

# HOUSE BILL No. 5285

January 25, 2012, Introduced by Reps. Walsh, Nesbitt, Tyler and Hughes and referred to the Committee on Judiciary.

A bill to establish the liability of possessors of land for injuries to trespassers on the land and property of the trespassers.

## THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1       Sec. 1. This act shall be known and may be cited as the  
2 "trespasser responsibility act".

3       Sec. 2. As used in this act:

4       (a) "Child" means an individual who is 16 years of age or  
5 younger.

6       (b) "Person" means an individual, partnership, corporation,  
7 association, governmental entity, or other legal entity.

8       (c) "Possessor" means a person who has any of the following  
9 relationships to land:

10       (i) Is in occupation of the land with intent to control it.

1           (ii) Has been in occupation of the land with intent to control  
2 it, if no other person has subsequently occupied it with intent to  
3 control it.

4           (iii) Is entitled to immediate occupation of the land, if no  
5 other person is in possession under subparagraphs (i) or (ii).

6           (d) "Trespasser" means an individual who goes on the land of  
7 another without an express or implied invitation, for his or her  
8 own purposes, and not in the performance of any duty to the owner,  
9 lessee, or possessor of the land, regardless of whether the  
10 individual has an unlawful intent.

11           (e) "Willful misconduct" means conduct, including a failure to  
12 act, that was intended to harm the plaintiff.

13           Sec. 5. (1) Except as otherwise provided in this section, a  
14 possessor of land does not owe a trespasser on the land a duty to  
15 either make the premises safe or warn the trespasser of conditions  
16 existing on the premises, and is not liable in a civil action for  
17 damages because of injury to the trespasser or the trespasser's  
18 property.

19           (2) Subsection (1) does not apply if both of the following are  
20 true:

21           (a) The possessor had reason to know that trespassers  
22 consistently intruded on the land.

23           (b) Either of the following are true:

24           (i) The landowner did not act with reasonable care for the  
25 trespasser's safety while carrying out an activity that posed a  
26 risk of death or serious bodily harm and the activity resulted in  
27 the injury to the trespasser.

1           (ii) A condition that posed a risk of death or serious bodily  
2 harm existed on the property, the landowner had reason to know the  
3 trespasser would not discover the condition and failed to warn the  
4 trespasser of the condition, and the condition resulted in the  
5 injury to the trespasser.

6           (3) Subsection (1) does not apply if the trespasser is a  
7 child, the injury is caused by an artificial condition on the land,  
8 and all of the following apply:

9           (a) The possessor knows or has reason to know that children  
10 are likely to trespass at the place where the condition exists.

11           (b) The possessor knows or has reason to know of the condition  
12 and realizes or should realize that the condition involves an  
13 unreasonable risk of death or serious bodily harm to child  
14 trespassers.

15           (c) The child trespassers, because of their youth, do not  
16 discover the condition or realize the risk involved in  
17 intermeddling with it or in coming within the area made dangerous  
18 by it.

19           (d) The utility to the possessor of maintaining the condition  
20 and the burden of eliminating the danger are slight as compared  
21 with the risk to the child trespassers.

22           (e) The possessor fails to exercise reasonable care to  
23 eliminate the danger or otherwise to protect the child trespassers.