

By the Committee on Civil Justice & Claims and
Representatives Byrd, Warner, Flanagan and Thrasher

1 A bill to be entitled
2 An act relating to negligence; creating s.
3 768.0705, F.S.; providing limitations on
4 premises liability for a person or organization
5 owning or controlling an interest in commercial
6 real property; providing for a presumption
7 against liability; providing conditions for the
8 presumption; amending s. 768.075, F.S.;
9 delineating the duty owed to trespassers by a
10 person or organization owning or controlling an
11 interest in real property; providing
12 definitions; providing for the avoidance of
13 liability to discovered and undiscovered
14 trespassers under described circumstances;
15 providing for the application of the act with
16 respect to the common law; providing an
17 effective date.

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19 Be It Enacted by the Legislature of the State of Florida:

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21 Section 1. Section 768.0705, Florida Statutes, is
22 created to read:

23 768.0705 Limitation on premises liability.--

24 (1) If at least six of the following eight provisions
25 of this section are met, there shall be a presumption that a
26 person or organization owning or controlling an interest in
27 commercial real property, other than a convenience store, has
28 fulfilled any duty to provide adequate security for invitees,
29 guests, and other members of the public, against criminal acts
30 which occur on the premises and which are committed by third
31 parties who are not employees or agents of the person or

1 organization owning or controlling the interest in commercial
2 real property.
3 (a) Signs shall be prominently posted in the parking
4 lot and other public places on the premises indicating the
5 hours of normal business operations and the general security
6 measures provided.
7 (b) The parking lot, public walkways, public building
8 entrances and exits, shall be illuminated at an intensity of
9 at least 2 foot-candles per square foot at 18 inches above the
10 surface of the ground, pavement, or walkway.
11 (c) Crime prevention training, with a curriculum
12 approved by the local law enforcement agency or the Department
13 of Legal Affairs, shall be provided to all nonmanagement
14 employees. To meet the requirements of this paragraph,
15 existing employees shall receive training within 12 months of
16 the effective date of this section and new employees shall
17 receive training within 120 days of hiring. No person shall
18 be liable for ordinary negligence due to implementing the
19 approved curriculum so long as the training was actually
20 provided. Under no circumstances shall the state or the local
21 law enforcement agency be held liable for the contents of the
22 approved curriculum.
23 (d) Security cameras shall be installed, maintained,
24 and monitored, covering public entrances and exits to
25 buildings and at least half the parking lot. Cameras shall
26 operate during business hours and for at least 30 minutes
27 after closing.
28 (e) An emergency call box, linked to law enforcement,
29 a private security agency, or a security guard or other agent
30 on the premises, shall be maintained and available within 150
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1 feet of any location in the parking lot or other public place
2 on the premises.

3 (f) A licensed security guard is on duty at the time
4 of the criminal occurrence and is either monitoring
5 surveillance cameras or patrolling the premises with such
6 frequency that each area of the parking lot and public spaces
7 is observed by the guard at no more that 15 minute intervals.

8 (g) Fencing shall be installed and maintained, which
9 surrounds parking lots and structures, and which limits
10 pedestrian entry onto the premises to public walkways.

11 (h) A public address system shall be installed and
12 maintained which is capable of reaching all areas of the
13 premises regularly frequented by the public.

14 (2) The owner or operator of a convenience business,
15 that substantially implements the applicable security measures
16 listed in ss. 812.173 and 812.174 shall gain a presumption
17 against liability in connection with criminal acts which occur
18 on the premises and which are committed by third parties who
19 are not employees or agents of the owner or operator of the
20 convenience business.

21 (3) Persons or organizations owning or controlling an
22 interest in commercial real property, which is located in an
23 enterprise zone designated under s. 290.0065, shall be immune
24 from liability in connection with criminal acts which occur on
25 the premises and which are committed by third parties who are
26 not employees or agents of the person or organization owning
27 or controlling an interest in commercial real property, if the
28 persons or organizations owning or controlling an interest in
29 commercial real property comply with at least six of the eight
30 provisions listed in paragraph (1), and if they do not engage
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1 in gross negligence which permits or invites the occurrence of
2 the criminal act.

3 (4) Failure to implement a sufficient number of the
4 measures listed in paragraph (1), paragraph (2), or paragraph
5 (3) shall not create a presumption of liability.

6 Section 2. Section 768.075, Florida Statutes, is
7 amended to read:

8 768.075 Immunity from liability for injury to
9 trespassers on real property; definitions; duty to
10 trespassers.--

11 (1) A person or organization owning or controlling an
12 interest in real property, or an agent of such person or
13 organization, shall not be held liable for any civil damages
14 for death of or injury or damage to a trespasser upon the
15 property ~~resulting from or arising by reason of the~~
16 ~~trespasser's commission of the offense of trespass as~~
17 ~~described in s. 810.08 or s. 810.09~~, when such trespasser was
18 under the influence of alcoholic beverages with a
19 blood-alcohol level of 0.08 ~~0.10~~ percent or higher, when such
20 trespasser was under the influence of any chemical substance
21 set forth in s. 877.111, when such trespasser was illegally
22 under the influence of any substance controlled under chapter
23 893, or if the trespasser is affected by any of the aforesaid
24 substances to the extent that her or his normal faculties are
25 impaired. For the purposes of this section, voluntary
26 intoxication or impediment of faculties by use of alcohol or
27 any of the aforementioned substances shall not excuse a party
28 bringing an action or on whose behalf an action is brought
29 from proving the elements of trespass as described in
30 paragraph (3)(a). However, the person or organization owning
31 or controlling the interest in real property shall not be

1 immune from liability if gross negligence or intentional
2 ~~willful and wanton~~ misconduct on the part of such person or
3 organization or agent thereof is a proximate cause of the
4 death of or injury or damage to the trespasser.
5 (2) A person or organization owning or controlling an
6 interest in real property, or an agent of such person or
7 organization, shall not be held liable for any civil damages
8 for death of or injury or damage to any discovered or
9 undiscovered trespasser, except as provided in paragraphs
10 (3)(a), (b), and (c), and regardless of whether the trespasser
11 was intoxicated or otherwise impaired.

12 (3)(a) As used in this subsection:

13 1. "Implied invitation" means that the visitor
14 entering the premises has an objectively reasonable belief
15 that he or she has been invited or is otherwise welcome on
16 that portion of the real property where injury occurs.

17 2. "Discovered trespasser" means a person who enters
18 real property without invitation, either express or implied,
19 and whose actual physical presence was detected within 24
20 hours preceding the accident, by the person or organization
21 owning or controlling an interest in real property, or to
22 whose actual physical presence the person or organization
23 owning or controlling an interest in real property was alerted
24 by a reliable source within 24 hours preceding the accident.
25 The status of a person who enters real property shall not be
26 elevated to that of an invitee, unless the person or
27 organization owning or controlling an interest in real
28 property has issued an express invitation to enter the
29 property or has manifested a clear intent to hold the property
30 open to use by persons pursuing purposes such as those pursued
31 by the person whose status is at issue.

1 3. "Undiscovered trespasser" means a person who enters
2 property without invitation, either express or implied, and
3 whose actual physical presence was not detected within 24
4 hours preceding the accident, by the person or organization
5 owning or controlling an interest in real property.

6 (b) To avoid liability to undiscovered trespassers, a
7 person or organization owning or controlling an interest in
8 real property must refrain from intentional misconduct, but
9 has no duty to warn of dangerous conditions. To avoid
10 liability to discovered trespassers, a person or organization
11 owning or controlling an interest in real property must
12 refrain from gross negligence or intentional misconduct, and
13 must warn the trespasser of dangerous conditions, known to the
14 person or organization owning or controlling an interest in
15 real property, but which are not readily observable by others.

16 (c) This subsection shall not be interpreted or
17 construed to alter the common law as it pertains to the
18 attractive nuisance doctrine.

19 Section 3. This act shall take effect October 1 of the
20 year in which enacted.

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23 HOUSE SUMMARY

24 Provides for premises liability for a person or
25 organization owning or controlling an interest in
26 commercial real property. Provides conditions under which
27 a presumption against liability may be received by a
28 person or organization owning or controlling an interest
29 in commercial real property. Provides conditions under
30 which a person or organization owning or controlling an
31 interest in real property may avoid liability to a
discovered or undiscovered trespasser. See bill for
details.