

HOUSE BILL 2811

By Dennis

AN ACT to amend Tennessee Code Annotated, Title 29,
Chapter 34, relative to landowner liability.

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

SECTION 1. Tennessee Code Annotated, Title 29, Chapter 34, is amended by adding the following as a new part:

29-34-401.

As used in this part, unless the context otherwise requires:

(1) "Land" means all real property, private ways, waterways, and any landscaping, structures, fixtures and equipment thereon;

(2) "Landowner" means the legal title holder or owner of land, the person entitled to immediate possession of the land, or any lessee, occupant or other person in control of the land; and

(3) "Trespasser" means a person who enters on the land of another without permission and without an invitation, express or implied.

29-34-402.

Except as otherwise provided by law for specific circumstances, a landowner owes no duty of care to a trespasser and is not subject to civil liability for any injury, property damage or death suffered by the trespasser while on the landowner's land.

29-34-403.

Notwithstanding the provisions of § 29-34-402, a landowner may be subject to liability for physical injury, property damage or death to a trespasser under the following circumstances:

(a) The trespasser's physical injury, property damage or death is intentionally caused by the landowner. However, nothing in this part shall be construed as abrogating or diminishing a landowner's right to:

(1) Use reasonable force to prevent or terminate a trespass on the landowner's land pursuant to § 39-11-614; or

(2) Inflict injury on a trespasser who is committing or attempting to commit a felony on the landowner's land pursuant to § 29-34-201.

(b) The trespasser was age sixteen (16) or younger and the physical injury, property damage or death results from an artificial condition on the land if:

(1) The landowner knew or had reason to know that children were likely to trespass at the location of the condition;

(2) The condition is one the landowner knew or reasonably should have known involved an unreasonable risk of death or serious bodily harm to such children;

(3) The injured child did not discover the condition or realize the risk involved in the condition or coming within the area made dangerous by it;

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

(5) The landowner failed to exercise reasonable care to eliminate the danger or otherwise protect the injured child.

(c) The landowner knows, or from facts within the landowner's knowledge should know, that trespassers consistently intrude upon a limited area of the possessor's land; and

(1) The trespasser's harm was caused by the landowner's failure to carry on an activity involving a risk of death or serious bodily harm with reasonable care for the trespasser's safety; or

(2)

(A) The trespasser's harm was caused by an artificial condition created or maintained by the landowner;

(B) The landowner knew the condition was likely to cause death or serious bodily injury to such a trespasser;

(C) The condition was of such a nature that the landowner had reason to believe that the trespasser would not discover it; and

(D) The landowner failed to exercise reasonable care to warn the trespasser of the condition and the risk involved.

(d)

(1) The trespasser was harmed as a result of the landowner's failure to carry on dangerous activities on the land with reasonable care for the trespasser's safety;

(2)

(A) The trespasser was harmed as a result of the landowner's failure to exercise reasonable care to warn the trespasser about an artificial condition maintained by the possessor;

(B) The condition involved a risk of death or serious bodily injury; and

(C) The condition was of such a nature that the possessor had reason to believe the trespasser would not discover the condition or realize the risk involved; or

(D)

(i) The landowner knew or had reason to know that the trespasser was in dangerous proximity to a moving force in the landowner's immediate control just before the harm occurred; and

(ii) The trespasser was harmed as a result of the landowners failure to exercise reasonable care to prevent the force from harming the trespasser or failed to exercise reasonable care to provide a warning that was reasonably adequate to allow the trespasser to avoid the harm.

SECTION 2. Tennessee Code Annotated, Title 29, Chapter 34, Part 2, is amended by adding the following as a new section:

29-34-208.

(a) Notwithstanding any other provision of law to the contrary, a business owner shall not be liable for injuries to a person occurring on the business property if the injuries were proximately caused by the criminal conduct of a third party. The criminal conduct of the third party shall constitute a supervening act which the business owner has no duty to prevent or guard against.

(b) The provisions of this section shall apply regardless of whether the third party is convicted of criminal conduct.

SECTION 3. This act shall take effect on July 1, 2012, the public welfare requiring it.