



1 wildlife propagation purposes by limiting their liability for  
2 injury to persons entering thereon and for injury to the property  
3 of persons entering thereon and limiting their liability to persons  
4 who may be injured or otherwise damaged by the acts or omissions of  
5 persons entering thereon.

6 **§19-25-3. Limiting duty of landowner who grants a lease, easement  
7 or license of land to federal, state, county or  
8 municipal government or any agency thereof.**

9 Unless otherwise agreed in writing, an owner who grants a  
10 lease, easement or license of land to the federal government or any  
11 agency thereof, or the state or any agency thereof, or any county  
12 or municipality or agency thereof, for military, law-enforcement or  
13 homeland-defense training or recreational or wildlife propagation  
14 purposes owes no duty of care to keep that land safe for entry or  
15 use by others or to give warning to persons entering or going upon  
16 the land of any dangerous or hazardous conditions, uses, structures  
17 or activities thereon. An owner who grants a lease, easement or  
18 license of land to the federal government or any agency thereof, or  
19 the state or any agency thereof, or any county or municipality or  
20 agency thereof, for military, law-enforcement or homeland-defense  
21 training or recreational or wildlife propagation purposes does not  
22 by giving a lease, easement or license: (a) Extend any assurance  
23 to any person using the land that the premises are safe for any  
24 purpose; or (b) confer upon those persons the legal status of an

1 invitee or licensee to whom a duty of care is owed; or (c) assume  
2 responsibility for or incur liability for any injury to person or  
3 property caused by an act or omission of a person who enters upon  
4 the leased land. The provisions of this section apply whether the  
5 person entering upon the leased land is an invitee, licensee,  
6 trespasser or otherwise.

7 **§19-25-5. Definitions.**

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

10 (1) "Charge" means:

11 (A) For purposes of limiting liability for recreational or  
12 wildlife propagation purposes set forth in section two of this  
13 article, the amount of money asked in return for an invitation to  
14 enter or go upon the land, including a one-time fee for a  
15 particular event, amusement, occurrence, adventure, incident,  
16 experience or occasion which may not exceed \$50 a year per  
17 recreational participant: *Provided*, That the monetary cap on  
18 charges imposed pursuant to this article does not apply to the  
19 provisions of article fourteen, chapter twenty of this code  
20 pertaining to the Hatfield-McCoy regional recreational authority or  
21 activities sponsored on the Hatfield-McCoy recreation area;

22 (B) For purposes of limiting liability for military, law-  
23 enforcement or homeland-defense training set forth in section six  
24 of this article, the amount of money asked in return for an

1 invitation to enter or go upon the land;

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

5       (3) "Noncommercial recreational activity" shall not include  
6 any activity for which there is any charge which exceeds \$50 per  
7 year per participant;

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

10       (5) "Recreational purposes" includes, but shall not be limited  
11 to, any one or any combination of the following noncommercial  
12 recreational activities: Hunting, fishing, swimming, boating,  
13 camping, picnicking, hiking, pleasure driving, motorcycle or all-  
14 terrain vehicle riding, bicycling, horseback riding, nature study,  
15 water skiing, winter sports and visiting, viewing or enjoying  
16 historical, archaeological, scenic or scientific sites or otherwise  
17 using land for purposes of the user;

18       (6) "Wildlife propagation purposes" applies to and includes  
19 all ponds, sediment control structures, permanent water  
20 impoundments or any other similar or like structure created or  
21 constructed as a result of or in connection with surface mining  
22 activities as governed by article three, chapter twenty-two of this  
23 code or from the use of surface in the conduct of underground coal  
24 mining as governed by said article and rules promulgated

1 thereunder, which ponds, structures or impoundments are hereafter  
2 designated and certified in writing by the Director of the Division  
3 of Environmental Protection and the owner to be necessary and vital  
4 to the growth and propagation of wildlife, animals, birds and fish  
5 or other forms of aquatic life and finds and determines that the  
6 premises have the potential of being actually used by the wildlife  
7 for those purposes and that the premises are no longer used or  
8 necessary for mining reclamation purposes. The certification shall  
9 be in form satisfactory to the director and shall provide that the  
10 designated ponds, structures or impoundments shall not be removed  
11 without the joint consent of the director and the owner; and

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

23 **§19-25-6. Limiting duty of landowner for use of land for military,**  
24 **law enforcement or homeland security purposes.**

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

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

18 **§19-25-7. Insurance policies.**

19           Any policy or contract of liability insurance providing  
20 coverage for liability sold, issued or delivered in this state to  
21 any owner of lands covered under the provisions of this article  
22 shall be read so as to contain a provision or endorsement whereby  
23 the company issuing such policy waives or agrees not to assert as  
24 a defense on behalf of the policyholder or any beneficiary thereof,

1 to any claim covered by the terms of such policy within the policy  
2 limits, the immunity from liability of the insured by reason of the  
3 use of such insured's land for recreational, wildlife propagation  
4 or military, law enforcement or homeland defense purposes, unless  
5 such provision or endorsement is rejected in writing by the named  
6 insured.

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(NOTE: The purpose of this bill is to limit the liability of landowners who make land available for military, law enforcement or homeland defense training.

Strike-throughs indicate language that would be stricken from the present law, and underscoring indicates new language that would be added.)