

HOUSE _____ **AMENDMENT NO.** _____

Offered By

1 AMEND House Committee Substitute for Senate Bill No. 628, Pages 44-45, Section 537.351,
2 Lines 1-38, by deleting all of said lines and inserting in lieu thereof the following:

3
4 “537.351. 1. Except as provided in subsection 2 of this section, a possessor of real
5 property, including an owner, lessee, or other occupant, or an agent of such owner, lessee, or other
6 occupant, owes no duty of care to a trespasser except to refrain from harming the trespasser by an
7 intentional, willful, or wanton act. A possessor of real property may use justifiable force to repel a
8 criminal trespasser as provided by section 563.074.

9 2. A possessor of real property may be subject to liability for physical injury or death to a
10 trespasser in the following situations:

11 (1) If the trespasser is a child who is harmed by a dangerous artificial condition on the
12 land; and

13 (a) The possessor knew or should have known that children were likely to trespass at the
14 location of the condition;

15 (b) The condition is one which the possessor knew or reasonably should have known
16 involved an unreasonable risk of death or serious physical injury to such children;

17 (c) The injured child because of the child's youth did not discover the condition or realize
18 the risk involved in the intermeddling with the condition or in coming within the area made
19 dangerous by the condition;

20 (d) The utility to the possessor of maintaining the condition and the burden of eliminating
21 the danger were slight as compared with the risk to the child involved; and

22 (e) The possessor failed to exercise reasonable care to eliminate the danger or otherwise
23 protect the injured child; or

24 (2) The possessor knew or should have known that trespassers consistently intrude upon a
25 limited area of the possessor's land where the trespasser was harmed, the harm resulted from a
26 dangerous artificial condition on the land; and

27 (a) The possessor created or maintained the artificial condition that caused the injury;

28 (b) The possessor knew that the condition was likely to cause death or serious bodily
29 harm to trespassers;

1 (c) The possessor knew or should have known that the condition was of such a nature that
2 trespassers would not discover it; and

3 (d) The possessor failed to exercise reasonable care to warn trespassers of the condition
4 and the risk involved; or

5 (3) If the possessor knew of the trespasser's presence on the land and failed to exercise
6 ordinary care as to active operations carried out on the land.

7 3. This section does not create or increase the liability of any possessor of real property
8 and does not affect any immunities from or defenses to liability established under state law or
9 available under common law to which a possessor of real property may be entitled under
10 circumstances not covered by this section.”; and

11
12 Further amend said bill by amending the title, enacting clause, and intersectional references
13 accordingly.