

5091

2011-2012 Regular Sessions

I N S E N A T E

May 3, 2011

Introduced by Sen. SEWARD -- read twice and ordered printed, and when printed to be committed to the Committee on Judiciary

AN ACT to amend the real property law, in relation to the duty of land possessors to those who trespass

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 Section 1. The real property law is amended by adding a new article 11
2 to read as follows:

3 ARTICLE 11

4 LAND POSSESSOR LIABILITY TO TRESPASSERS

5 SECTION 350. LIABILITY OF LAND POSSESSOR TO TRESPASSER; EXCEPTIONS.

6 S 350. LIABILITY OF LAND POSSESSOR TO TRESPASSER; EXCEPTIONS. 1. A
7 POSSESSOR OF LAND, INCLUDING AN OWNER, LESSEE, OR OTHER OCCUPANT, OR AN
8 AGENT OF SUCH PERSON OR ENTITY, OWES NO DUTY OF CARE TO A TRESPASSER
9 EXCEPT TO REFRAIN FROM HARMING THE TRESPASSER BY AN INTENTIONAL, WILL-
10 FUL, OR WANTON ACT. A LAND POSSESSOR MAY USE JUSTIFIABLE FORCE TO REPEL
11 A CRIMINAL TRESPASSER AS PROVIDED BY SECTIONS 35.20 AND 35.25 OF THE
12 PENAL LAW.

13 2. NOTWITHSTANDING SUBDIVISION ONE OF THIS SECTION, A POSSESSOR OF
14 LAND MAY BE SUBJECT TO LIABILITY FOR PHYSICAL INJURY OR DEATH TO A TRES-
15 PASSER IF:

16 (A) THE PHYSICAL INJURY OR DEATH IS TO A CHILD TRESPASSER AND RESULTS
17 FROM AN ARTIFICIAL CONDITION WHERE:

18 (1) THE POSSESSOR KNEW OR HAD REASON TO KNOW THAT CHILDREN WERE LIKELY
19 TO TRESPASS AT THE LOCATION OF THE CONDITION;

20 (2) THE CONDITION IS ONE THE POSSESSOR KNEW OR REASONABLY SHOULD HAVE
21 KNOWN INVOLVED AN UNREASONABLE RISK OF DEATH OR SERIOUS BODILY HARM TO
22 SUCH CHILDREN;

23 (3) THE INJURED CHILD DID NOT DISCOVER THE CONDITION OR REALIZE THE
24 RISK INVOLVED IN THE CONDITION OR COMING WITHIN THE AREA MADE DANGEROUS
25 BY IT;

EXPLANATION--Matter in *ITALICS* (underscored) is new; matter in brackets
[] is old law to be omitted.

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1 (4) THE UTILITY TO THE POSSESSOR OF MAINTAINING THE CONDITION AND THE
2 BURDEN OF ELIMINATING THE DANGER WERE SLIGHT AS COMPARED WITH THE RISK
3 TO THE CHILD INVOLVED; AND

4 (5) THE POSSESSOR FAILED TO EXERCISE REASONABLE CARE TO ELIMINATE THE
5 DANGER OR OTHERWISE PROTECT THE INJURED CHILD;

6 (B) THE POSSESSOR KNEW OR SHOULD HAVE KNOWN THAT TRESPASSERS CONSTANT-
7 LY INTRUDED UPON THE LIMITED AREA OF THE POSSESSOR'S LAND WHERE THE
8 TRESPASSER WAS HARMED, THE HARM RESULTED FROM AN ARTIFICIAL CONDITION ON
9 THE LAND, AND:

10 (1) THE POSSESSOR CREATED OR MAINTAINED THE CONDITION THAT CAUSED THE
11 INJURY;

12 (2) THE POSSESSOR KNEW THAT THE CONDITION WAS LIKELY TO CAUSE DEATH OR
13 SERIOUS BODILY HARM TO TRESPASSERS;

14 (3) THE POSSESSOR KNEW OR SHOULD HAVE KNOWN THAT THE CONDITION WAS OF
15 SUCH A NATURE THAT TRESPASSERS WOULD NOT DISCOVER IT; AND

16 (4) THE POSSESSOR FAILED TO EXERCISE ORDINARY CARE TO WARN TRESPASSERS
17 OF THE CONDITION AND THE RISK INVOLVED; OR

18 (C) THE POSSESSOR KNEW OF THE TRESPASSER'S PRESENCE AND:

19 (1) FAILED TO CARRY ON A DANGEROUS ACTIVITY ON THE LAND WITH REASON-
20 ABLE CARE FOR THE TRESPASSER'S SAFETY;

21 (2) FAILED TO EXERCISE REASONABLE CARE TO WARN THE TRESPASSER ABOUT AN
22 ARTIFICIAL CONDITION MAINTAINED BY THE POSSESSOR THAT INVOLVED A RISK OF
23 DEATH OR SERIOUS BODILY INJURY AND WAS OF SUCH A NATURE THAT THE POSSES-
24 SOR HAD REASON TO BELIEVE THE TRESPASSER WOULD NOT DISCOVER THE CONDI-
25 TION OR REALIZE THE RISK INVOLVED; OR

26 (3) (I) KNEW OR HAD REASON TO KNOW THAT THE TRESPASSER WAS IN DANGER-
27 OUS PROXIMITY TO A MOVING FORCE IN THE POSSESSOR'S IMMEDIATE CONTROL
28 JUST BEFORE THE HARM OCCURRED; AND

29 (II) THE TRESPASSER WAS HARMED AS A RESULT OF THE POSSESSOR'S FAILURE
30 TO EXERCISE REASONABLE CARE SO AS TO PREVENT THE FORCE FROM HARMING THE
31 TRESPASSER OR FAILED TO EXERCISE REASONABLE CARE TO PROVIDE A WARNING
32 THAT WAS REASONABLY ADEQUATE TO ALLOW THE TRESPASSER TO AVOID THE HARM.

33 3. FOR THE PURPOSES OF THIS SECTION: (A) "TRESPASSER" MEANS A PERSON
34 WHO ENTERS ON THE PROPERTY OF ANOTHER WITHOUT PERMISSION AND WITHOUT AN
35 INVITATION, EXPRESS OR IMPLIED; AND (B) "CHILD" MEANS A PERSON UNDER THE
36 AGE OF EIGHTEEN YEARS.

37 4. THIS SECTION DOES NOT CREATE OR INCREASE THE LIABILITY OF ANY
38 PERSON OR ENTITY.

39 S 2. This act shall take effect immediately.