

Substitute for HOUSE BILL No. 2106

By Committee on Judiciary

2-20

1 AN ACT concerning real property; relating to trespass and liability;
2 exceptions.

3
4 *Be it enacted by the Legislature of the State of Kansas:*

5 Section 1. (a) For the purposes of this act, "trespasser" means a
6 person who enters or remains on the property of another without
7 permission and without an invitation, expressed or implied.

8 (b) A possessor of real property, including an owner, lessee, or other
9 occupant, or an agent of such person or entity, owes no duty of care to a
10 trespasser except to refrain from willfully or wantonly injuring the
11 trespasser. A possessor may use justifiable force to repel a trespasser who
12 has entered the land or a building with the intent to commit a crime.

13 (c) Notwithstanding subsection (b), a possessor of real property may
14 be subject to liability for physical injury or death to a trespasser if the
15 trespasser was a child, the injury resulted from a dangerous artificial
16 condition on the land and:

17 (1) The possessor knows, or in the exercise of ordinary care should
18 know, that young children are likely to trespass upon the land;

19 (2) the possessor knows, or in the exercise of ordinary care should
20 know, that the condition exists and that it involves an unreasonable risk of
21 bodily harm to young children;

22 (3) the injured child because of such child's youth did not discover
23 the condition or realize the risk involved in intermeddling with it or in
24 coming within the area made dangerous by it; and

25 (4) a possessor using ordinary care would not have maintained the
26 condition when taking into consideration the usefulness of the condition
27 and whether or not the expense or inconvenience to the possessor in
28 remedying the condition would be slight in comparison to the risk of harm
29 to children.

30 (d) (1) This section does not create or increase the liability of any
31 possessor of real property.

32 (2) This section does not affect any immunities from or defenses to
33 liability established by another section of the Kansas Statutes Annotated,
34 including, but not limited to, immunities or defenses described in K.S.A.
35 2011 Supp. 21-5220 *et seq.*, and amendments thereto.

36 (3) This section does not affect any immunities from or defenses to

1 liability available at common law to which a possessor of real property
2 may be entitled under circumstances not covered by this section.

3 Sec. 2. This act shall take effect and be in force from and after its
4 publication in the statute book.

5