S T A T E O F N E W Y O R K

1760

2015-2016 Regular Sessions

I N A S S E M B L Y

January 12, 2015

Introduced by M. of A. MAGEE, SCHIMMINGER -- read once and referred 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:

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

ARTICLE 11

LAND POSSESSOR LIABILITY TO TRESPASSERS

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

S 350. LIABILITY OF LAND POSSESSOR TO TRESPASSER; EXCEPTIONS. 1. A POSSESSOR OF LAND, 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 HARMING THE TRESPASSER BY AN INTENTIONAL, WILLFUL, OR WANTON ACT. A LAND POSSESSOR MAY USE JUSTIFIABLE FORCE TO REPEL A CRIMINAL TRESPASSER AS PROVIDED BY SECTIONS 35.20 AND 35.25 OF THE PENAL LAW.

2. NOTWITHSTANDING SUBDIVISION ONE OF THIS SECTION, A POSSESSOR OF LAND MAY BE SUBJECT TO LIABILITY FOR PHYSICAL INJURY OR DEATH TO A TRESPASSER IF:

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) FAILED TO CARRY ON A DANGEROUS ACTIVITY ON THE LAND WITH REASONABLE CARE FOR THE TRESPASSER'S SAFETY;

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

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

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

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

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

S 2. This act shall take effect immediately.