

By: Representatives Hood, Brown, Boyd

To: Judiciary B

HOUSE BILL NO. 767
(As Sent to Governor)

1 AN ACT TO CODIFY THE DUTY OF CARE OF A POSSESSOR OF REAL
2 PROPERTY TO A TRESPASSER; AND FOR RELATED PURPOSES.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

4 **SECTION 1.** The following shall be codified as Section
5 95-5-31, Mississippi Code of 1972:

6 95-5-31. **Duty of possessor of real property to trespasser.**

7 (1) For the purposes of this section, the following words shall
8 have the following meanings:

9 (a) "Possessor of real property" means any person with
10 a fee, reversionary, or easement interest in real property,
11 including an owner, lessee, or other lawful occupant.

12 (b) "Trespasser" means a person who enters upon the
13 property of another without permission and without an invitation,
14 express or implied, or other legal right.

15 (2) A possessor of real property owes no duty of care to a
16 trespasser, except a duty to refrain from willfully or wantonly
17 injuring such a person.



18 (3) Notwithstanding subsection (2) of this section, a
19 possessor of real property may be subject to liability for injury
20 to a trespasser if:

21 (a) The possessor discovers the trespasser in a
22 position of peril on the property and fails to exercise reasonable
23 care to prevent injury to that trespasser; or

24 (b) The trespasser is a child injured by an artificial
25 condition on the possessor's property and all of the following
26 apply:

27 (i) The place where the condition existed was one
28 upon which the possessor knew or had reason to know that a child
29 would be likely to trespass;

30 (ii) The condition is one of which the possessor
31 knew or had reason to know and which the possessor realized or
32 should have realized would involve an unreasonable risk of death
33 or serious bodily harm to a child;

34 (iii) The injured child because of his or her
35 youth did not discover the condition or realize the risk involved
36 in intermeddling with it or in coming within the area made
37 dangerous by it;

38 (iv) The utility to the possessor of maintaining
39 the condition and the burden of eliminating the danger was slight
40 as compared with the risk to the child; and

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



43 (4) This section does not create or increase the liability
44 of any possessor of real property and does not affect any
45 immunities from or defenses to civil liability established by
46 another section of the Mississippi Code of 1972 or available at
47 common law to which a possessor of real property may be entitled.

48 **SECTION 2.** This act shall take effect and be in force from
49 and after July 1, 2016.

