

SENATE BILL No. 788

February 13, 2014, Introduced by Senators JONES, BOOHER, GREEN and SCHUITMAKER and referred to the Committee on Judiciary.

A bill to codify the liability of possessors of land for injuries to trespassers.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1. This act shall be known and may be cited as the
2 "trespass liability act".

3 Sec. 3. (1) A possessor of a fee, reversionary, or easement
4 interest in real property, including an owner, lessee, or other
5 lawful occupant, owes no duty of care to a trespasser and is not
6 liable to a trespasser for physical harm caused by the possessor's
7 failure to exercise reasonable care to put the land in a condition
8 reasonably safe for the trespasser or to carry on activities on the
9 property so as not to endanger trespassers.

10 (2) Notwithstanding subsection (1), a possessor of real

1 property may be subject to liability for physical injury or death
2 to a trespasser if any of the following apply:

3 (a) The possessor injured the trespasser by willful and wanton
4 misconduct.

5 (b) The possessor was aware of the trespasser's presence on
6 the property, or in the exercise of ordinary care should have known
7 of the trespasser's presence on the property, and failed to use
8 ordinary care to prevent injury to the trespasser arising from
9 active negligence.

10 (c) The possessor knew, or from facts within the possessor's
11 knowledge should have known, that trespassers constantly intrude on
12 a limited area of the property and the trespasser was harmed as a
13 result of the possessor's failure to carry on an activity involving
14 a risk of death or serious bodily harm with reasonable care for the
15 trespasser's safety.

16 (d) The trespasser is a child injured by an artificial
17 condition on the property and all of the following apply:

18 (i) The possessor knew or had reason to know that a child would
19 be likely to trespass on the place where the condition existed.

20 (ii) The possessor knew or had reason to know of the condition
21 and realized or should have realized that the condition would
22 involve an unreasonable risk of death or serious bodily harm to a
23 child.

24 (iii) The injured child, because of his or her youth, did not
25 discover the condition or realize the risk involved in
26 intermeddling with it or in coming within the area made dangerous
27 by it.

1 (iv) The utility to the possessor of maintaining the condition
2 and the burden of eliminating the danger were slight as compared
3 with the risk to the child.

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

6 (3) This section does not create or increase the liability of
7 a possessor of real property and does not affect any immunity from
8 or defenses to civil liability established by or available under
9 the statutes or common law of this state to which a possessor of
10 real property is entitled.