

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 in common areas, parking areas, and on portions of  
31          the premises not occupied by buildings or structures and which

1 are committed by third parties who are not employees or agents  
2 of the person or organization owning or controlling the  
3 interest in commercial real property.

4 (a) Signs shall be prominently posted in the parking  
5 area and other public access points on the premises indicating  
6 the hours of normal business operations and the general  
7 security measures provided.

8 (b) The parking area, public walkways, public building  
9 entrances and exits, shall be illuminated at an intensity of  
10 at least 2 foot-candles per square foot at 18 inches above the  
11 surface of the ground, pavement, or walkway.

12 (c) Crime prevention training, with a curriculum  
13 approved by the local law enforcement agency or the Department  
14 of Legal Affairs, shall be provided to all nonmanagement  
15 on-site employees. To meet the requirements of this  
16 paragraph, existing employees shall receive training within 12  
17 months of the effective date of this section and new employees  
18 shall receive training within 120 days of hiring. No person  
19 shall be liable for ordinary negligence due to implementing  
20 the approved curriculum so long as the training was actually  
21 provided. Under no circumstances shall the state or the local  
22 law enforcement agency be held liable for the contents of the  
23 approved curriculum.

24 (d) Security cameras shall be installed and  
25 maintained, and shall be monitored or recorded, covering  
26 public entrances and exits to buildings and at least half the  
27 parking lot. Cameras shall operate during business hours and  
28 for at least 30 minutes after closing.

29 (e) An emergency call box, or an alarm system linked  
30 to law enforcement, a private security agency, or a security  
31 guard or other agent on the premises, shall be maintained and

1 available within 150 feet of any location in the parking lot  
2 or other public place on the premises.

3 (f) A licensed security guard or law enforcement  
4 officer is on duty at the time of the criminal occurrence and  
5 is either monitoring surveillance cameras or patrolling the  
6 premises with such frequency that the parking area and common  
7 areas are observed by the guard at no more than 15 minute  
8 intervals.

9 (g) Perimeter fencing shall be installed and  
10 maintained, which surrounds parking areas and structures, and  
11 which directs pedestrian entry onto the premises.

12 (h) Landscaping shall be maintained so as to provide  
13 no hiding place or obstruct the view of security personnel or  
14 cameras.

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

22 (3) Persons or organizations owning or controlling an  
23 interest in commercial real property, which is located in an  
24 enterprise zone designated under s. 290.0065, shall be immune  
25 from liability in connection with criminal acts which occur in  
26 common areas, parking areas, and on portions of the premises  
27 not occupied by buildings or structures, and which are  
28 committed by third parties who are not employees or agents of  
29 the person or organization owning or controlling an interest  
30 in commercial real property, if the persons or organizations  
31 owning or controlling an interest in commercial real property

1 comply with at least seven of the eight provisions listed in  
2 paragraph (1), and if they do not engage in gross negligence  
3 which permits or invites the occurrence of the criminal act.

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

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

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

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

1 or controlling the interest in real property shall not be  
2 immune from liability if gross negligence or intentional  
3 ~~willful and wanton~~ misconduct on the part of such person or  
4 organization or agent thereof is a proximate cause of the  
5 death of or injury or damage to the trespasser.

6 (2) A person or organization owning or controlling an  
7 interest in real property, or an agent of such person or  
8 organization, shall not be held liable for any civil damages  
9 for death of or injury or damage to any discovered or  
10 undiscovered trespasser, except as provided in paragraphs  
11 (3)(a), (b), and (c), and regardless of whether the trespasser  
12 was intoxicated or otherwise impaired.

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

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

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

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

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

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

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

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