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WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1994



ENROLLED

Committee Substitute for
SENATE BILL NO. 426

(By Senator Plymale)



PASSED March 12, 1994

In Effect 90 days from Passage

E N R O L L E D
COMMITTEE SUBSTITUTE
FOR
Senate Bill No. 426

(SENATOR PLYMALE, *original sponsor*)

[Passed March 12, 1994; in effect ninety days from passage.]

AN ACT to amend and reenact sections three, four and five, article twenty-five, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to limiting the liability of landowners who make their land available to the public; extending the limitation to the granting of easements and licenses on land; extending the limitation to the granting of leases, easements or licenses to federal entities; changing the definitions of "charge" and "recreational purposes"; and adding the definition of "noncommercial recreational activity".

Be it enacted by the Legislature of West Virginia:

That sections three, four and five, article twenty-five,

chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 25. LIMITING LIABILITY OF LANDOWNERS.

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

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

§19-25-4. Application of article.

1 Nothing herein limits in any way any liability which
2 otherwise exists: (a) For willful or malicious failure to
3 guard or warn against a dangerous or hazardous

4 condition, use, structure or activity; or (b) for injury
5 suffered in any case where the owner of land charges the
6 person or persons who enter or go on the land other than
7 the amount, if any, paid to the owner of the land by the
8 federal government or any agency thereof, the state or
9 any agency thereof, or any county or municipality or
10 agency thereof.

11 Nothing herein creates a duty of care or ground of
12 liability for injury to person or property.

13 Nothing herein limits in any way the obligation of a
14 person entering upon or using the land of another for
15 recreational or wildlife propagation purposes to exercise
16 due care in his or her use of such land and in his or her
17 activities thereon.

§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 two
6 of this article, the amount of money asked in return for
7 an invitation to enter or go upon the land, including a
8 one-time fee for a particular event, amusement,
9 occurrence, adventure, incident, experience or occasion
10 which may not exceed fifty dollars a year per recre-
11 ational participant;

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

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

20 (3) "Noncommercial recreational activity" shall not

21 include any activity for which there is any charge which
22 exceeds \$50.00 per year, per participant;

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

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

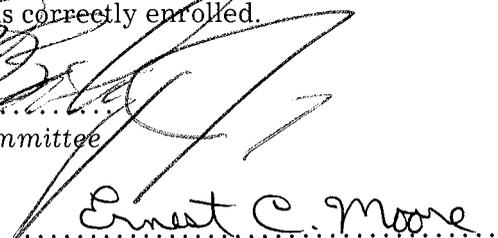
35 (6) "Wildlife propagation purposes" applies to and
36 includes all ponds, sediment control structures,
37 permanent water impoundments or any other similar or
38 like structure created or constructed as a result of or in
39 connection with surface mining activities, as governed
40 by article three, chapter twenty-two-a of this code, or
41 from the use of surface in the conduct of underground
42 coal mining as governed by articles one, two and three
43 of said chapter, and rules promulgated thereunder,
44 which ponds, structures or impoundments are hereafter
45 designated and certified in writing by the director of the
46 division of natural resources and the owner to be
47 necessary and vital to the growth and propagation of
48 wildlife, animals, birds and fish or other forms of
49 aquatic life, and finds and determines that the premises
50 has the potential of being actually used by the wildlife
51 for those purposes and that the premises are no longer
52 used or necessary for mining reclamation purposes. The
53 certification shall be in form satisfactory to the director
54 and shall provide that the designated ponds, structures
55 or impoundments shall not be removed without the joint
56 consent of the director and the owner; and

57 (7) "Military training" includes, but is not limited to,

58 training, encampments, instruction, overflight by
59 military aircraft, parachute drops of personnel or
60 equipment or other use of land by a member of the army
61 national guard or air national guard, a member of a
62 reserve unit of the armed forces of the United States or
63 a person on active duty in the armed forces of the
64 United States, acting in that capacity.

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

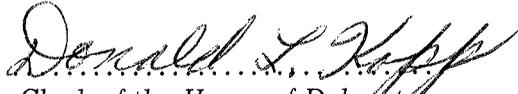

.....
Chairman Senate Committee

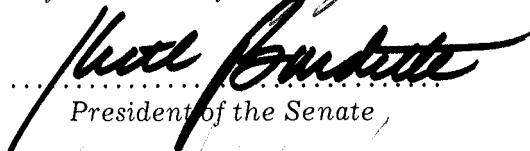

..... Ernest C. Moore
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage


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Clerk of the Senate


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Clerk of the House of Delegates


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President of the Senate


.....
Speaker House of Delegates

The within is approved this the 30th day of March, 1994.


.....
Governor

PRESENTED TO THE

GOVERNOR

Date

3/28/93

Time

11:40am