

**As Reported by the Senate Judiciary Committee**

**129th General Assembly  
Regular Session  
2011-2012**

**S. B. No. 202**

**Senator Seitz**

**Cosponsors: Senators Patton, Grendell, Eklund, LaRose**

—

**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 care to a trespasser on the property except to refrain from willful, wanton, or reckless conduct that is likely to cause injury, death, or loss to the person of the trespasser.

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

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

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

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

(c) Because of their youth, the children who are likely to trespass on the property do not discover the artificial condition

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