

1 HB380  
2 136672-3  
3 By Representative Williams (J)  
4 RFD: Judiciary  
5 First Read: 21-FEB-12

2  
3  
4  
5  
6  
7  
8 SYNOPSIS: Under existing case law in limited  
9 circumstances, an owner of real property may owe a  
10 duty of care to certain trespassers on his or her  
11 property.

12 This bill would codify case law relating to  
13 the duty of care an owner of real property owes to  
14 certain trespassers on his or her property.

15  
16 A BILL  
17 TO BE ENTITLED  
18 AN ACT

19  
20 Relating to trespassers; to add Section 6-5-345 to  
21 the Code of Alabama 1975, to codify case law relating to the  
22 duty of care that an owner of real property owes to certain  
23 trespassers on his or her property.

24 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

25 Section 1. Section 6-5-345 is added to Article 18,  
26 Chapter 5, of Title 40 of the Code of Alabama 1975, to read as  
27 follows:

1 §6-5-345.

2 (a) For the purpose of this section, the following  
3 words have the following meanings:

4 (1) POSSESSOR OF REAL PROPERTY. The owner, lessee,  
5 renter, or other lawful occupant of real property.

6 (2) TRESPASSER. A person who goes upon the premises  
7 of another without permission or invitation, expressed or  
8 implied, or who, after rightfully entering upon the premises  
9 of another, remains on the premises after consent or license  
10 to enter or use the premises has been terminated.

11 (b) (1) A possessor of real property owes no duty of  
12 care to a trespasser except to:

13 a. Refrain from causing wanton or intentional  
14 injury, including by a trap or pitfall.

15 b. Exercise reasonable diligence to warn a  
16 trespasser of dangers known by the possessor to exist on the  
17 property of the possessor after the possessor has knowledge of  
18 the presence of the trespasser.

19 (2) A possessor of real property, however, may cause  
20 injury or use force to prevent or terminate a trespass as  
21 permitted at common law or in Title 13A, Chapter 3, Article 2.

22 (c) Notwithstanding the provisions of subsection  
23 (b), a possessor of real property may be subject to liability  
24 for physical injury or death to a child trespasser caused by  
25 an artificial condition upon the real property of the  
26 possessor, if all of the following apply:

1           (1) The place where the condition existed is one  
2 upon which the possessor knew or had reason to know that a  
3 child would be likely to trespass.

4           (2) The condition is one of which the possessor knew  
5 or had reason to know and which the possessor realized or  
6 should have realized would involve an unreasonable risk of  
7 death or serious bodily harm to a child.

8           (3) The injured child, because of his or her youth,  
9 did not discover the condition or realize the risk involved in  
10 intermeddling with the condition or in coming within the area  
11 made dangerous by it.

12           (4) The utility to the possessor of maintaining the  
13 condition and the burden of eliminating the danger was slight  
14 as compared with the risk to the child.

15           (5) The possessor failed to exercise reasonable care  
16 to eliminate the danger or otherwise to protect the child.

17           (d) This section may not be construed to create or  
18 increase the liability of any possessor of real property and  
19 does not affect any immunity from or defenses to liability  
20 established by another law or available at common law to which  
21 a possessor of real property may be entitled.

22           Section 2. This act shall become effective  
23 immediately following its passage and approval by the  
24 Governor, or its otherwise becoming law.