

1 **H. B. 2793**

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3 (By Delegates T. Campbell and Boggs)
4 [Introduced January 24, 2011; referred to the
5 Committee on Natural Resources then the Judiciary.]
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10 A BILL to amend and reenact §19-25-5 of the Code of West Virginia,
11 1931, as amended, relating to defining "spelunking" as a
12 recreational purpose and activity for which a landowner's
13 liability for injury is limited.

14 *Be it enacted by the Legislature of West Virginia:*

15 That §19-25-5 of the Code of West Virginia, 1931, as amended,
16 be amended and reenacted to read as follows:

17 **ARTICLE 25. LIMITING LIABILITY OF LANDOWNERS.**

18 **§19-25-5. Definitions.**

19 Unless the context used clearly requires a different meaning,
20 as used in this article:

21 (1) "Charge" means:

22 (A) For purposes of limiting liability for recreational or
23 wildlife propagation purposes set forth in section two of this
24 article, the amount of money asked in return for an invitation to

1 enter or go upon the land, including a one-time fee for a
2 particular event, amusement, occurrence, adventure, incident,
3 experience or occasion which may not exceed \$50 a year per
4 recreational participant: *Provided*, That the monetary cap on
5 charges imposed pursuant to this article does not apply to the
6 provisions of article fourteen, chapter twenty of this code
7 pertaining to the Hatfield-McCoy regional recreational authority or
8 activities sponsored on the Hatfield-McCoy recreation area;

9 (B) For purposes of limiting liability for military training
10 set forth in section six of this article, the amount of money asked
11 in return for an invitation to enter or go upon the land;

12 (2) "Land" includes, but ~~shall~~ is not ~~be~~ limited to, roads,
13 water, watercourses, private ways and buildings, structures and
14 machinery or equipment thereon when attached to the realty;

15 (3) "Noncommercial recreational activity" ~~shall~~ does not
16 include any activity for which there is any charge which exceeds
17 \$50 per year per participant;

18 (4) "Owner" includes, but ~~shall~~ is not ~~be~~ limited to, tenant,
19 lessee, occupant or person in control of the premises;

20 (5) "Recreational purposes" includes, but ~~shall~~ is not ~~be~~
21 limited to, any one or any combination of the following
22 noncommercial recreational activities: Hunting, fishing, swimming,
23 boating, camping, picnicking, hiking, pleasure driving, motorcycle
24 or all-terrain vehicle riding, bicycling, horseback riding, nature

1 study, water skiing, winter sports, spelunking, and visiting,
2 viewing or enjoying historical, archaeological, scenic or
3 scientific sites or otherwise using land for purposes of the user;

4 (6) "Wildlife propagation purposes" applies to and includes all
5 ponds, sediment control structures, permanent water impoundments or
6 any other similar or like structure created or constructed as a
7 result of or in connection with surface mining activities as
8 governed by article three, chapter twenty-two of this code or from
9 the use of surface in the conduct of underground coal mining as
10 governed by said article and rules promulgated thereunder, which
11 ponds, structures or impoundments are hereafter designated and
12 certified in writing by the director of the ~~Division~~ Department of
13 Environmental Protection and the owner to be necessary and vital to
14 the growth and propagation of wildlife, animals, birds and fish or
15 other forms of aquatic life and finds and determines that the
16 premises have the potential of being actually used by the wildlife
17 for those purposes and that the premises are no longer used or
18 necessary for mining reclamation purposes. The certification shall
19 be in form satisfactory to the director and shall provide that the
20 designated ponds, structures or impoundments ~~shall~~ may not be
21 removed without the joint consent of the director and the owner; and

22 (7) "Military training" includes, but is not limited to,
23 training, encampments, instruction, overflight by military aircraft,
24 parachute drops of personnel or equipment or other use of land by

1 a member of the Army National Guard or Air National Guard, a member
2 of a reserve unit of the Armed Forces of the United States or a
3 person on active duty in the Armed Forces of the United States,
4 acting in that capacity.

NOTE: The purpose of this bill is to define "caving" or "spelunking" as a recreational purpose and activity for which a landowner's liability for injury is limited.

Strike-throughs indicate language that would be stricken from the present law, and underscoring indicates new language that would be added.