

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2021

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HOUSE BILL 228
PROPOSED COMMITTEE SUBSTITUTE H228-PCS40217-TQ-8

Short Title: Attractive Nuisances.

(Public)

Sponsors:

Referred to:

March 8, 2021

1 A BILL TO BE ENTITLED
2 AN ACT TO DEFINE A POSSESSOR'S LIABILITY FOR BODIES OF WATER ON THE
3 POSSESSOR'S LAND REGARDING CHILD TRESPASSERS.

4 The General Assembly of North Carolina enacts:

5 **SECTION 1.** G.S. 38B-3 reads as rewritten:

6 "**§ 38B-3. Exceptions.**

7 Notwithstanding G.S. 38B-2, a possessor of land may be subject to liability for physical
8 injury or death to a trespasser in the following situations:

- 9 (1) Intentional harms. – A possessor may be subject to liability if the trespasser's
10 bodily injury or death resulted from the possessor's willful or wanton conduct,
11 or was intentionally caused by the possessor, except that a possessor may use
12 reasonable force to repel a trespasser who has entered the land or a building
13 with the intent to commit a crime.
- 14 (2) Harms to trespassing children caused by artificial condition. – A possessor
15 may be subject to liability for bodily injury or death to a child trespasser
16 resulting from an artificial condition on the land if all of the following apply:
- 17 a. The possessor knew or had reason to know that children were likely to
18 trespass at the location of the condition.
- 19 b. The condition is one the possessor knew or reasonably should have
20 known involved an unreasonable risk of serious bodily injury or death
21 to such children.
- 22 c. The injured child did not discover the condition or realize the risk
23 involved in the condition or in coming within the area made dangerous
24 by it.
- 25 d. The utility to the possessor of maintaining the condition and the burden
26 of eliminating the danger were slight as compared with the risk to the
27 child involved.
- 28 e. The possessor failed to exercise reasonable care to eliminate the
29 danger or otherwise protect the injured child.

30 (2a) Notwithstanding subdivision (2) of this section, the possessor shall not be
31 subject to liability for a condition that is a body of water on the possessor's
32 land unless the possessor creates or causes to be created a sandy area for
33 swimmers or makes other improvements that would make the body of water
34 attractive to a child trespasser. For the purpose of this subdivision, "body of
35 water" means a pool of water, pond, stream, creek, river, lake, or other body
36 of water having a primary use as a wildlife habitat, a wildlife conservation



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1 area, a wildlife water source, or an irrigation source for plants or crops, or a
2 watering place for livestock and farm animals, including, but not limited to,
3 cows, sheep, horses, mules, donkeys, goats, llamas, pigs, or fowls of all types.
4 (3) Position of peril. – A possessor may be subject to liability for physical injury
5 or death to a trespasser if the possessor discovered the trespasser in a position
6 of peril or helplessness on the property and failed to exercise ordinary care not
7 to injure the trespasser."

8 **SECTION 2.** This act becomes effective October 1, 2021, and applies to actions
9 filed on or after that date.