



LAWSUIT REFORM ALLIANCE OF NEW YORK

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SUPPORT

BILL: *S.5091 (Seward) / A.7590 (Magee)*
SUBJECT: *Limitation of Liability to Trespassers*
DATE: *June 1, 2012*
CONTACT: *Scott Hobson*

Summary:

This legislation provides clear and definitive duty rules for land possessors for injuries to trespassers. Currently, **New York is one of only two states that holds a land possessor responsible for injuries to any reasonably foreseeable entrants on the land, including unwanted trespassers.** In the overwhelming majority of states, a land possessor owes no duty of care to a trespasser except in a few narrow and well-circumscribed instances.

This legislation dials back existing broad and open-ended liability exposure by codifying traditional common law liability rules relating to trespassers that exist in most other states. The language also provides for widely-recognized exceptions including: where the trespasser is a child injured by an artificial condition (often called an "attractive nuisance"); where the trespasser's presence is known to the land possessor; and where trespassers constantly intrude on a limited area of the land so that they are the functional equivalent of known trespassers.

Why we support this legislation:

Fundamental Legal Fairness

- Virtually all states determine a land possessor's duty to an entrant on the land based upon the entrant's status: 1) invitee, 2) licensee, or 3) trespasser. A clear and distinct duty of care corresponds to each category of land entrant. For example, if a land possessor expressly invites someone onto his or her property, he or she owes that person the highest degree of care, and must warn of any known hazards or even hazards he or she should have been known about. But when a person enters another's land as a trespasser, there is generally no duty owed except for the land possessor to refrain from intentionally injuring the trespasser. The traditional common law approach put forth in this legislation provides both courts and involved parties with unambiguous, predictable, and easy-to-apply duty rules that respect a land possessor's right to free enjoyment of his or her land.

Improved Economic Competitiveness

- New York's business climate was recently ranked 49th out of 50 states,¹ and our tort liability costs are third highest of any state in the nation.² Our state's hostile liability climate drives up insurance and legal costs, creating barriers to job creation and investment. Enacting rational limitations on landowner liability would encourage businesses to locate in New York, creating jobs and increasing tax revenue.

¹ *Chief Executive Magazine*. "Best/Worst States for Business, 2012". May 2012.

² McQuillian, L and Abramyan, H. *U.S. Tort Liability Index: 2010 Report*. Pacific Research Institute. June 2010.

The Lawsuit Reform Alliance of New York is a not-for-profit association of businesses, healthcare professionals, membership organizations, and concerned citizens dedicated to reform of the legal system in order to foster a better business climate, promote job growth and address the growing cost of lawsuit abuse.