

WEST VIRGINIA LEGISLATURE

2024 REGULAR SESSION

Introduced

House Bill 5350

By Delegates Howell, W. Clark, Lucas, E. Pritt,
Nestor, Ferrell, Dittman, Maynor, Moore, Willis, and
Hornby

[Introduced January 30, 2024; Referred to the
Committee on Economic Development and Tourism
then the Judiciary]

1 A BILL to amend and reenact §19-25-5 of the Code of West Virginia, 1931, as amended, relating to
 2 limiting the duty and liability of a landowner who grants a lease, easement or license of
 3 land to federal, state, county or municipal government or any agency thereof for
 4 "recreational purposes"; expanding the definition of "recreational purposes" to include
 5 mountain biking activities.

Be it enacted by the Legislature of West Virginia:

ARTICLE 25. LIMITING LIABILITY OF LANDOWNERS.

§19-25-5. Definitions.

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

2 "Agricultural purposes" means the raising, cultivation, drying, harvesting, marketing,
 3 production, or storage of agricultural products, including both crops and livestock, for sale or use in
 4 agriculture or agricultural production, or the storage of machinery or equipment used in support of
 5 agricultural production;

6 "Charge" means (A) For purposes of limiting liability for recreational or wildlife propagation
 7 purposes set forth in §19-25-2 of this code, the amount of money asked in return for an invitation to
 8 enter or go upon the land, including a one-time fee for a particular event, amusement, occurrence,
 9 adventure, incident, experience, or occasion which may not exceed \$50 a year per recreational
 10 participant: *Provided*, That the monetary cap on charges imposed pursuant to this article does not
 11 apply to the provisions of §20-14-1 *et seq.* of this code pertaining to the Hatfield-McCoy Regional
 12 Recreation Authority or activities sponsored on the Hatfield-McCoy regional recreational authority;

13 (B) For purposes of limiting liability for military, law enforcement, or homeland-defense training set
 14 forth in §19-25-6 of this code, the amount of money asked in return for an invitation to enter or go
 15 upon the land;

16 "Land" includes, but is not limited to, roads, water, watercourses, rocks, boulders, caves,
 17 private ways, and buildings, structures, and machinery or equipment, when attached to the realty;

18 "Noncommercial recreational activity" does not include any activity for which there is any

19 charge which exceeds \$50 per year per participant;

20 "Owner includes, but is not limited to, a tenant, lessee, occupant, or person in control of the
21 premises;

22 "Recreational purposes" includes but is not limited to, any one or any combination of the
23 following noncommercial recreational activities: Hunting, fishing, swimming, boating, camping,
24 picnicking, hiking, rock climbing, bouldering, caving, rappelling, slacklining pleasure driving,
25 motorcycle or all-terrain vehicle riding, bicycling, mountain biking, horseback riding, spelunking,
26 nature study, water skiing, winter sports, and visiting, viewing, or enjoying historical,
27 archaeological, scenic, or scientific sites, aircraft or ultralight operations on private airstrips or
28 farms or otherwise using land for purposes of the user;

29 "Wildlife propagation purposes" applies to and includes all ponds, sediment control
30 structures, permanent water impoundments, or any other similar structure created in connection
31 with surface mining activities as governed by §22-3-1 *et seq.* of this code or from the use of surface
32 in the conduct of underground coal mining as governed by that article and any rules promulgated
33 because of the article, which ponds, structures, or impoundments are designated and certified in
34 writing by the director of the Division of Environmental Protection and the owner to be necessary
35 and vital to the growth and propagation of wildlife, animals, birds, fish, or other forms of aquatic life
36 and finds and determines that the premises have the potential of being actually used by the wildlife
37 for those purposes and that the premises are no longer used or necessary for mining reclamation
38 purposes. The certification shall be in form satisfactory to the director and shall provide that the
39 designated ponds, structures, or impoundments may not be removed without the joint consent of
40 the director and the owner; and

41 "Military, law enforcement, or homeland-defense training" includes, but is not limited to,
42 training, encampments, instruction, overflight by military aircraft, parachute drops of personnel or
43 equipment, or other use of land by a member of the Army National Guard or Air National Guard, a
44 member of a reserve unit of the armed forces of the United States, a person on active duty in the

45 armed forces of the United States, a state or federal law-enforcement officer, a federal agency or
46 service employee, a West Virginia military authority employee or a civilian contractor supporting
47 the military and/or government employees acting in that capacity.

NOTE: The purpose of this bill is to expand the definition of "recreational purposes" to include mountain biking activities as an activity for which the duty and liability of a landowner who grants a lease, easement or license of land to federal, state, county or municipal government or any agency thereof for such purposes is limited.

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