

Senate Bill No. 367

(By Senators Williams, Sypolt, Beach and Jenkins)

[Introduced January 20, 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.

- 1 (a) A possessor of real property, including an owner,
- 2 lessee or other occupant, does not owe a duty of care to a
- 3 trespasser except to refrain from causing the trespasser

4 willful or wanton injury. A possessor of real property may
5 use justifiable force to repel a criminal trespasser as pro-
6 vided by section twenty-two of this article.

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

8 (1) A possessor of real property may be subject to
9 liability for physical injury or death to a trespasser if the
10 possessor discovered the trespasser in a position of peril on
11 the property and failed to exercise ordinary care not to cause
12 injury to the trespasser.

13 (2) A possessor of real property may be subject to
14 liability for physical injury or death to a trespasser as a
15 result of creating or maintaining a highly dangerous condi-
16 tion or instrumentality on the property if:

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

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

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

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

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

30 (A) The place of the condition was frequented by chil-
31 dren;

32 (B) The possessor knew or should have known of the
33 dangerous condition and that children frequented the
34 dangerous premises either for pleasure or out of curiosity;
35 and

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

38 (c) This section does not create or increase the liability of
39 any possessor of real property and does not affect any
40 immunities from or defenses to liability established by
41 another section of the statutes, including section nine, article
42 one-a, chapter five-b, sections one through seven, article
43 twenty-five, chapter nineteen, section nine, article fourteen,
44 chapter twenty and section nine, article twenty-eight,
45 chapter twenty-nine, all of this code, or available at common
46 law to which a possessor of real property may be entitled
47 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, strike-throughs and underscoring have been omitted.)