

Substitute for HOUSE BILL NO. 2106

By Committee on Judiciary

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

Be it enacted by the Legislature of the State of Kansas:

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

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

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

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

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

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

(4) a possessor using ordinary care would not have maintained the condition when taking into consideration the usefulness of the condition and whether or not the expense or

inconvenience to the possessor in remedying the condition would be slight in comparison to the risk of harm to children.

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

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

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

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