1	Senate Bill No. 367
2	(By Senators Williams, Sypolt, Beach and Jenkins)
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4	[Introduced January 20, 2012; referred to the Committee on the
5	Judiciary.]
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10	A BILL to amend the Code of West Virginia, 1931, as amended, by
11	adding thereto a new section, designated §55-7-27, relating to
12	the liability of a possessor of real property for harm to a
13	trespasser.
14	Be it enacted by the Legislature of West Virginia:
15	That the Code of West Virginia, 1931, as amended, be amended
16	by adding thereto a new section, designated §55-7-27, to read as
17	follows:
18	ARTICLE 7. ACTIONS FOR INJURIES.
19	§55-7-27. Liability of possessor of real property for harm to a
20	trespasser.
21	(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 wantor

- 1 injury. A possessor of real property may use justifiable force to
- 2 repel a criminal trespasser as provided by section twenty-two of
- 3 this article.
- 4 (b) Notwithstanding subsection (a) of this section:
- 5 (1) A possessor of real property may be subject to liability
- 6 for physical injury or death to a trespasser if the possessor
- 7 discovered the trespasser in a position of peril on the property
- 8 and failed to exercise ordinary care not to cause injury to the
- 9 trespasser.
- 10 (2) A possessor of real property may be subject to liability
- 11 for physical injury or death to a trespasser as a result of
- 12 creating or maintaining a highly dangerous condition or
- 13 instrumentality on the property if:
- 14 (A) The possessor knew, or from facts within his or her
- 15 knowledge should have known, that trespassers constantly intrude at
- 16 the location of the dangerous condition;
- 17 (B) The possessor was aware that the condition was likely to
- 18 cause serious bodily injury or death to trespassers;
- 19 (C) The condition was such that the possessor had reason to
- 20 believe that trespassers would not discover it; and
- 21 (D) The possessor failed to exercise reasonable care to
- 22 adequately warn the trespasser of the condition.
- 23 (3) A possessor of real property may be subject to liability
- 24 for physical injury or death to a child trespasser caused by a

- 1 dangerous instrumentality or condition on the property if:
- 2 (A) The place of the condition was frequented by children;
- 3 (B) The possessor knew or should have known of the dangerous
- 4 condition and that children frequented the dangerous premises
- 5 either for pleasure or out of curiosity; and
- 6 (C) The possessor failed to exercise reasonable care to 7 eliminate the danger or otherwise protect the children.
- 8 (c) This section does not create or increase the liability of
  9 any possessor of real property and does not affect any immunities
  10 from or defenses to liability established by another section of the
  11 statutes, including section nine, article one-a, chapter five-b,
  12 sections one through seven, article twenty-five, chapter nineteen,
  13 section nine, article fourteen, chapter twenty and section nine,
  14 article twenty-eight, chapter twenty-nine, all of this code, or
  15 available at common law to which a possessor of real property may
  16 be entitled under circumstances not covered by this section.

<sup>(</sup>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, strike-throughs and underscoring have been omitted.)