

ASSEMBLY, No. 2587

STATE OF NEW JERSEY 219th LEGISLATURE

INTRODUCED FEBRUARY 13, 2020

Sponsored by:

Assemblyman WAYNE P. DEANGELO

District 14 (Mercer and Middlesex)

SYNOPSIS

Establishes liability for harm caused by defective trees.

CURRENT VERSION OF TEXT

As introduced.



1 **AN ACT** establishing liability for harm caused by certain defective
2 trees and supplementing Title 2A of the New Jersey Statutes and
3 Title 17 of the Revised Statutes.

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5 **BE IT ENACTED** *by the Senate and General Assembly of the State*
6 *of New Jersey:*

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8 1. a. An owner of private land is subject to liability for harm
9 caused to a person, structure or other chattels on residential
10 property outside of the land by a defect in the condition of a tree
11 thereon, if the exercise of reasonable care by the land owner:

12 (1) would have disclosed the defect and the risk associated with
13 that defect; and

14 (2) would have made the defect reasonably safe by repair or
15 other remedial action.

16 b. “Residential property” means a property zoned for
17 residential use on which a one or two family dwelling is located,
18 and does not include any public space such as sidewalks or
19 roadways.

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21 2. In any action to recover damages pursuant to section 1 of
22 P.L. , c. (C.) (pending before the Legislature as this bill), the
23 plaintiff shall have the burden of proving the existence of a
24 defective condition of the tree at a time prior to when the harm
25 occurred so that an opportunity existed for the land owner to make
26 the condition reasonably safe by repair or other remedial action.

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28 3. a. Any homeowner’s insurance policy issued or renewed
29 after the effective date of P.L. , c. (C.) (pending before the
30 Legislature as this bill) for a property located within or adjacent to a
31 residential area shall include coverage for potential liability under
32 section 1 of P.L. , c. (C.) (pending before the Legislature as this
33 bill).

34 b. “Residential area” means a portion of a municipality zoned
35 for residential uses, including those portions zoned for mixed
36 residential uses.

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38 4. This act shall take effect immediately.

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STATEMENT

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43 This bill establishes liability of an owner of property for harm
44 caused by a tree in certain situations.

45 New Jersey Courts currently follow Section 363 of the
46 Restatement (Second) of Torts, which does not hold a landowner
47 liable for harm caused by a naturally occurring condition on the
48 property. New Jersey Courts have interpreted this section to mean

1 that a property owner is only liable for “active conduct,” meaning
2 that the owner is not liable for damages to neighboring property or
3 person caused by a tree unless that owner has taken some
4 affirmative step which impacted the condition of the tree. For
5 example, under current New Jersey law, if there exists a defective
6 tree on land and a landowner did not plant the tree and took no
7 action with respect to the condition of that tree, the landowner
8 would not be responsible if that tree collapsed and destroyed a
9 neighboring home, even if a basic inspection of that tree would
10 have revealed the danger it posed.

11 Pennsylvania courts have also relied upon Section 363 of the
12 Restatement (Second) of Torts, but have carved out an exception in
13 certain circumstances. This bill is based upon that exception and
14 would make an owner of land responsible for caused to a person,
15 structure or other chattels on residential property outside of the land
16 by a tree which existed on the property in a discoverable defective
17 condition at the time the tree caused harm to a residential property
18 or a person located on that residential property.

19 This bill does not establish liability of a landowner for harm
20 caused by a non-defective tree. The bill also requires that any
21 homeowner’s insurance policy for a property located within or
22 adjacent to a residential area shall include coverage for potential
23 liability under the bill.