child who is at least 14 years of age is presumed to
1-43 appreciate the risk of highly dangerous artificial conditions on
1-44 land, but this presumption may be overcome if the claimant proves
1-45 that the child, at the time of the injury, did not have the ability
1-46 to appreciate the risk.

1-47 (e) An owner, lessee, or occupant of land whose actions are
1-48 justified under Subchapter C or D, Chapter 9, Penal Code, is not
1-49 liable to a trespasser for damages arising from those actions.

1-50 (f) This section does not affect Sections 75.001, 75.002,
1-51 75.0021, 75.003, or 75.004 or create or increase the liability of
1-52 any person.

1-53 SECTION 2. The change in law made by this Act applies only
1-54 to a cause of action that accrues on or after the effective date of
1-55 this Act. A cause of action that accrues before the effective date
1-56 of this Act is governed by the law in effect immediately before the
1-57 effective date of this Act, and that law is continued in effect for
1-58 that purpose.

1-59 SECTION 3. This Act takes effect immediately if it receives
1-60 a vote of two-thirds of all the members elected to each house, as
1-61 provided by Section 39, Article III, Texas Constitution. If this
1-62 Act does not receive the vote necessary for immediate effect, this
1-63 Act takes effect September 1, 2011.

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