

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) Failure to implement a sufficient number of the
23 measures listed in subsection (1) or subsection (2) shall not
24 create a presumption of liability.

25 Section 2. Section 768.075, Florida Statutes, is
26 amended to read:

27 768.075 Immunity from liability for injury to
28 trespassers on real property; definitions; duty to
29 trespassers.--

30 (1) A person or organization owning or controlling an
31 interest in real property, or an agent of such person or

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

24 (2) A person or organization owning or controlling an
 25 interest in real property, or an agent of such person or
 26 organization, shall not be held liable for any civil damages
 27 for death of or injury or damage to any discovered or
 28 undiscovered trespasser, except as provided in paragraphs
 29 (3)(a), (b), and (c), and regardless of whether the trespasser
 30 was intoxicated or otherwise impaired.

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

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

5 2. "Discovered trespasser" means a person who enters
6 real property without invitation, either express or implied,
7 and whose actual physical presence was detected within 24
8 hours preceding the accident, by the person or organization
9 owning or controlling an interest in real property, or to
10 whose actual physical presence the person or organization
11 owning or controlling an interest in real property was alerted
12 by a reliable source within 24 hours preceding the accident.
13 The status of a person who enters real property shall not be
14 elevated to that of an invitee, unless the person or
15 organization owning or controlling an interest in real
16 property has issued an express invitation to enter the
17 property or has manifested a clear intent to hold the property
18 open to use by persons pursuing purposes such as those pursued
19 by the person whose status is at issue.

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

25 (b) To avoid liability to undiscovered trespassers, a
26 person or organization owning or controlling an interest in
27 real property must refrain from intentional misconduct, but
28 has no duty to warn of dangerous conditions. To avoid
29 liability to discovered trespassers, a person or organization
30 owning or controlling an interest in real property must
31 refrain from gross negligence or intentional misconduct, and

1 must warn the trespasser of dangerous conditions, known to the
2 person or organization owning or controlling an interest in
3 real property, but which are not readily observable by others.

4 (c) This subsection shall not be interpreted or
5 construed to alter the common law as it pertains to the
6 attractive nuisance doctrine.

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

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