

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2021**

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HOUSE BILL 228

Short Title: Attractive Nuisances. (Public)

Sponsors: Representatives Zachary, Dixon, Watford, and Yarborough (Primary Sponsors).
For a complete list of sponsors, refer to the North Carolina General Assembly web site.

Referred to: Agriculture, if favorable, Judiciary 3, if favorable, Rules, Calendar, and Operations of the House

March 8, 2021

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

The General Assembly of North Carolina enacts:

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

"§ 38B-3. Exceptions.

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

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

Notwithstanding sub-subdivisions a. through e. of this subdivision, the possessor shall not be subject to liability for a condition that is a body of water on the possessor's land unless the possessor creates or causes to be created a sandy area for swimmers or makes other improvements that would make the body of water attractive to a child trespasser. For the purpose of this



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1 subdivision, "body of water" means a pool of water, pond, stream, creek, river,
2 lake, reservoir, or other body of water having a primary use as a wildlife
3 habitat, a wildlife conservation area, a wildlife water source, or an irrigation
4 source for plants or crops, or a watering place for livestock and farm animals,
5 including, but not limited to, cows, sheep, horses, mules, donkeys, goats,
6 llamas, pigs, or fowls of all types.

- 7 (3) Position of peril. – A possessor may be subject to liability for physical injury
8 or death to a trespasser if the possessor discovered the trespasser in a position
9 of peril or helplessness on the property and failed to exercise ordinary care not
10 to injure the trespasser."

11 **SECTION 2.** This act becomes effective October 1, 2021, and applies to acts
12 occurring on or after that date.