

SECOND REGULAR SESSION

[RECORRECTED]

# HOUSE BILL NO. 1286

## 96TH GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVES HIGDON (Sponsor), KELLEY (126), FITZWATER,  
BROWN (116) AND CONWAY (27) (Co-sponsors).

4625L.02I

D. ADAM CRUMBLISS, Chief Clerk

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### AN ACT

To repeal sections 537.345 and 537.346, RSMo, and to enact in lieu thereof three new sections relating to an owner's liability for death or injury to a trespasser.

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*Be it enacted by the General Assembly of the state of Missouri, as follows:*

Section A. Sections 537.345 and 537.346, RSMo, are repealed and three new sections  
2 enacted in lieu thereof, to be known as sections 537.345, 537.346, and 537.351, to read as  
3 follows:

537.345. As used in sections 537.345 to 537.347, **and section 537.351**, the following  
2 terms mean:

3 (1) "Charge", the admission price or fee asked by an owner of land or an invitation or  
4 permission without price or fee to use land for recreational purposes when such invitation or  
5 permission is given for the purpose of sales promotion, advertising or public goodwill in  
6 fostering business purposes;

7 (2) "Land", all real property, land and water, and all structures, fixtures, equipment and  
8 machinery thereon;

9 (3) "Owner", any individual, legal entity or governmental agency that has any ownership  
10 or security interest whatever or lease or right of possession in land;

11 (4) "Recreational use", hunting, fishing, camping, picnicking, biking, nature study,  
12 winter sports, viewing or enjoying archaeological or scenic sites, or other similar activities  
13 undertaken for recreation, exercise, education, relaxation, or pleasure on land owned by another;

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

14           **(5) "Trespasser", any person who enters on the property of another without**  
15 **permission and without an invitation, express or implied regardless of whether actual**  
16 **notice of trespass was given or the land was posted in accordance with the provisions of**  
17 **sections 569.140 and 569.145.**

          537.346. Except as provided in sections 537.345 to 537.348, **and section 537.351**, an  
2 owner of land owes no duty of care to any person who enters on the land without charge to keep  
3 his land safe for recreational use or to give any general or specific warning with respect to any  
4 natural or artificial condition, structure, or personal property thereon.

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

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

8           **(1) If the trespasser is a child who is harmed by a dangerous artificial condition on**  
9 **the land; and**

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

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

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

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

19           **(e) The possessor failed to exercise reasonable care to eliminate the danger or**  
20 **otherwise protect the injured child; or**

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

24           **(a) The possessor created or maintained the artificial condition that caused the**  
25 **injury;**

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

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

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

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

34           3. This section does not create or increase the liability of any possessor of real  
35 property and does not affect any immunities from or defenses to liability established under  
36 state law or available under common law to which a possessor of real property may be  
37 entitled under circumstances not covered by this section.

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