Legislative Analysis

Mary Ann Cleary, Director
Phone: (517) 373-8080
http://www.house.mi.gov/hfa

TRESPASS LIABILITY ACT

House Bill 5335
Sponsor: Rep. Bradford C. Jacobsen
Committee: Judiciary

Complete to 3-19-14

A SUMMARY OF HOUSE BILL 5335 AS INTRODUCED 2-18-14

Under the bill, generally speaking, a landowner or lawful tenant would not owe a duty of care to a trespasser and would not be liable for injuries to the trespasser caused by the condition of the premises trespassed upon. Under certain circumstances, however, the landowner/tenant would be liable.

House Bill 5335 would create the Trespass Liability Act to specify that a possessor of a fee, reversionary, or easement interest in real property, including an owner, lessee, or other lawful occupant, owes no duty of care to a trespasser and is liable to a trespasser for physical harm caused by the possessor's failure to exercise reasonable care to put the land in a condition reasonably safe for the trespasser or to carry on activities on the property so as not to endanger trespassers. The bill would not create or increase the liability of a possessor of real property and would not affect any immunity from or defenses to civil liability established by or available under Michigan statutes or common law to which the possessor is entitled.

However, if any of the following apply, a possessor of real property may be liable for physical injury or death to a trespasser:

- The possessor injured the trespasser by willful and wanton misconduct.

- The possessor was aware of the trespasser's presence on the property (or should have known in the exercise of ordinary care) and failed to use ordinary care to prevent injury arising from active negligence.

- The possessor knew (or should have known from facts within his or her knowledge) that trespassers constantly intrude on a limited area of the property and the trespasser was harmed because the possessor failed to use reasonable care for the trespasser's safety when engaging in an activity involving a risk of death or serious bodily harm.

- The trespasser is a child injured by an artificial condition on the property and all of the following apply:

    - The possessor knew or had reason to know that a child would be likely to trespass on the place where the condition existed.

- The possessor knew or had reason to know of the condition and realized (or should have realized) that the condition would involve an unreasonable risk of death or serious bodily harm to a child.
- Because of the child's youth, the child did not discover the condition or realize the risk involved in trespassing in the area of that dangerous condition.
- The utility (or benefit) to the possessor of maintaining the condition and the burden of eliminating the danger were slight as compared with the risk to the child.
- The possessor failed to exercise reasonable care to eliminate the danger or otherwise to protect the child.

FISCAL IMPACT:

The bill would have no direct fiscal impact on state or local units of government.

Legislative Analyst: Susan Stutzky
Fiscal Analyst: William E. Hamilton

■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.