

H. B. 2138

(By Delegates Folk, Gearheart, Householder, Howell, Nelson, J., Ireland, Faircloth, Williams,
Lynch, Shott and McGeehan)

[Introduced January 20, 2015; referred to the
Committee on the Judiciary.]

A BILL to amend and reenact §19-25-5 of the Code of West Virginia, 1931, as amended, relating
to adding aircraft operations on private airstrips and farms to the definition of "recreational
purpose" for the purpose of limiting the liability of landowners.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 25. LIMITING LIABILITY OF LANDOWNERS.

§19-25-5. Definitions.

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

(+) "Charge" means:

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

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

6 (B) For purposes of limiting liability for military, law-enforcement or homeland-defense
 7 training set forth in section six of this article, the amount of money asked in return for an invitation
 8 to enter or go upon the land;

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

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

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

15 (5) "Recreational purposes" includes, but ~~shall not be~~ is not limited to, any one or any
 16 combination of the following noncommercial recreational activities: hunting, fishing, swimming,
 17 boating, camping, picnicking, hiking, pleasure driving, motorcycle or all-terrain vehicle riding,
 18 bicycling, horseback riding, spelunking, nature study, water skiing, winter sports and visiting,
 19 viewing or enjoying historical, archaeological, scenic or scientific sites, aircraft or ultralight
 20 operations on private airstrips or farms or otherwise using land for purposes of the user;

21 (6) "Wildlife propagation purposes" applies to and includes all ponds, sediment control
 22 structures, permanent water impoundments or any other similar ~~or like~~ structure created or

1 ~~constructed as a result of or~~ in connection with surface mining activities as governed by article three,
 2 chapter twenty-two of this code or from the use of surface in the conduct of underground coal mining
 3 as governed by ~~said that~~ that article and any rules promulgated ~~thereunder~~ because of the article, which
 4 ponds, structures or impoundments are ~~hereafter~~ designated and certified in writing by the Director
 5 of the Division of Environmental Protection and the owner to be necessary and vital to the growth
 6 and propagation of wildlife, animals, birds and fish or other forms of aquatic life and finds and
 7 determines that the premises have the potential of being actually used by the wildlife for those
 8 purposes and that the premises are no longer used or necessary for mining reclamation purposes. The
 9 certification shall be in form satisfactory to the director and shall provide that the designated ponds,
 10 structures or impoundments ~~shall~~ may not be removed without the joint consent of the director and
 11 the owner; and

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

NOTE: The purpose of this bill is to add noncommercial recreational aircraft operations to the list of protected activities for the purpose of limiting the liability of landowners.

Strike-throughs indicate language that would be stricken from the present law, and

underscoring indicates new language that would be added.