

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; providing immunity from certain civil actions for certain persons in connection with the display of public art; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

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



Section 2 of this bill adopts the principle for determining the duty of care owed by an owner, lessee or occupant of any premises to a trespasser as it was at common law. **Section 2** also codifies in statute what is commonly known as the "attractive nuisance doctrine." This doctrine imposes a higher standard of care on an owner, lessee or occupant toward a trespassing child who is injured by an artificial condition on the premises if: (1) the owner, lessee or occupant knows or reasonably should know that the condition is likely to attract children and involves an unreasonable risk of death or serious bodily injury; (2) the child is unlikely to appreciate the dangerousness of the condition because of his or her age; (3) the utility of maintaining the condition and eliminating the danger are slight as compared to the risk to the child; and (4) the owner, lessee or occupant fails to exercise reasonable care to eliminate the danger or to otherwise protect the trespassing child.

Section 3 provides that, subject to certain conditions, a person who creates, sponsors, owns or produces public art or who owns, leases or occupies any estate or interest in any premises where such art is displayed is not liable for the death or injury of a person or for damage to property caused or sustained by a person who: (1) defaces or destroys, or attempts to deface or destroy, public art; (2) uses the public art in an unintended manner; or (3) fails to heed certain posted warnings or instructions concerning the public art. **Section 3** also defines "public art" for such purposes.

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

Section 1. Chapter 41 of NRS is hereby amended by adding thereto the provisions set forth as sections 2 and 3 of this act.

Sec. 2. 1. *Except as otherwise provided in this section, an owner of any estate or interest in any premises, or a lessee or an occupant of any premises, owes no duty of care to a trespasser and is not liable to a trespasser for physical harm caused by the failure to exercise reasonable care to put the premises in a condition that is reasonably safe for the entry or use by a trespasser or to carry on activities on the premises so as not to endanger a trespasser.*

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

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

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

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

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

(2) *The condition is one that the owner, lessee or occupant knows or has reason to know and that the owner, lessee or*



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1 occupant realizes or should realize involves an unreasonable risk
2 of death or serious bodily harm to a trespassing child;

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

6 (4) The utility to the owner, lessee or occupant of
7 maintaining the condition and the burden of eliminating the
8 danger are slight as compared with the risk to the trespassing
9 child; and

10 (5) The owner, lessee or occupant fails to exercise
11 reasonable care to eliminate the danger or to otherwise protect the
12 trespassing child from harm.

13 3. This section does not affect any immunity from or defenses
14 to civil liability established by specific statute or available at
15 common law to which an owner, lessee or occupant may be
16 entitled.

17 4. As used in this section, "trespasser" means any person who
18 enters or remains upon any premises owned, leased or occupied by
19 another person without the express or implied consent of the
20 owner, lessee or occupant of the premises.

21 **Sec. 3. 1.** Except as otherwise provided in this section, a
22 person who creates, sponsors, owns or produces public art, or who
23 owns, leases or occupies any estate or interest in any premises
24 where such art is displayed, is not liable for the death or injury of
25 a person or for damage to property caused or sustained by a
26 person who:

27 (a) Defaces or destroys, or attempts to deface or destroy, public
28 art;

29 (b) Uses the public art in an unintended manner; or

30 (c) Fails to heed posted warnings or instructions concerning
31 the public art if such warnings are posted to warn the public
32 against any foreseeable conditions or any misuse of the public art
33 that may pose an unreasonable risk of death or serious bodily
34 injury.

35 2. This section does not eliminate a person's duty to remedy
36 or mitigate a condition that has actually caused two or more
37 instances of serious bodily injury.

38 3. As used in this section, "public art":

39 (a) Except as otherwise provided in paragraph (b), means a
40 work of art which:

41 (1) Is an original painting in oil, mineral, water colors,
42 vitreous enamel, pastel or other medium, an original mosaic,
43 drawing or sketch, an original sculpture of stone, clay, textiles,
44 fiber, wood, metal, plastic, glass or a similar material, an original
45 work of mixed media or a lithograph;



1 (2) *Was purchased in an arm's length transaction for*
2 *\$25,000 or more, or has an appraised value of \$25,000 or more;*

3 (3) *Is displayed in a building or indoor or outdoor premises*
4 *generally open to the public, whether publicly or privately owned;*
5 *and*

6 (4) *Is made available to be viewed by the public without*
7 *charge; and*

8 (b) *Does not include:*

9 (1) *Performance art;*

10 (2) *Literary works;*

11 (3) *Property used in the performing arts, including, without*
12 *limitation, scenery or props for a stage production;*

13 (4) *A product of filmmaking or photography, including,*
14 *without limitation, motion pictures; or*

15 (5) *Property that was created for a functional use other*
16 *than, or in addition to, its aesthetic qualities, including, without*
17 *limitation, a classic or custom-built automobile or boat, a sign that*
18 *advertises a business, and custom or antique furniture, lamps,*
19 *chandeliers, jewelry, mirrors, doors or windows.*

20 **Sec. 4.** This act becomes effective upon passage and approval.

