



HOUSE BILL 228: Attractive Nuisances.

2021-2022 General Assembly

Committee:	House Agriculture. If favorable, re-refer to Judiciary 3. If favorable, re-refer to Rules, Calendar, and Operations of the House	Date:	March 17, 2021
Introduced by:	Reps. Zachary, Dixon, Watford, Yarborough	Prepared by:	Kyle Evans
Analysis of:	PCS to First Edition H228-CSTQ-8		Committee Co-Counsel

OVERVIEW: *The Proposed Committee Substitute (PCS) to House Bill 228 would provide that a landowner is not subject to liability for injury to a child trespasser where the injury arises from a body of water on the landowner's property that has not been improved in such a way to make the body of water attractive to children.*

The PCS makes a technical change, removes "reservoir" from the list of bodies of water, and clarifies that the act applies to actions filed on or after the effective date of the act.

CURRENT LAW:

Chapter 38B of the General Statutes, the Trespasser Responsibility Act, provides a general rule that a landowner does not owe a duty of care to a trespasser and is not subject to liability for any injury to a trespasser.

G.S. 38B-3 creates exceptions to that general rule, including in situations of intentionally causing harm to the trespasser, failing to help a trespasser in a position of peril, or when a trespassing child is harmed by an artificial condition (i.e. an "attractive nuisance").

Concerning attractive nuisance, G.S. 38B-3 provides that a landowner may be liable for harm to child trespassers resulting from an artificial condition on the land if:

- The landowner knew or had reason to know that children were likely to trespass at the location of the condition.
- The condition is one the landowner knew or reasonably should have known involved an unreasonable risk of serious bodily injury or death to child trespassers.
- The injured child trespasser did not discover the condition or realize the risk involved in the condition or surrounding area.
- The utility to the landowner of maintaining the condition and the burden of eliminating the danger were slight as compared with the risk to the child trespasser.
- The landowner failed to exercise reasonable care to eliminate danger or otherwise protect the injured child trespasser.

This approach codifies how courts have historically handled liability for injuries arising from attractive nuisances under common law.

BILL ANALYSIS:

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The PCS to House Bill 228 would create an exception to the attractive nuisance provision in G.S. 38B-3 by providing that a landowner would not be subject to liability for any injuries to child trespassers arising from a body of water on the landowner property, unless the landowner creates a sandy area for swimmers or makes other improvements that would make the body of water attractive to a child trespasser.

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

EFFECTIVE DATE: This act would become effective October 1, 2021 and apply to actions filed on or after that date.