

1 **Senate Bill No. 605**

2 (By Senators Wells, Yost, Barnes, Edgell, Green, Boley, Jenkins,
3 Laird, Williams, Klempa and Plymale)

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5 [Introduced February 15, 2012; referred to the Committee on the
6 Judiciary.]
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10 A BILL to amend and reenact §19-25-1, §19-25-3, §19-25-5, §19-25-6
11 and §19-25-7 of the Code of West Virginia, 1931, as amended,
12 all relating to limiting the liability of landowners who make
13 land available for military, law-enforcement or homeland-
14 defense training.

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

16 That §19-25-1, §19-25-3, §19-25-5, §19-25-6 and §19-25-7 of
17 the Code of West Virginia, 1931, as amended, be amended and
18 reenacted, all to read as follows:

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

20 **§19-25-1. Purpose.**

21 The purpose of this article is to encourage owners of land to
22 make available to the public land and water areas for military,
23 law-enforcement or homeland-defense training or recreational or

1 wildlife propagation purposes by limiting their liability for
2 injury to persons entering thereon and for injury to the property
3 of persons entering thereon and limiting their liability to persons
4 who may be injured or otherwise damaged by the acts or omissions of
5 persons entering thereon.

6 **§19-25-3. Limiting duty of landowner who grants a lease, easement
7 or license of land to federal, state, county or
8 municipal government or any agency thereof.**

9 Unless otherwise agreed in writing, an owner who grants a
10 lease, easement or license of land to the federal government or any
11 agency thereof, or the state or any agency thereof, or any county
12 or municipality or agency thereof, for military, law-enforcement or
13 homeland-defense training or recreational or wildlife propagation
14 purposes owes no duty of care to keep that land safe for entry or
15 use by others or to give warning to persons entering or going upon
16 the land of any dangerous or hazardous conditions, uses, structures
17 or activities thereon. An owner who grants a lease, easement or
18 license of land to the federal government or any agency thereof, or
19 the state or any agency thereof, or any county or municipality or
20 agency thereof, for military, law-enforcement or homeland-defense
21 training or recreational or wildlife propagation purposes does not
22 by giving a lease, easement or license: (a) Extend any assurance
23 to any person using the land that the premises are safe for any
24 purpose; or (b) confer upon those persons the legal status of an

1 invitee or licensee to whom a duty of care is owed; or (c) assume
2 responsibility for or incur liability for any injury to person or
3 property caused by an act or omission of a person who enters upon
4 the leased land. The provisions of this section apply whether the
5 person entering upon the leased land is an invitee, licensee,
6 trespasser or otherwise.

7 **§19-25-5. Definitions.**

8 Unless the context used clearly requires a different meaning,
9 as used in this article:

10 (1) "Charge" means:

11 (A) For purposes of limiting liability for recreational or
12 wildlife propagation purposes set forth in section two of this
13 article, the amount of money asked in return for an invitation to
14 enter or go upon the land, including a one-time fee for a
15 particular event, amusement, occurrence, adventure, incident,
16 experience or occasion which may not exceed \$50 a year per
17 recreational participant: *Provided*, That the monetary cap on
18 charges imposed pursuant to this article does not apply to the
19 provisions of article fourteen, chapter twenty of this code
20 pertaining to the Hatfield-McCoy regional recreational authority or
21 activities sponsored on the Hatfield-McCoy recreation area;

22 (B) For purposes of limiting liability for military, law-
23 enforcement or homeland-defense training set forth in section six
24 of this article, the amount of money asked in return for an

1 invitation to enter or go upon the land;

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

5 (3) "Noncommercial recreational activity" shall not include
6 any activity for which there is any charge which exceeds \$50 per
7 year per participant;

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

10 (5) "Recreational purposes" includes, but shall not be limited
11 to, any one or any combination of the following noncommercial
12 recreational activities: Hunting, fishing, swimming, boating,
13 camping, picnicking, hiking, pleasure driving, motorcycle or all-
14 terrain vehicle riding, bicycling, horseback riding, nature study,
15 water skiing, winter sports and visiting, viewing or enjoying
16 historical, archaeological, scenic or scientific sites or otherwise
17 using land for purposes of the user;

18 (6) "Wildlife propagation purposes" applies to and includes
19 all ponds, sediment control structures, permanent water
20 impoundments or any other similar or like structure created or
21 constructed as a result of or in connection with surface mining
22 activities as governed by article three, chapter twenty-two of this
23 code or from the use of surface in the conduct of underground coal
24 mining as governed by said article and rules promulgated

1 thereunder, which ponds, structures or impoundments are hereafter
2 designated and certified in writing by the Director of the Division
3 of Environmental Protection and the owner to be necessary and vital
4 to the growth and propagation of wildlife, animals, birds and fish
5 or other forms of aquatic life and finds and determines that the
6 premises have the potential of being actually used by the wildlife
7 for those purposes and that the premises are no longer used or
8 necessary for mining reclamation purposes. The certification shall
9 be in form satisfactory to the director and shall provide that the
10 designated ponds, structures or impoundments shall not be removed
11 without the joint consent of the director and the owner; and

12 (7) "Military, law-enforcement or homeland-defense training"
13 includes, but is not limited to, training, encampments,
14 instruction, overflight by military aircraft, parachute drops of
15 personnel or equipment or other use of land by a member of the Army
16 National Guard or Air National Guard, a member of a reserve unit of
17 the armed forces of the United States, ~~or~~ a person on active duty
18 in the armed forces of the United States, a state or federal law-
19 enforcement officer, a federal agency or service employee, a West
20 Virginia military authority employee or a civilian contractor
21 supporting the military and/or government employees acting in that
22 capacity.

23 **§19-25-6. Limiting duty of landowner for use of land for military,**
24 **law enforcement or homeland security purposes.**

1 Notwithstanding the provisions of section four of this article
2 to the contrary, an owner of land owes no duty of care to keep the
3 premises safe for entry or use by others for military, law-
4 enforcement or homeland-defense training purposes, regardless of
5 whether any charge is made therefor, or to give any warning of a
6 dangerous or hazardous condition, use, structure or activity on the
7 premises to persons entering for those purposes.

8 Notwithstanding the provisions of section four of this article
9 to the contrary, an owner of land who either directly or indirectly
10 invites or permits, either with or without charge, any person to
11 use the property for military, law-enforcement or homeland-defense
12 training purposes does not thereby: (a) Extend any assurance that
13 the premises are safe for any purpose; (b) confer upon those
14 persons the legal status of an invitee or licensee to whom a duty
15 of care is owed; or (c) assume responsibility for or incur
16 liability for any injury to person or property caused by an act or
17 omission of those persons.

18 **§19-25-7. Insurance policies.**

19 Any policy or contract of liability insurance providing
20 coverage for liability sold, issued or delivered in this state to
21 any owner of lands covered under the provisions of this article
22 shall be read so as to contain a provision or endorsement whereby
23 the company issuing such policy waives or agrees not to assert as
24 a defense on behalf of the policyholder or any beneficiary thereof,

1 to any claim covered by the terms of such policy within the policy
2 limits, the immunity from liability of the insured by reason of the
3 use of such insured's land for recreational, wildlife propagation
4 or military, law enforcement or homeland defense purposes, unless
5 such provision or endorsement is rejected in writing by the named
6 insured.

(NOTE: The purpose of this bill is to limit the liability of landowners who make land available for military, law enforcement or homeland defense training.

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