

SENATE BILL NO. 160—SENATOR ROBERSON

FEBRUARY 16, 2015

Referred to Committee on Judiciary

SUMMARY—Enacts provisions governing the liability of owners, lessees or occupants of any premises for injuries to trespassers. (BDR 3-939)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State: No.

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EXPLANATION – Matter in *bolded italics* is new; matter between brackets [omitted material] is material to be omitted.

AN ACT relating to actions concerning persons; enacting certain limitations of liability for owners, lessees or occupants of any premises for injuries to trespassers; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

1 Traditionally, at common law, the duty of care that an owner or other lawful
2 occupant of real property owed to a person entering onto the property was
3 determined by the person’s status as an invitee, a licensee or a trespasser. Thus, an
4 owner or occupant of real property had a duty to exercise ordinary care and
5 prudence to render the property reasonably safe for the visit of an invitee or to warn
6 the invitee of certain dangerous or unsafe conditions on the property. An owner or
7 occupant of real property who failed to exercise due care was subject to civil
8 liability for any harm to an invitee caused by that failure. (*Galloway v. McDonalds
9 Restaurants of Nevada, Inc.*, 102 Nev. 534, 537 (1986)) In contrast, an owner or
10 occupant of real property had no duty to a mere trespasser except to not wantonly
11 or willfully injure the trespasser and to exercise due care to prevent injury to the
12 trespasser after the owner or occupant discovered the trespasser’s presence in a
13 place of danger on the property. (*Crosman v. Southern Pac. Co.*, 44 Nev. 286, 300
14 (1921)) In 1994, however, the Nevada Supreme Court abandoned the principle of
15 basing the liability of an owner or occupant of real property on the status of the
16 person injured on the property. The Court adopted instead the principle that the
17 owner or occupier of real property should be held to the general duty of reasonable
18 care whenever another person is injured on that property and that determinations of
19 liability should primarily depend on whether the owner or occupier acted
20 reasonably under the circumstances. (*Moody v. Manny’s Auto Repair*, 110 Nev.
21 320, 333 (1994))

22 This bill adopts the principle for determining the duty of care owed by an
23 owner, lessee or occupant of any premises to a trespasser as it was at common law.
24 This bill also codifies in statute what is commonly known as the “attractive



25 nuisance doctrine.” This doctrine imposes a higher standard of care on an owner,
26 lessee or occupant toward a trespassing child who is injured by an artificial
27 condition on the premises if: (1) the owner, lessee or occupant knows or reasonably
28 should know that the condition is likely to attract children and involves an
29 unreasonable risk of death or serious bodily injury; (2) the child is unlikely to
30 appreciate the dangerousness of the condition because of his or her age; (3) the
31 utility of maintaining the condition and eliminating the danger are slight as
32 compared to the risk to the child; and (4) the owner, lessee or occupant fails to
33 exercise reasonable care to eliminate the danger or to otherwise protect the
34 trespassing child.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 **Section 1.** Chapter 41 of NRS is hereby amended by adding
2 thereto a new section to read as follows:

3 *1. Except as otherwise provided in this section, an owner of*
4 *any estate or interest in any premises, or a lessee or an occupant*
5 *of any premises, owes no duty of care to a trespasser and is not*
6 *liable to a trespasser for physical harm caused by the failure to*
7 *exercise reasonable care to put the premises in a condition that is*
8 *reasonably safe for the entry or use by a trespasser or to carry on*
9 *activities on the premises so as not to endanger a trespasser.*

10 *2. An owner, lessee or occupant of premises may be subject to*
11 *liability for harm to a trespasser if:*

12 *(a) The owner, lessee or occupant willfully or wantonly causes*
13 *harm to the trespasser;*

14 *(b) The owner, lessee or occupant fails to exercise reasonable*
15 *care to prevent harm to the trespasser after discovering the*
16 *trespasser's presence in a place of danger on the premises; or*

17 *(c) The trespasser is a child who is injured by an artificial*
18 *condition on the premises and:*

19 *(1) The place where the condition exists is one on which the*
20 *owner, lessee or occupant knows or has reason to know that a*
21 *child is likely to trespass;*

22 *(2) The condition is one that the owner, lessee or occupant*
23 *knows or has reason to know and that the owner, lessee or*
24 *occupant realizes or should realize involves an unreasonable risk*
25 *of death or serious bodily harm to a trespassing child;*

26 *(3) The trespassing child, because of his or her youth, does*
27 *not discover the condition or realize the risk involved in the*
28 *condition or coming within the area made dangerous by it;*

29 *(4) The utility to the owner, lessee or occupant of*
30 *maintaining the condition and the burden of eliminating the*
31 *danger are slight as compared with the risk to the trespassing*
32 *child; and*



1 (5) *The owner, lessee or occupant fails to exercise*
2 *reasonable care to eliminate the danger or to otherwise protect the*
3 *trespassing child from harm.*

4 3. *This section does not affect any immunity from or defenses*
5 *to civil liability established by specific statute or available at*
6 *common law to which an owner, lessee or occupant may be*
7 *entitled.*

8 **Sec. 2.** This act becomes effective upon passage and approval.

