

H. B. 4375

(By Delegates Hartman, Williams, Ashley, C. Miller,
Anderson, Border, Overington, Hamilton, Romine,
Rowan and Canterbury)

[Introduced February 1, 2012; referred to the
Committee on the Judiciary.]

A BILL to amend the Code of West Virginia, 1931, as amended, by
adding thereto a new section, designated §55-7-27, relating to
the liability of a possessor of real property for harm to a
trespasser.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended
by adding thereto a new section, designated §55-7-27, to read as
follows:

ARTICLE 7. ACTIONS FOR INJURIES.

**§55-7-27. Liability of possessor of real property for harm to a
trespasser.**

(a) A possessor of real property, including an owner, lessee
or other occupant, does not owe a duty of care to a trespasser
except to refrain from causing the trespasser willful or wanton
injury. A possessor of real property may use justifiable force to
repel a criminal trespasser as provided by section twenty-two of

1 this article.

2 (b) Notwithstanding subsection (a) of this section:

3 (1) A possessor of real property may be subject to liability
4 for physical injury or death to a trespasser if the possessor
5 discovered the trespasser in a position of peril on the property
6 and failed to exercise ordinary care not to cause injury to the
7 trespasser.

8 (2) A possessor of real property may be subject to liability
9 for physical injury or death to a trespasser as a result of
10 creating or maintaining a highly dangerous condition or
11 instrumentality on the property if:

12 (A) The possessor knew, or from facts within his or her
13 knowledge should have known, that trespassers constantly intrude at
14 the location of the dangerous condition;

15 (B) The possessor was aware that the condition was likely to
16 cause serious bodily injury or death to trespassers;

17 (C) The condition was such that the possessor had reason to
18 believe that trespassers would not discover it; and

19 (D) The possessor failed to exercise reasonable care to
20 adequately warn the trespasser of the condition.

21 (3) A possessor of real property may be subject to liability
22 for physical injury or death to a child trespasser caused by a
23 dangerous instrumentality or condition on the property if:

24 (A) The place of the condition was frequented by children;

1 (B) The possessor knew or should have known of the dangerous
2 condition and that children frequented the dangerous premises
3 either for pleasure or out of curiosity; and

4 (C) The possessor failed to exercise reasonable care to
5 eliminate the danger or otherwise protect the children.

6 (c) This section does not create or increase the liability of
7 any possessor of real property and does not affect any immunities
8 from or defenses to liability established by another section of the
9 statutes, including section nine, article one-a, chapter five-b,
10 sections one through seven, article twenty-five, chapter nineteen,
11 section nine, article fourteen, chapter twenty, and section nine,
12 article twenty-eight, chapter twenty-nine, all of this code, or
13 available at common law to which a possessor of real property may
14 be entitled under circumstances not covered by this section.

NOTE: The purpose of this bill is to articulate when a possessor of real property may be subject to liability for physical injury or death to a trespasser.

This section is new; therefore, it has been completely underscored.