

1 injury. A possessor of real property may use justifiable force to
2 repel a criminal trespasser as provided by section twenty-two of
3 this article.

4 (b) Notwithstanding subsection (a) of this section:

5 (1) A possessor of real property may be subject to liability
6 for physical injury or death to a trespasser if the possessor
7 discovered the trespasser in a position of peril on the property
8 and failed to exercise ordinary care not to cause injury to the
9 trespasser.

10 (2) A possessor of real property may be subject to liability
11 for physical injury or death to a trespasser as a result of
12 creating or maintaining a highly dangerous condition or
13 instrumentality on the property if:

14 (A) The possessor knew, or from facts within his or her
15 knowledge should have known, that trespassers constantly intrude at
16 the location of the dangerous condition;

17 (B) The possessor was aware that the condition was likely to
18 cause serious bodily injury or death to trespassers;

19 (C) The condition was such that the possessor had reason to
20 believe that trespassers would not discover it; and

21 (D) The possessor failed to exercise reasonable care to
22 adequately warn the trespasser of the condition.

23 (3) A possessor of real property may be subject to liability
24 for physical injury or death to a child trespasser caused by a

1 dangerous instrumentality or condition on the property if:

2 (A) The place of the condition was frequented by children;

3 (B) The possessor knew or should have known of the dangerous
4 condition and that children frequented the dangerous premises
5 either for pleasure or out of curiosity; and

6 (C) The possessor failed to exercise reasonable care to
7 eliminate the danger or otherwise protect the children.

8 (c) This section does not create or increase the liability of
9 any possessor of real property and does not affect any immunities
10 from or defenses to liability established by another section of the
11 statutes, including section nine, article one-a, chapter five-b,
12 sections one through seven, article twenty-five, chapter nineteen,
13 section nine, article fourteen, chapter twenty and section nine,
14 article twenty-eight, chapter twenty-nine, all of this code, or
15 available at common law to which a possessor of real property may
16 be entitled under circumstances not covered by this section.

(NOTE: The purpose of this bill is to articulate when a possessor of real property may be subject to liability for physical injury or death to a trespasser.)

This section is new; therefore, strike-throughs and underscoring have been omitted.)