

***Judiciary Committee***

***HB 1541***

***Title:*** *An act relating to defenses in civil actions.*

***Brief Description:*** *Addressing defenses in civil actions.*

***Sponsors:*** *Representatives Carrell, Lambert, Cairnes, Van Luven, Reardon, Santos, Voloria and Morris.*

***Brief Summary of Bill***

- *Provides a complete defense in an action for damages for personal injury or wrongful death if the person injured or killed was committing a gross misdemeanor or misdemeanor crime and the crime was a proximate cause of the injury or death.*

***Hearing Date:*** *2/15/01*

***Staff:*** *Edie Adams (786-7180).*

***Background:***

*A person who has been injured by another may bring a civil action to recover damages caused by the injury. The plaintiff in a case for negligence must establish four things: (1) the defendant owed a duty of care to the plaintiff; (2) the defendant breached that duty; (3) the breach was a proximate cause of the injury; and (4) the plaintiff suffered personal injury or property damage.*

*There is a complete defense against an action for personal injury or wrongful death that the person injured or killed was engaged in a felony and the felony was the proximate cause of the injury or death.*

*Proximate cause is a legal standard that consists of two components: cause in fact and legal causation. An act is the cause in fact of the injury if the injury would not have occurred but for the act. Legal causation involves considerations of whether a defendant's conduct should warrant legal liability as a matter of social policy and common sense. One way a court determines if there is legal causation is whether the injury was reasonably*

*foreseeable. A person is generally not liable for unforeseeable harmful results that are not within the risk created by the person's negligent acts.*

*Generally, a property owner owes no duty to a trespasser, except to refrain from willful or wanton conduct. However, a property owner may owe a duty to a child trespasser under the doctrine of attractive nuisance. A landowner may be liable for injuries to a trespassing child from an item or artificial condition on the property if the following conditions are met:*

- The item or condition is attractive and alluring to young children;*
- The item or condition was left unguarded where young children may be expected to play;*
- The item or condition is dangerous;*
- The child was incapable of comprehending the danger because of his or her youth; and*
  
- It was reasonably feasible to prevent access to the dangerous item or condition or to make it harmless without preventing its reasonable and intended use.*

***Summary of Bill:***

*The defense to a civil action for injury or death that results as a proximate cause of the injured person's commission of a felony is extended to misdemeanor and gross misdemeanor offenses. It is a complete defense to an action for personal injury or wrongful death that the injured or killed person was engaged in a misdemeanor or gross misdemeanor crime, if the crime was a proximate cause of the injury or death.*

*This defense does not apply to an action under the common law doctrine of attractive nuisance when the only offense committed is trespass.*

***Appropriation:*** *None.*

***Fiscal Note:*** *Not Requested.*

***Effective Date:*** *Ninety days after adjournment of session in which bill is passed.*