

1 SB342  
2 136672-8  
3 By Senator Williams  
4 RFD: Agriculture, Conservation, and Forestry  
5 First Read: 21-FEB-12

1 SB342

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4 ENGROSSED

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7 A BILL  
8 TO BE ENTITLED  
9 AN ACT

10  
11 Relating to trespassers; to add Section 6-5-345 to  
12 the Code of Alabama 1975, to codify case law relating to the  
13 duty of care that an owner of real property owes to certain  
14 trespassers on his or her property.

15 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

19 §6-5-345.

20 (a) For the purpose of this section, the following  
21 words have the following meanings:

22 (1) POSSESSOR OF REAL PROPERTY OR POSSESSOR. The  
23 owner, lessee, renter, or other lawful occupant of real  
24 property.

25 (2) TRESPASSER. A person who goes upon the premises  
26 of another without permission or invitation, expressed or

1 implied, or who, after rightfully entering upon the premises  
2 of another, remains on the premises after consent or license  
3 to enter or use the premises has been terminated.

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

6 a. Refrain from causing wanton or intentional  
7 injury, including by a trap or pitfall.

8 b. Exercise reasonable care to avoid causing injury  
9 to a known trespasser in a position of peril and to use  
10 reasonable care to warn a known trespasser of dangers known by  
11 the possessor to exist on the property.

12 c. Exercise reasonable diligence to warn a  
13 trespasser of dangers known after discovery that the  
14 trespasser is in a position of peril after the possessor has  
15 knowledge of the presence of the trespasser.

16 d. Exercise reasonable care to warn a known  
17 trespasser of dangers known by the possessor to exist on the  
18 property after the possessor becomes aware of the danger to  
19 the trespasser. Nothing in this section shall diminish,  
20 change, amend, or otherwise affect the open and obvious  
21 doctrine.

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

25 (c) Notwithstanding the provisions of subsection  
26 (b), a possessor of real property may be subject to liability

1 for physical injury or death to a child trespasser caused by  
2 an artificial condition upon the real property of the  
3 possessor, if all of the following apply:

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

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

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

15 (4) The utility to the possessor of maintaining the  
16 condition and the burden of eliminating the danger was slight  
17 as compared with the risk to the child.

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

20 (d) Notwithstanding the provisions of subsection  
21 (c), the duty owed by the possessor of real property to a  
22 child trespasser with respect to a natural condition is the  
23 same as that owed in subsection (b).

24 (e) The intent of the Legislature in enacting this  
25 section is to reject the adoption of the Third Restatement of  
26 Torts with respect to the duty of a possessor of real property

1 to a trespasser. Nothing in this section shall diminish,  
2 change, amend, or otherwise affect the provisions of Sections  
3 35-15-1 through 35-15-40, Code of Alabama 1975.

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

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2  
3 Senate  
  
4 Read for the first time and referred to the Senate  
5 committee on Agriculture, Conservation, and For-  
6 estry..... 21-FEB-12  
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8 Read for the second time and placed on the calen-  
9 dar..... 15-MAR-12  
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11 Read for the third time and passed as amended .... 03-APR-12  
  
12 Yeas 29  
13 Nays 0  
  
14  
15  
16 Patrick Harris  
17 Secretary  
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