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Senate Bill 788 (as introduced 2-13-14)
Sponsor: Senator Rick Jones
Committee: Judiciary

Date Completed: 4-28-14

CONTENT

The bill would create the "Trespass Liability Act" to specify that a possessor of real property, including an owner, lessee, or other lawful occupant, would not have a duty of care to a trespasser or be liable to a trespasser for physical harm caused by failure to make the land reasonably safe for the trespasser. A possessor of real property could be subject to liability for injury to or the death of a trespasser, however, under certain conditions.

Specifically, a possessor of a fee, reversionary, or easement interest in real property, including an owner, lessee, or other lawful occupant, would not owe a duty of care to a trespasser and would not be liable to a trespasser for physical harm caused by the possessor's failure to exercise reasonable care to put the land in a condition reasonably safe for the trespasser or to carry on activities on the property so as not to endanger trespassers.

A possessor of real property could be subject to liability for physical injury or death to a trespasser, however, if any of the following applied:

- The possessor injured the trespasser by willful and wanton misconduct.
- The possessor was aware of the trespasser's presence on the property, or in the exercise of ordinary care should have known of the trespasser's presence, and failed to use ordinary care to prevent injury to him or her arising from active negligence.
- The possessor knew, or from facts within his or her knowledge should have known, that trespassers constantly intruded on a limited area of the property and the trespasser was harmed as a result of the possessor's failure to carry on an activity involving a risk of death or serious bodily harm with reasonable care for the trespasser's safety.

A possessor of real property also could be subject to liability for injury or death to a trespasser if the trespasser were a child injured by an artificial condition on the property and all of the following applied:

- The possessor knew or had reason to know that a child would be likely to trespass on the place where the condition existed.
- The possessor knew or had reason to know of the condition and realized or should have realized that the condition would involve an unreasonable risk of death or serious bodily harm to a child.
- The injured child, because of his or her youth, did not discover the condition or realize the risk involved in intermeddling with it or in coming within the area made dangerous by it.

- The utility to the possessor of maintaining the condition and the burden of eliminating the danger were slight compared with the risk to the child.
- The possessor failed to exercise reasonable care to eliminate the danger or otherwise to protect the child.

The proposed Act would not create or increase the liability of a possessor of real property and would not affect any immunity from, or defenses to, civil liability established by or available under the statutes or common law of Michigan to which a possessor of real property was entitled.

Legislative Analyst: Patrick Affholter

FISCAL IMPACT

The bill would have no fiscal impact on State or local government.

Fiscal Analyst: John Maxwell

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.