

House Substitute for SENATE BILL No. 160

By Committee on Judiciary

3-16

1 AN ACT concerning real property; relating to trespass and liability;
2 exceptions; amending K.S.A. 58-3201 and repealing the existing
3 section.
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5 *Be it enacted by the Legislature of the State of Kansas:*

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

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

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

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

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

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

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

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

34 (2) This section does not affect any immunities from or defenses to
35 liability established by another section of the Kansas Statutes Annotated,
36 including, but not limited to, immunities or defenses described in K.S.A.

1 2011 Supp. 21-5220 *et seq.*, and amendments thereto.

2 (3) This section does not affect any immunities from or defenses to
3 liability available at common law to which a possessor of real property
4 may be entitled under circumstances not covered by this section.

5 Sec. 2. K.S.A. 58-3201 is hereby amended to read as follows: 58-
6 3201. (a) The purpose of this act is to encourage owners of land to make
7 land and water areas available to the public for recreational purposes by
8 limiting their liability toward persons entering thereon for such purposes.

9 (b) *Nothing in the provisions of K.S.A. 58-3201 et seq., and*
10 *amendments thereto, shall be construed as the granting of an easement*
11 *over such land by the owner thereof, nor as the granting of an easement*
12 *over such land by adverse possession.*

13 Sec. 3. K.S.A. 58-3201 is hereby repealed.

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

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