

Stricken language would be deleted from and underlined language would be added to present law.

State of Arkansas
91st General Assembly
Regular Session, 2017

A Bill

HOUSE BILL 1380

By: Representative D. Douglas

For An Act To Be Entitled

AN ACT TO CLARIFY A LANDOWNER'S DUTY OF CARE TO A
TRESPASSER; TO CREATE THE ARKANSAS TRESPASSER
RESPONSIBILITY ACT; AND FOR OTHER PURPOSES.

Subtitle

TO CREATE THE ARKANSAS TRESPASSER
RESPONSIBILITY ACT.

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

SECTION 1. Arkansas Code Title 18, Chapter 11, is amended to add an additional subchapter to read as follows:

Subchapter 7 – Arkansas Trespasser Responsibility Act

18-11-701. Title.

This subchapter shall be known and may be cited as the "Arkansas Trespasser Responsibility Act".

18-11-702. Definitions.

As used in this subchapter:

- (1) "Child" means an individual under eighteen (18) years of age;
- (2) "Land" means real property, including land, roads, water, watercourses, airstrips, private ways and buildings, structures, and machinery or equipment that is attached to real property;
- (3) "Owner" means the possessor of a fee interest, a tenant, lessee, holder of a conservation easement as defined in § 15-20-402,



occupant, or person in control of the land; and

(4) "Trespasser" means a person who enters onto the land of another without:

(A) Permission; or

(B) An invitation, express or implied.

18-11-703. Owner – Duty of care.

Except as specifically provided for under § 18-11-704 and § 18-60-108, an owner does not owe a duty of care to a trespasser and shall not be subject to liability for any injury to a trespasser.

18-11-704. Exceptions.

An owner may be subject to liability for a physical injury or death to a trespasser if:

(1) The trespasser's physical injury or death is intentionally caused by the owner, except that an owner may use reasonable force to repel a trespasser who enters onto the land with the intent to commit a crime;

(2) The trespasser is a child who suffers a physical injury or death as a result of an artificial condition on the land if:

(A) The owner knew or had reason to know that a child was likely to trespass at the location of the artificial condition;

(B) The owner knew or reasonably should have known that the artificial condition involved a risk of death or serious bodily harm to a child;

(C) The child did not discover the artificial condition or realize the risk of death or serious bodily harm by entering an area of the owner's land presents a danger by the artificial condition;

(D) The utility to the owner of maintaining the artificial condition and the burden of eliminating the danger are slight compared with the risk of death or serious bodily harm to the child involved; and

(E) The owner failed to exercise reasonable care to eliminate the danger or otherwise protect the child.

(3) The owner knows or reasonably should know that trespassers consistently intrude upon a limited area of the owner's land that:

(A) Contains a risk of death or serious bodily harm that can be caused due to the owner's failure to carry on an activity with

reasonable care for the trespasser's safety; or

(B) Contains an artificial condition:

(i) Created or maintained by the owner;

(ii) That the owner knew or reasonably should have known was likely to cause death or serious bodily injury to the trespasser;

(iii) That is of such a nature that the owner had reason to believe that the trespasser would not discover the artificial condition; and

(iv) While the owner failed to exercise reasonable care to warn the trespasser of the artificial condition and the risk of death or serious bodily harm involved; or

(4) The trespasser is harmed as a result of:

(A) The owner's failure to exercise reasonable care while carrying on dangerous activities on the land;

(B) The owner's failure to exercise reasonable care to warn the trespasser about an artificial condition maintained by the owner if the artificial condition:

(i) Involves a risk of death or serious bodily harm;
and

(ii) Is of such a nature that the owner had reason to believe the trespasser would not discover the artificial condition or realize the risk of death or serious bodily harm involved; or

(C) The owner knew or reasonably should have known that the trespasser was in dangerous proximity to a moving force in the owner's immediate control just before the harm occurred if:

(i) The trespasser was harmed as a result of the owner's failure to exercise reasonable care to prevent the force from harming the trespasser; or

(ii) The owner failed to exercise reasonable care to provide a warning that was in an adequate amount of time to allow the trespasser to avoid the harm.