

As Passed by the Senate

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S. B. No. 202

Senator Seitz

**Cosponsors: Senators Patton, Grendell, Eklund, LaRose, Bacon, Balderson,
Beagle, Burke, Coley, Faber, Hite, Hughes, Jones, Jordan, Lehner, Manning,
Niehaus, Schaffer, Widener**

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A B I L L

To enact section 2305.402 of the Revised Code to 1
specify the responsibility of a possessor of real 2
property to a trespasser and the circumstances in 3
which the possessor may be liable in a tort action 4
for the death or injury of a trespasser. 5

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:

Section 1. That section 2305.402 of the Revised Code be 6
enacted to read as follows: 7

Sec. 2305.402. (A) As used in this section: 8

(1) "Possessor of real property" means the owner, lessee, 9
renter, or other occupant of real property. 10

(2) "Tort action" means a civil action for damages for 11
injury, death, or loss to person other than a civil action for 12
damages for a breach of contract or another agreement between 13
persons. 14

(3) "Trespasser" means an individual who, without express or 15
implied authorization, invitation, or inducement, enters real 16
property purely for the individual's own purposes and convenience. 17

(4) "Child" means an individual under eighteen years of age. 18

(B) The possessor of real property does not owe a duty of 19
care to a trespasser on the property except to refrain from 20
willful, wanton, or reckless conduct that is likely to cause 21
injury, death, or loss to the person of the trespasser. 22

(C) Notwithstanding division (B) of this section, the 23
possessor of real property is liable in damages to a trespasser on 24
the property or to any other person in a tort action for injury, 25
death, or loss to the person of the trespasser that allegedly is 26
caused by the possessor of the real property if, at the time the 27
injury, death, or loss allegedly is caused, the possessor knows, 28
or from facts within the possessor's knowledge should know or 29
believe, that the trespasser is in a position of peril on the 30
property, and the possessor of the property fails to exercise 31
ordinary care to avoid causing that injury, death, or loss. 32

(D)(1) Notwithstanding division (B) of this section, the 33
possessor of real property is liable in damages to a trespasser on 34
the property who is a child, to a parent, guardian, or custodian 35
of the child, or to any other person in a tort action for injury, 36
death, or loss to the person of the child that allegedly is caused 37
by an artificial condition on the real property if, at the time 38
the injury, death, or loss allegedly is caused, all of the 39
following apply: 40

(a) The place on the property where the artificial condition 41
exists is a place upon which the possessor of the property knows 42
or has reason to know that children are likely to trespass. 43

(b) The artificial condition is a condition that the 44
possessor of the property knows, has reason to know, realizes, or 45
should realize will involve an unreasonable risk of death or 46
serious injury to those children. 47

(c) Because of their youth, the children who are likely to 48

trespass on the property do not discover the artificial condition 49
on the property or do not realize the risk involved in 50
intermeddling with it or coming within the area made dangerous by 51
it. 52

(d) The utility to the possessor of the property of 53
maintaining the artificial condition and the burden of eliminating 54
the danger involved in maintaining the condition are slight in 55
comparison to the risk of injury, death, or loss to the person of 56
those children. 57

(e) The possessor of the property fails to exercise 58
reasonable care to eliminate the danger involved in maintaining 59
the artificial condition or to otherwise protect the children who 60
are likely to trespass on the property. 61

(2) Notwithstanding division (B) of this section, the 62
possessor of real property is liable in damages to an adult person 63
who trespasses on the property or to any other person in a tort 64
action for injury, death, or loss to the person of the adult that 65
allegedly is caused in an attempt by the adult person to rescue a 66
child who trespasses on the property under the conditions 67
specified in division (D)(1) of this section. 68

(E)(1) This section does not create a new cause of action or 69
substantive legal right against the possessor of real property. 70

(2) This section does not affect any civil liability under 71
another section of the Revised Code or the common law of this 72
state of a possessor of real property with respect to trespassers 73
under circumstances not covered by this section or with respect to 74
individuals other than trespassers, including, but not limited to, 75
civil liability to invitees or licensees on the property. 76

(3) This section does not affect any immunities from or 77
defenses to tort liability established by another section of the 78
Revised Code or available at common law to which a possessor of 79

real property may be entitled in connection with injury, death, or 80
loss to the person or property of a trespasser on the property, 81
including, but not limited to, self-defense or defense of third 82
persons. 83

(4) This section does not affect any criminal liability that 84
the possessor of real property may have for injury, death, or loss 85
to the person or property of a trespasser on the property. 86

(5) This section does not affect any immunities from or 87
defenses to civil liability established by another section of the 88
Revised Code or available at common law to which an individual 89
other than the possessor of real property may be entitled in 90
connection with injury, death, or loss to the person or property 91
of a trespasser on real property owned, leased, rented, or 92
occupied by another person, including, but not limited to, 93
self-defense or defense of third persons. 94