

As Passed by the House

**129th General Assembly
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Sub. 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**

**Representatives Garland, Slaby, Hayes, Blessing, Bubp, Conditt, Young,
Adams, R., Beck, Buchy, Combs, Damschroder, Derickson, Grossman,
Hackett, Hall, Johnson, Newbold, Scherer, Thompson, Uecker, Wachtmann**

Speaker Batchelder

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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, and to 5
specify that it is the intent of the General 6
Assembly to declare that the American Law 7
Institute's finalized "Restatement Third of Torts: 8
Liability for Physical and Emotional Harm" does 9
not constitute the public policy of the state of 10
Ohio and to codify the current law of Ohio 11
regarding the duties owed to trespassers by those 12
who own, occupy, or control premises. 13

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

Section 1. That section 2305.402 of the Revised Code be 14

enacted to read as follows: 15

Sec. 2305.402. (A) As used in this section: 16

(1) "Possessor of real property" means the owner, lessee, 17
renter, or other occupant of real property. 18

(2) "Tort action" means a civil action for damages for 19
injury, death, or loss to person other than a civil action for 20
damages for a breach of contract or another agreement between 21
persons. 22

(3) "Trespasser" means an individual who, without express or 23
implied authorization, invitation, or inducement, enters real 24
property purely for the individual's own purposes and convenience. 25

(4) "Child" means an individual under eighteen years of age. 26

(B) The possessor of real property does not owe a duty of 27
care to a trespasser on the property except to refrain from 28
willful, wanton, or reckless conduct that is likely to cause 29
injury, death, or loss to the person of the trespasser. 30

(C) Notwithstanding division (B) of this section, the 31
possessor of real property is liable in damages to a trespasser on 32
the property or to any other person in a tort action for injury, 33
death, or loss to the person of the trespasser that allegedly is 34
caused by the possessor of the real property if, at the time the 35
injury, death, or loss allegedly is caused, the possessor knows, 36
or from facts within the possessor's knowledge should know or 37
believe, that the trespasser is in a position of peril on the 38
property, and the possessor of the property fails to exercise 39
ordinary care to avoid causing that injury, death, or loss. 40

(D)(1) Notwithstanding division (B) of this section, the 41
possessor of real property is liable in damages to a trespasser on 42
the property who is a child, to a parent, guardian, or custodian 43

of the child, or to any other person in a tort action for injury, 44
death, or loss to the person of the child that allegedly is caused 45
by an artificial condition on the real property if, at the time 46
the injury, death, or loss allegedly is caused, all of the 47
following apply: 48

(a) The place on the property where the artificial condition 49
exists is a place upon which the possessor of the property knows 50
or has reason to know that children are likely to trespass. 51

(b) The artificial condition is a condition that the 52
possessor of the property knows, has reason to know, realizes, or 53
should realize will involve an unreasonable risk of death or 54
serious injury to those children. 55

(c) Because of their youth, the children who are likely to 56
trespass on the property do not discover the artificial condition 57
on the property or do not realize the risk involved in 58
intermeddling with it or coming within the area made dangerous by 59
it. 60

(d) The utility to the possessor of the property of 61
maintaining the artificial condition and the burden of eliminating 62
the danger involved in maintaining the condition are slight in 63
comparison to the risk of injury, death, or loss to the person of 64
those children. 65

(e) The possessor of the property fails to exercise 66
reasonable care to eliminate the danger involved in maintaining 67
the artificial condition or to otherwise protect the children who 68
are likely to trespass on the property. 69

(2) Notwithstanding division (B) of this section, the 70
possessor of real property is liable in damages to an adult person 71
who trespasses on the property or to any other person in a tort 72
action for injury, death, or loss to the person of the adult that 73
allegedly is caused in an attempt by the adult person to rescue a 74

child who trespasses on the property under the conditions 75
specified in division (D)(1) of this section. 76

(E)(1) This section does not create a new cause of action or 77
substantive legal right against the possessor of real property. 78

(2) This section does not affect any civil liability under 79
another section of the Revised Code or the common law of this 80
state of a possessor of real property with respect to trespassers 81
under circumstances not covered by this section or with respect to 82
individuals other than trespassers, including, but not limited to, 83
civil liability to invitees or licensees on the property. 84

(3) This section does not affect any immunities from or 85
defenses to tort liability established by another section of the 86
Revised Code or available at common law to which a possessor of 87
real property may be entitled in connection with injury, death, or 88
loss to the person or property of a trespasser on the property, 89
including, but not limited to, self-defense or defense of third 90
persons. 91

(4) This section does not affect any criminal liability that 92
the possessor of real property may have for injury, death, or loss 93
to the person or property of a trespasser on the property. 94

(5) This section does not affect any immunities from or 95
defenses to civil liability established by another section of the 96
Revised Code or available at common law to which a possessor of 97
real property may be entitled in connection with injury, death, or 98
loss to the person or property of a trespasser on real property 99
owned, leased, rented, or occupied by another person, including, 100
but not limited to, self-defense or defense of third persons. 101

Section 2. In enacting section 2305.402 of the Revised Code 102
in this act, it is the intent of the General Assembly to do all of 103
the following: 104

(A) To declare that the American Law Institute's recently 105

finalized "Restatement Third of Torts: Liability for Physical and Emotional Harm (Section 51)," that imposes broad new duties on those who own, occupy, or control premises, including the duty to exercise reasonable care toward all trespassers, does not constitute the public policy of the state of Ohio.

(B) To codify and preserve the current law in Ohio on the duties owed to trespassers by those who own, occupy, or control premises, as promulgated by the Ohio Judicial Conference in Ohio Jury Instruction CV 617.09, "Licensee and trespasser," as revised on December 14, 2002, and as set forth in the holdings of the Ohio Supreme Court in *Glandon v. Greater Cleveland Regional Transit Auth.* (1996), 75 Ohio St.3d 312 and *Bennett v. Stanley* (2001), 92 Ohio St.3d 35, and their progeny.