

Senate Bill No. 338

(By Senators Palumbo, Beach, Kirkendoll, Tucker, Williams,
Nohe and McCabe)

[Introduced February 21, 2013; 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 lawful occupant, owes no duty of care to a

3 trespasser except in those circumstances where a common
4 law right-of-action existed as of the effective date of this
5 section, including the duty to refrain from willfully or
6 wantonly causing the trespasser injury.

7 (b) A possessor of real property may use justifiable force
8 to repel a criminal trespasser as provided by section twenty-
9 two of this article.

10 (c) This section does not increase the liability of any
11 possessor of real property and does not affect any immunities
12 from or defenses to liability established by another section of
13 this code or available at common law to which a possessor of
14 real property may be entitled.

15 (d) The Legislature intends to codify and preserve the
16 common law in West Virginia on the duties owed to
17 trespassers by possessors of real property as of the effective
18 date of this section.

(NOTE: The purpose of this bill is to codify existing common law in West Virginia as it relates to the duty of care possessors of property owe trespassers.

This section is new; therefore, strike-throughs and underscoring have been omitted.

This bill was recommended for introduction and passage during the Regular Session of the Legislature by the Joint Judiciary Committee.)