

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1993



ENROLLED

SENATE BILL NO. 576

(By Senator Alborton, et al)



PASSED April 8, 1993

In Effect 90 days from **Passage**

E N R O L L E D

Senate Bill No. 576

(BY SENATORS WOOTON, FELTON, PLYMALE, MINARD,
ANDERSON, DITTMAR AND YODER)

[Passed April 8, 1993; in effect ninety days from passage.]

AN ACT to amend and reenact sections one, three, five and six, article twenty-five, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article by adding thereto a new section, designated section seven, all relating to limiting the liability of landowners; permitting landowners to collect money for the annual use of land without incurring liability for other than willful or malicious failure to guard or warn against a dangerous or hazardous condition, use, structure or activity; defining terms; limiting the liability of landowners who allow their property to be used for military training purposes; and providing for certain insurance policy requirements.

Be it enacted by the Legislature of West Virginia:

That sections one, three, five and six, article twenty-five, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that said article be further amended by adding thereto a new section, designated section seven, all to read as follows:

ARTICLE 25. LIMITING LIABILITY OF LANDOWNERS.

§19-25-1. Purpose.

1 The purpose of this article is to encourage owners of
2 land to make available to the public land and water
3 areas for military training or recreational or wildlife
4 propagation purposes by limiting their liability toward
5 persons entering thereon and toward persons who
6 may be injured or otherwise damaged by the acts or
7 omissions of persons entering thereon.

**§19-25-3. Limiting duty of landowner who leases land to
state, counties, municipalities or agencies.**

1 Unless otherwise agreed in writing, an owner of
2 land leased to the state or any agency thereof, or any
3 county or municipality or agency thereof, for military
4 training or recreational or wildlife propagation pur-
5 poses owes no duty of care to keep that land safe for
6 entry or use by others or to give warning to persons
7 entering or going upon the land of any dangerous or
8 hazardous conditions, uses, structures or activities
9 thereon. An owner who leases land to the state or any
10 agency thereof, or any county or municipality or
11 agency thereof, for military training or recreational or
12 wildlife propagation purposes shall not by giving a
13 lease: (a) Extend any assurance to any person using
14 the land that the premises are safe for any purpose; or
15 (b) confer upon those persons the legal status of an
16 invitee or licensee to whom a duty of care is owed; or
17 (c) assume responsibility for or incur liability for any
18 injury to person or property caused by an act or
19 omission of a person who enters upon the leased land.
20 The provisions of this section apply whether the
21 person entering upon the leased land is an invitee,
22 licensee, trespasser or otherwise.

§19-25-5. Definitions.

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

3 (1) "Charge" means:

4 (A) For purposes of limiting liability for recreational

5 or wildlife propagation purposes set forth in section
6 two of this article, the amount of money asked in
7 return for an invitation to enter or go upon the land
8 including a one time fee for a particular event,
9 amusement, occurrence, adventure, incident, experi-
10 ence or occasion but not including an amount of
11 money not to exceed fifty dollars a year for an
12 individual for the annual use of land;

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

17 (2) "Land" includes, but shall not be limited to,
18 roads, water, watercourses, private ways and build-
19 ings, structures and machinery or equipment thereon
20 when attached to the realty;

21 (3) "Owner" includes, but shall not be limited to,
22 tenant, lessee, occupant or person in control of the
23 premises;

24 (4) "Recreational purposes" includes, but shall not
25 be limited to, any one or any combination of the
26 following noncommercial recreational purposes: Hunt-
27 ing, fishing, swimming, boating, camping, picnicking,
28 hiking, pleasure driving, motorcycle or all-terrain
29 vehicle riding, nature study, water skiing, winter
30 sports and visiting, viewing or enjoying historical,
31 archaeological, scenic or scientific sites, or otherwise
32 using land for purposes of the user;

33 (5) "Wildlife propagation purposes" applies to and
34 includes all ponds, sediment control structures, per-
35 manent water impoundments or any other similar or
36 like structure created or constructed as a result of or
37 in connection with surface mining activities, as gov-
38 erned by article three, chapter twenty-two-a of this
39 code, or from the use of surface in the conduct of
40 underground coal mining as governed by articles one,
41 two and three of said chapter, and rules promulgated
42 thereunder, which ponds, structures or impoundments
43 are hereafter designated and certified in writing by
44 the director of the department of natural resources

45 and the owner to be necessary and vital to the growth
46 and propagation of wildlife, animals, birds and fish or
47 other forms of aquatic life, and finds and determines
48 that the premises has the potential of being actually
49 used by the wildlife for those purposes and that the
50 premises are no longer used or necessary for mining
51 reclamation purposes. The certification shall be in
52 form satisfactory to the director and shall provide that
53 the designated ponds, structures or impoundments
54 shall not be removed without the joint consent of the
55 director and the owner; and

56 (6) "Military training" includes, but is not limited to,
57 training, encampments, instruction, overflight by
58 military aircraft, parachute drops of personnel or
59 equipment or other use of land by a member of the
60 army national guard or air national guard, a member
61 of a reserve unit of the armed forces of the United
62 States or a person on active duty in the armed forces
63 of the United States, acting in that capacity.

**§19-25-6. Limiting duty of landowner for use of land for
military purposes.**

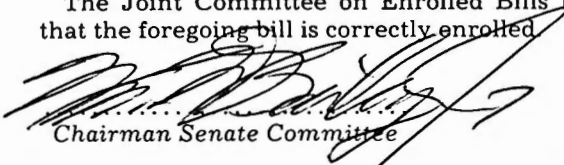
1 Notwithstanding the provisions of section four of this
2 article to the contrary, an owner of land owes no duty
3 of care to keep the premises safe for entry or use by
4 others for military training purposes, regardless of
5 whether any charge is made therefore, or to give any
6 warning of a dangerous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

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

§19-25-7. Insurance policies.

1 Any policy or contract of liability insurance provid-
2 ing coverage for liability sold, issued or delivered in
3 this state to any owner of lands covered under the
4 provisions of this article shall be read so as to contain
5 a provision or endorsement whereby the company
6 issuing such policy waives or agrees not to assert as a
7 defense on behalf of the policyholder or any benefi-
8 ciary thereof, to any claim covered by the terms of
9 such policy within the policy limits, the immunity
10 from liability of the insured by reason of the use of
11 such insured's land for recreational, wildlife propaga-
12 tion or military purposes, unless such provision or
13 endorsement is rejected in writing by the named
14 insured.

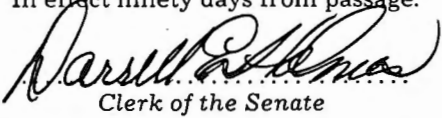
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled

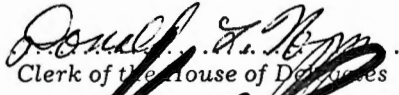

Chairman Senate Committee

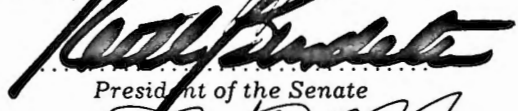
Ernest C. Moore
Chairman House Committee

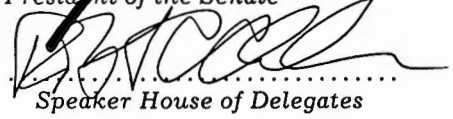
Originated in the Senate.

In effect ninety days from passage.


Clerk of the Senate


Clerk of the House of Delegates


President of the Senate


Speaker House of Delegates

The within is approved this the 19th day of April, 1993.


Governor

PRESENTED TO THE

GOVERNOR

Date 4/16/93

Time 9:35 am