

FILED

2015 FEB 18 P 4: 34

OFFICE WEST VIRGINIA  
SECRETARY OF STATE

**WEST VIRGINIA LEGISLATURE**  
FIRST REGULAR SESSION, 2015

HB 2138



**ENROLLED**

**House Bill No. 2138**

(By Delegate(s) Folk, Gearheart, Householder,  
Howell, J. Nelson, Ireland, Faircloth, Williams,  
Lynch, Shott and McGeehan)



Passed February 11, 2015

In effect ninety days from passage.

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**E N R O L L E D**

**H. B. 2138**

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(BY DELEGATE(S) FOLK, GEARHEART, HOUSEHOLDER,  
HOWELL, J. NELSON, IRELAND, FAIRCLOTH, WILLIAMS,  
LYNCH, SHOTT AND MCGEEHAN)

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AN ACT to amend and reenact §19-25-5 of the Code of West Virginia, 1931, as amended, relating to adding aircraft operations on private airstrips and farms to the definition of “recreational purpose” for the purpose of limiting the liability of landowners.

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

That §19-25-5 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

**ARTICLE 25. LIMITING LIABILITY OF LANDOWNERS.**

**§19-25-5. Definitions.**

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

3       “Charge” means:

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

15       (B) For purposes of limiting liability for military,  
16 law-enforcement or homeland-defense training set forth in  
17 section six of this article, the amount of money asked in return  
18 for an invitation to enter or go upon the land;

19       “Land” includes, but is not limited to, roads, water,  
20 watercourses, private ways and buildings, structures and  
21 machinery or equipment when attached to the realty;

22       “Noncommercial recreational activity” does not include any  
23 activity for which there is any charge which exceeds \$50 per  
24 year per participant;

25       “Owner” includes, but is not limited to, tenant, lessee,  
26 occupant or person in control of the premises;

27       “Recreational purposes” includes, but is not limited to, any  
28 one or any combination of the following noncommercial  
29 recreational activities: hunting, fishing, swimming, boating,  
30 camping, picnicking, hiking, pleasure driving, motorcycle or  
31 all-terrain vehicle riding, bicycling, horseback riding,  
32 spelunking, nature study, water skiing, winter sports and visiting,

33 viewing or enjoying historical, archaeological, scenic or  
34 scientific sites, aircraft or ultralight operations on private  
35 airstrips or farms or otherwise using land for purposes of the  
36 user;

37 “Wildlife propagation purposes” applies to and includes all  
38 ponds, sediment control structures, permanent water  
39 impoundments or any other similar structure created in  
40 connection with surface mining activities as governed by article  
41 three, chapter twenty-two of this code or from the use of surface  
42 in the conduct of underground coal mining as governed by that  
43 article and any rules promulgated because of the article, which  
44 ponds, structures or impoundments are designated and certified  
45 in writing by the Director of the Division of Environmental  
46 Protection and the owner to be necessary and vital to the growth  
47 and propagation of wildlife, animals, birds and fish or other  
48 forms of aquatic life and finds and determines that the premises  
49 have the potential of being actually used by the wildlife for those  
50 purposes and that the premises are no longer used or necessary  
51 for mining reclamation purposes. The certification shall be in  
52 form satisfactory to the director and shall provide that the  
53 designated ponds, structures or impoundments may not be  
54 removed without the joint consent of the director and the owner;  
55 and

56 “Military, law-enforcement or homeland-defense training”  
57 includes, but is not limited to, training, encampments,  
58 instruction, overflight by military aircraft, parachute drops of  
59 personnel or equipment or other use of land by a member of the  
60 Army National Guard or Air National Guard, a member of a  
61 reserve unit of the armed forces of the United States, a person on  
62 active duty in the armed forces of the United States, a state or  
63 federal law-enforcement officer, a federal agency or service  
64 employee, a West Virginia military authority employee or a  
65 civilian contractor supporting the military and/or government  
66 employees acting in that capacity.

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

Steve Westfall  
Vice Chairman, House Committee

Mark R. Raymond  
Chairman, Senate Committee

Originating in the House.

In effect ninety days from passage.

Steve J. Adams

Clark Starnes  
Clerk of the Senate

Paul P. Pate  
Speaker of the House of Delegates

Mill P. Pate  
President of the Senate

The within is approved this the 15th  
day of February, 2015.

Earl Ray Tomblin  
Governor

PRESENTED TO THE GOVERNOR

Feb 17 2015

Time 3:45