

First Regular Session  
Sixty-fifth General Assembly  
STATE OF COLORADO

**ENGROSSED**

*This Version Includes All Amendments Adopted  
on Second Reading in the House of Introduction*

LLS NO. 05-0475.01 Stephen Miller

**SENATE BILL 05-057**

---

**SENATE SPONSORSHIP**

**Dyer**

**HOUSE SPONSORSHIP**

**(None)**

---

**Senate Committees**

Judiciary

**House Committees**

---

**A BILL FOR AN ACT**

101 **CONCERNING A CLARIFICATION THAT THE COMMON LAW DOCTRINE OF**  
102 **OPEN AND OBVIOUS DANGER CONTINUES TO APPLY IN ASSESSING**  
103 **LANDOWNER LIABILITY IN ACTIONS BROUGHT UNDER THE**  
104 **PREMISES LIABILITY STATUTE.**

---

**Bill Summary**

*(Note: This summary applies to this bill as introduced and does not necessarily reflect any amendments that may be subsequently adopted.)*

Clarifies that the common law doctrine of open and obvious danger survived the enactment of the premises liability statute. Specifies that the doctrine continues to apply in assessing landowner liability in actions brought under the premises liability statute.

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.

*Capital letters indicate new material to be added to existing statute.*

*Dashes through the words indicate deletions from existing statute.*

SENATE  
2nd Reading Unamended  
February 14, 2005

---

1 *Be it enacted by the General Assembly of the State of Colorado:*

2           **SECTION 1.** 13-21-115 (1.5), Colorado Revised Statutes, is  
3 amended BY THE ADDITION OF THE FOLLOWING NEW  
4 PARAGRAPHS to read:

5           **13-21-115. Actions against landowners.** (1.5) The general  
6 assembly hereby finds and declares:

7           (f) THAT THE GENERAL ASSEMBLY, IN ENACTING AND AMENDING  
8 THIS SECTION IN 1986 AND 1990, RESPECTIVELY, DID NOT INTEND TO  
9 ABROGATE THE COMMON LAW DOCTRINE OF OPEN AND OBVIOUS DANGER  
10 BUT INSTEAD INTENDED TO LIMIT THE PREEMPTION OF LANDOWNER  
11 LIABILITY BY RETAINING THE DOCTRINE;

12           (g) THAT THE HOLDING BY THE COLORADO SUPREME COURT IN  
13 **VIGIL V. FRANKLIN**, CASE NO. 03 SC 479 (COLO. 2004), STATING THAT  
14 THE COMMON LAW DOCTRINE OF OPEN AND OBVIOUS DANGER DID NOT  
15 SURVIVE THE ENACTMENT OF THIS SECTION, DOES NOT REFLECT THE  
16 INTENT OF THE GENERAL ASSEMBLY IN ADOPTING THIS SECTION AND DOES  
17 NOT REFLECT THE INTENT OF GENERAL ASSEMBLY AS TO THE PUBLIC  
18 POLICY OF THIS STATE.

19           **SECTION 2.** 13-21-115 (2) and (3.5), Colorado Revised Statutes,  
20 are amended to read:

21           **13-21-115. Actions against landowners.** (2) (a) In any civil  
22 action brought against a landowner by a person who alleges injury  
23 occurring while on the real property of another and by reason of the  
24 condition of such property, or activities conducted or circumstances  
25 existing on such property, the landowner shall be liable only as provided  
26 in subsection (3) of this section.

1 (b) This subsection (2) shall not be construed to abrogate the  
2 doctrine of attractive nuisance as applied to persons under fourteen years  
3 of age. A person who is at least fourteen years of age but is less than  
4 eighteen years of age shall be presumed competent for purposes of the  
5 application of this section.

6 (c) THIS SUBSECTION (2) SHALL NOT BE CONSTRUED TO ABROGATE  
7 THE DOCTRINE OF OPEN AND OBVIOUS DANGER.

8 (3.5) It is the intent of the general assembly in enacting the  
9 provisions of subsection (3) of this section that:

10 (a) The circumstances under which a licensee may recover include  
11 all of the circumstances under which a trespasser could recover and that  
12 the circumstances under which an invitee may recover include all of the  
13 circumstances under which a trespasser or a licensee could recover.

14 (b) THE DOCTRINE OF OPEN AND OBVIOUS DANGER SHALL  
15 CONTINUE TO APPLY IN ASSESSING LANDOWNER LIABILITY UNDER THIS  
16 SECTION.

17 **SECTION 3. Effective date - applicability.** (1) This act shall  
18 take effect September 1, 2005.

19 (2) However, if a referendum petition is filed against this act or  
20 an item, section, or part of this act during the 90-day period after final  
21 adjournment of the general assembly that is allowed for submitting a  
22 referendum petition pursuant to article V, section 1 (3) of the state  
23 constitution, then the act, item, section, or part, shall not take effect  
24 unless approved by the people at a biennial regular general election and  
25 shall take effect on the date specified in subsection (1) or on the date of  
26 the official declaration of the vote thereon by proclamation of the  
27 governor, whichever is later.

1           (3) The provisions of this act shall apply to causes of action  
2 accruing prior to, on, or after the applicable effective date of this act.