

1 **Senate Bill No. 13**

2 (By Senators Nohe, Boley, Ferns, D. Hall, Karnes, Maynard, Mullins, Sypolt, Trump, Blair,
3 Williams and Cole (Mr. President))

4 _____
5 [Introduced January 14, 2015; referred to the Committee on the Judiciary.]
6 _____

7
8
9
10 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section,
11 designated §55-7-27, relating to the liability of a possessor of real property for injuries
12 caused by open and obvious hazards.

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

14 That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new
15 section, designated §55-7-27, to read as follows:

16 **ARTICLE 7. ACTIONS FOR INJURIES.**

17 **§55-7-27. Limiting civil liability of a possessor of real property for injuries caused by open
18 and obvious hazards.**

19 (a) Notwithstanding the decision of the Supreme Court of Appeals of West Virginia in the
20 case of *Hersh v. E-T Enterprises, Limited Partnership*, 232 W.Va. 305, (November 12, 2013), a
21 possessor of real property, including an owner, lessee, or other lawful occupant, owes no duty of care
22 to protect against dangers that are obvious, reasonably apparent, or as well known to the person

1 injured as they are to the owner or occupant, and may not be held liable for civil damages for any
2 injuries sustained as a result of dangers that are open and obvious, even if such conditions constitute
3 a violation of state regulations or municipal ordinances.

4 (b) Nothing in this section creates, recognizes or ratifies a claim or cause of action of any
5 kind. As a matter of law, a possessor of real property is entitled to summary judgment in a cause of
6 action for civil damages sustained as a result of dangers that are open and obvious.

7 (c) It is the intent of the Legislature that this legislation shall overrule the decision of the
8 Supreme Court of Appeals of West Virginia in the case of *Hersh v. E-T Enterprises, Limited*
9 *Partnership*, 232 W.Va. 305, (November 12, 2013). This section applies to any claim or cause of
10 action pending on the effective day of this section.

11 (d) If any portion of this section or any application of this section is subsequently found to
12 be unconstitutional or in violation of applicable law, it does not affect the validity of the remainder
13 of this section or applications of the section that are not unconstitutional or in such violation.

NOTE: The purpose of this bill is to permanently reinstate the open and obvious doctrine for premises liability law, which has been the law of West Virginia for more than one hundred years, and overrule the decision of the Supreme Court of Appeals of West Virginia in the case of *Hersh v. E-T Enterprises, Limited Partnership*, 232 W.Va. 305, (November 12, 2013).

This section is new; therefore, underscoring and strike-throughs have been omitted.