

SENATE BILL 2719

By Kelsey

AN ACT to amend Tennessee Code Annotated, Title 29,
relative to the liability of a possessor of real
property for harm to a trespasser.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 29, Chapter 34, is amended by adding
the following as a new section thereto:

29-34-208.

(a) As used in this section:

(1) "Possessor of real property" means the owner, lessee, renter, or other
lawful occupant of real property; and

(2) "Trespasser" means a person who enters or remains on the real
property of another without actual or implied permission, or a person who
engages in conduct that constitutes a criminal trespass offense at common law
or under §§ 39-14-405 - 39-14-407.

(b) A possessor of real property owes no duty of care to a trespasser except to
refrain from causing willful or wanton injury; provided, however, a possessor of real
property may willfully cause injury to a trespasser or use force to prevent or terminate a
trespass or criminal offense as permitted at common law, under §§ 39-11-611 - 39-11-
616, and under § 29-34-201.

(c) Notwithstanding subsection (b), a possessor of real property is subject to
liability for physical injury or death to a child trespasser if:

(1) The possessor maintained a dangerous condition that was not a
natural condition and the possessor knew or should have known the condition
posed a risk of death or serious bodily harm to trespassing children;

(2) The possessor knew or should have known children were likely to trespass onto the property, either because they would be lured there by the dangerous condition or because children regularly use the property as a playground;

(3) The dangerous condition was not apparent, or children, because of their youth, would be unlikely to discover and comprehend the risk;

(4) The usefulness to the possessor of maintaining the dangerous condition and the burden of eliminating the danger were significantly outweighed by the risk of harm to children who would foreseeably trespass onto the property; and

(5) The possessor failed to use reasonable care to eliminate the danger or otherwise protect the children.

(d) This section shall not be construed to create or increase the liability of any possessor of real property or to affect any immunities from or defenses to liability established by another section of the codes or liability available at common law to which a possessor of real property may be entitled.

SECTION 2. This act shall take effect upon becoming a law, the public welfare requiring

it.