

1 SB342  
2 136672-9  
3 By Senator Williams  
4 RFD: Agriculture, Conservation, and Forestry  
5 First Read: 21-FEB-12

1 SB342

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4 ENROLLED, An Act,

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

9 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

13 §6-5-345.

14 (a) For the purpose of this section, the following  
15 words have the following meanings:

16 (1) POSSESSOR OF REAL PROPERTY OR POSSESSOR. The  
17 owner, lessee, renter, or other lawful occupant of real  
18 property.

19 (2) TRESPASSER. A person who goes upon the premises  
20 of another without permission or invitation, expressed or  
21 implied, or who, after rightfully entering upon the premises  
22 of another, remains on the premises after consent or license  
23 to enter or use the premises has been terminated.

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

1           a. Refrain from causing wanton or intentional  
2 injury, including by a trap or pitfall.

3           b. Exercise reasonable care to avoid causing injury  
4 to a known trespasser in a position of peril and to use  
5 reasonable care to warn a known trespasser of dangers known by  
6 the possessor to exist on the property.

7           c. Exercise reasonable diligence to warn a  
8 trespasser of dangers known after discovery that the  
9 trespasser is in a position of peril after the possessor has  
10 knowledge of the presence of the trespasser.

11           d. Exercise reasonable care to warn a known  
12 trespasser of dangers known by the possessor to exist on the  
13 property after the possessor becomes aware of the danger to  
14 the trespasser. Nothing in this section shall diminish,  
15 change, amend, or otherwise affect the open and obvious  
16 doctrine.

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

20           (c) Notwithstanding the provisions of subsection  
21 (b), a possessor of real property may be subject to liability  
22 for physical injury or death to a child trespasser caused by  
23 an artificial condition upon the real property of the  
24 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) Notwithstanding the provisions of subsection  
18 (c), the duty owed by the possessor of real property to a  
19 child trespasser with respect to a natural condition is the  
20 same as that owed in subsection (b).

21           (e) The intent of the Legislature in enacting this  
22 section is to reject the adoption of the Third Restatement of  
23 Torts with respect to the duty of a possessor of real property  
24 to a trespasser. Nothing in this section shall diminish,

1 change, amend, or otherwise affect the provisions of Sections  
2 35-15-1 through 35-15-40, Code of Alabama 1975.

3 Section 2. This act shall become effective  
4 immediately following its passage and approval by the  
5 Governor, or its otherwise becoming law.

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President and Presiding Officer of the Senate

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Speaker of the House of Representatives

SB342

Senate 03-APR-12

I hereby certify that the within Act originated in and passed the Senate.

Patrick Harris  
Secretary

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House of Representatives  
Passed: 01-MAY-12

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By: Senator Williams