

State of South Dakota

EIGHTY-SIXTH SESSION
LEGISLATIVE ASSEMBLY, 2011

484S0487

HOUSE BILL NO. 1087

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;

15 (2) The condition is one the person knew or reasonably should have known involved an



unreasonable risk or death or serious bodily harm to such children;

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

(4) The utility to the person 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 person failed to exercise reasonable care to eliminate the danger or otherwise protect the injured child.

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

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

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

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

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

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

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

Section 5. A person with a possessory interest in land may be subject to liability for physical

1 injury or death to a known trespasser if:

- 2 (1) The trespasser was harmed as a result of the persons's failure to carry on dangerous
3 activities on the land with reasonable care for the trespasser's safety;
- 4 (2) The trespasser was harmed as a result of the possessor's failure to exercise reasonable
5 care to warn the trespasser about an artificial condition maintained by the person, the
6 artificial condition involved a risk of death or serious bodily injury, and the artificial
7 condition was of such a nature that the person had reason to believe the trespasser
8 would not discover the artificial condition or realize the risk involved; or
- 9 (3) The person knew or had reason to know that the trespasser was in dangerous
10 proximity to a moving force in the person's immediate control just before the harm
11 occurred, and the trespasser was harmed as a result of the person's failure to exercise
12 reasonable care so as to prevent the force from harming the trespasser or failed to
13 exercise reasonable care to provide a warning that was reasonably adequate to allow
14 the trespasser to avoid the harm.

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