

HOUSE BILL REPORT

HB 1987

As Reported by House Committee On: Judiciary

Title: An act relating to exempting property owners from injury caused to another person as a result of metal theft.

Brief Description: Exempting property owners from injury caused to another person as a result of metal theft.

Sponsors: Representatives Warnick, Armstrong, Haler, Hailey, Sump, McCune, VanDeWege, Skinner, Kristiansen and Rodne.

Brief History:

Committee Activity:

Judiciary: 2/16/07, 2/23/07 [DPS].

Brief Summary of Substitute Bill

- Provides that a public or private landowner is not liable for a person's injuries caused: (a) by the theft of metal material from the property by the person or a third party; or (b) by a dangerous condition created by the theft when the landowner did not know and could not have reasonably known of the dangerous condition.

HOUSE COMMITTEE ON JUDICIARY

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 10 members: Representatives Lantz, Chair; Goodman, Vice Chair; Rodne, Ranking Minority Member; Warnick, Assistant Ranking Minority Member; Ahern, Kirby, Moeller, Pedersen, Ross and Williams.

Staff: Trudes Tango (786-7384).

Background:

A person who has been injured by another may bring a civil action to recover damages caused by the injury. In an action for negligence, the plaintiff must prove: (a) the defendant owed a

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duty of care to the plaintiff; (b) the defendant breached that duty; (c) the breach was a proximate cause of the plaintiff's injury; and (d) the plaintiff suffered injury.

Under common law premises liability, the duty of care owed by a landowner or possessor of land (landowner) depends upon whether the person injured was an invitee, licensee, or trespasser. A landowner owes the highest duty of care to invitees—members of the public who are invited on the premises for a purpose for which the premises is held open to the public and business visitors who are invited on the premises for a purpose connected with business dealings with the landowner. A landowner owes an invitee a duty of ordinary care to make the premises safe. A landowner owes a lower duty of care to licensees and the lowest duty of care to trespassers. A licensee is a person who is privileged to enter on the premises only by virtue of the landowner's consent. Social guests are generally licensees. A landowner owes a licensee a duty to exercise reasonable care where there is a known dangerous condition and the landowner can reasonably anticipate that the licensee will not discover or realize the risk. The landowner can satisfy his or her duty by warning the licensee of the condition. A landowner owes no duty of care to a trespasser, except to refrain from causing willful or wanton injury to the trespasser. An exception to this general rule for trespassers is the attractive nuisance doctrine, under which a landowner may be liable for the injuries to a trespassing child from an artificial condition on the land if the injured party can prove certain elements.

It 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. Theft in the first degree and theft in the second degree are felonies. Theft in the third degree is a gross misdemeanor.

A person commits theft if he or she:

- wrongfully obtains or exerts unauthorized control over the property or services of another with intent to deprive him or her of the property or services; or
- by color or aid of deception, obtains control over the property or services of another with the intent to deprive him or her of the property or services.

A person is guilty of theft in the first degree if the value of the property exceeds \$1,500 or is taken from the person of the victim. A person is guilty of theft in the second degree if: (a) the value of the property exceeds \$250 and is less than \$1,500; (b) the property is a public record, writing, or instrument kept, filed, or deposited according to law or in the keeping of any public office or public service; (c) the property is an access device; or (d) the property is a motor vehicle valued less than \$1,500. A person is guilty of theft in the third degree if the value of the property is less than \$250 or includes more than 10 merchandise pallets or beverage crates.

Summary of Substitute Bill:

A public or private landowner is not civilly liable for a person's injuries caused by: (a) the theft or attempted theft, by the person or a third party, of copper, aluminum, steel, or other

metal material from the property of the landowner; or (b) a dangerous condition created as a result of the theft or attempted theft when the landowner did not know and could not have reasonably known of the dangerous condition. This does not create or impose a duty of care upon a landowner that would not otherwise exist under common law.

Substitute Bill Compared to Original Bill:

The substitute bill expands the original bill to: (a) include possessors of land; (b) add attempted theft; and (c) add a provision that there is no liability for injuries caused by a dangerous condition if the landowner did not know and could not have reasonably known of the condition.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date of Substitute Bill: The bill takes effect 90 days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony:

(In support) This is a proactive idea brought by farmers. Farms have irrigation systems, and the combination of electricity and water makes electrocution a possibility when there is wire theft. If there were an electrocution due to wire theft, there could be a high potential for liability and economic damage. This bill focuses on wire thieves and innocent people who might be injured because of the theft of wire.

(Opposed) None.

Persons Testifying: (In support) Representative Warnick, prime sponsor.

Persons Signed In To Testify But Not Testifying: None.