WEST virginia legislature

2021 regular session

Introduced

Senate Bill 298

By Senators Maynard, Swope, and Karnes

[Introduced February 16, 2021; referred  
to the Committee on the Judiciary]

A BILL to amend and reenact §19-25-2, §19-25-3, §19-25-4, §19-25-5, and §19-25-6 of the Code of West Virginia, 1931, as amended, all relating generally to limiting landowner liability for injuries to, or caused by, persons entering or going upon land for noncommercial recreational purposes, wildlife propagation purposes, military training purposes, law-enforcement training purposes, or homeland defense training purposes; clarifying that limitation on liability and duty to warn applies only to landowner permitting the general public to enter or go upon such land for recreational or wildlife propagation purposes; providing that a landowner is not liable for, and has no duty to warn of, dangerous or hazardous wild animals on the land; deleting obsolete language providing that a landowner does not confer invitee or licensee status on persons invited or permitted upon land; substituting the term “fee” for the term “charge”; defining the term “fee”; providing that for the purposes of limiting landowner liability, a fee does not include a fee for an annual event or occurrence, if the total of such fees in a year does not exceed $25 per individual; providing that for the purposes of limiting landowner liability, a fee does not include voluntary donations to certain charitable entities; amending the term “land” to include premises; amending the definition of the term “owner of land” to specifically include any person holding legal possession, ownership, or partial ownership of an interest in land or a person sponsoring land or premises for volunteer improvement or maintenance purposes; amending the definition of the term “recreational purposes” to specifically include parking on or traversing land to engage in recreational activities and maintaining, or making improvements to, land for the purpose of making recreational activities accessible; naming the activities of rock climbing, bouldering, and kayaking as being activities within the definition of “recreational purposes”; and making numerous technical corrections.

Be it enacted by the Legislature of West Virginia:

ARTICLE 25. LIMITING LIABILITY OF LANDOWNERS.

§19-25-2. Limiting duty of landowner generally.

(a) Subject to the provisions of §19-25-4 of this code, an owner of land owes no duty of care to keep ~~the premises~~ the land safe for entry or use by ~~others~~ the general public for recreational or wildlife propagation purposes, or to give any warning of a dangerous or hazardous condition, use, structure, wild animal, or activity ~~on such premises~~ thereon to ~~persons~~ members of the public entering or going upon the land for such purposes.

(b) Subject to the provisions of §19-25-4 of this code, an owner of land who, without charging a fee, either directly or indirectly invites or permits ~~without charge as that term is defined in section five of this article any person to~~ ~~use such property~~ members of the general public to enter or go upon the land for recreational or wildlife propagation purposes does not thereby ~~(a)~~ extend any assurance that ~~the premises are~~ the land is safe for any purpose or ~~(b)~~ ~~confer upon such persons the legal status of an invitee or licensee to whom a duty of care is owed; or (c)~~ assume responsibility ~~for~~ or incur liability for any injury to person or property caused by an act or omission of such ~~persons~~ members of the public.

§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.

(a) Unless otherwise agreed in writing, an owner of land who grants a lease, easement, or license of land to the federal, state, or local government or any agency thereof, ~~or~~ ~~the state or any agency thereof, or any county or municipality or agency thereof,~~ for military training purposes, law-enforcement training purposes, ~~or~~ homeland defense training purposes, ~~or~~ recreational purposes, or wildlife propagation purposes owes no duty of care to keep that land safe for entry or use by others for such purposes, or to give warning to persons entering or going upon the land for such purposes of any dangerous or hazardous conditions, uses, structures, ~~or~~ activities, or wild animals thereon.

(b) An owner of land ~~who grants~~ does not, by granting a lease, easement, or license ~~of land to the federal government or any agency thereof, or the state or any agency thereof, or any county or municipality or agency thereof for military, law-enforcement or homeland-defense training, or recreational or wildlife propagation purposes~~ ~~does not by giving a lease, easement, or license (a)~~ described in subsection (a) of this section, extend any assurance to any person using the land that the ~~premises are~~ land is safe for any purpose; ~~or (b) confer upon those persons the legal status of an invitee or licensee to whom a duty of care is owed~~ or ~~(c)~~ assume responsibility ~~for~~ or incur liability for any injury to person or property caused by an act or omission of a person who enters upon the ~~leased~~ land. The provisions of this section apply whether the person entering upon the leased land is ~~an invitee, licensee~~ a trespasser or otherwise.

§19-25-4. Application of article.

(a) Nothing ~~herein~~ in this article limits ~~in any way any~~ liability which otherwise exists:

~~(a)~~ (1) For deliberate, willful, or malicious infliction of injury to persons or property; or

~~(b)~~ (2) For injury suffered in any case where the owner of land charges a fee in exchange for the person or persons ~~who~~ to enter or go ~~on~~ upon the land other than the amount, if any, paid to the owner of the land by the federal, state, or local government or any agency thereof. ~~the state or any agency thereof, or any county or municipality or agency thereof.~~

(b) Nothing ~~herein~~ in this article creates a duty of care or ~~ground of~~ grounds for liability for injury to person or property.

(c) Nothing ~~herein~~ in this article limits in any way the obligation of a person entering or going upon ~~or using~~ the land of another for recreational or wildlife propagation purposes to exercise due care in his or her use of ~~such~~ the land ~~and in his or her~~ or activities thereon.

(d) The amendments to this article made during the regular session of the Legislature, 2021, removing all provisions related to the absence of invitee or licensee status of persons entering or going upon land, are intended to remove provisions made obsolete by the holding of the West Virginia Supreme Court of Appeals in *Mallet v. Pickens*, 206 W.Va. 145, 522 S.E.2d 436 (1999) and do not create any new duty of care or grounds for liability.

§19-25-5. Definitions.

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

~~“Charge”~~ “Fee” means ~~(A) For purposes of limiting liability for recreational or wildlife propagation purposes set forth in §19-25-2 of this code,~~ the amount of money asked in return for an invitation to enter or go upon ~~the~~ land: ~~including a one-time fee for a particular event, amusement, occurrence, adventure, incident, experience, or occasion which may not exceed $50 a year per recreational participant:~~ *~~Provided,~~* ~~That the monetary cap on charges imposed pursuant to this article does not apply to the provisions of~~ *Provided*, That the term does not include:

(A) A fee for participation in an annual event or occurrence on the land: *Provided*, however, That a landowner does not charge a total of more than $25 per individual permitted to enter or go upon the land during a calendar year;

(B) The fees charged pursuant to §20-14-1 *et seq.* of this code pertaining to the Hatfield-McCoy Regional Recreation Authority or activities sponsored on the Hatfield-McCoy Recreation Area; or

(C) Any voluntary donation to an organization holding charitable organization status under Section 501(c)(3) of the Internal Revenue Code for the purpose of maintaining, improving, or promoting access to the land at issue.

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

“Land” includes, but is not limited to, roads, water, watercourses, private ways, ~~and~~ buildings, premises, structures, and machinery or equipment, when attached to the realty.

“Noncommercial recreational activity” does not include any activity for which ~~there is any charge which exceeds $50 per year per participant~~ a fee is charged.

“Owner of land” means any person holding legal possession, ownership, or partial ownership of an interest in land and includes, but is not limited to, a tenant, lessee, occupant, ~~or~~ person in control of the ~~premises~~ land, or a person sponsoring land for volunteer improvement or maintenance purposes.

“Recreational purposes” ~~includes~~ means:

(A) Any noncommercial recreational activity undertaken outdoors, or practice or instruction in any such activity, for the purpose of exercise, relaxation, or pleasure, including, but ~~is~~ not limited to, any one or any combination of the following noncommercial recreational activities: Hunting, fishing, swimming, boating, kayaking, camping, picnicking, hiking, rock climbing, bouldering, pleasure driving, motorcycle or all-terrain vehicle riding, bicycling, horseback riding, spelunking, nature study, water skiing, winter sports, and visiting, viewing, or enjoying historical, archaeological, scenic, or scientific sites, or aircraft or ultralight operations on private airstrips or farms; ~~or otherwise using land for purposes of the user~~

(B) Parking on or traversing land for the purpose of engaging in a recreational activity described in paragraph (A) of this subdivision; or

(C) Maintaining, or making improvements to, land for the purpose of making such land accessible or usable for a recreational activity described in paragraph (A) of this subdivision.

“Training purposes”, as that term describes military, law-enforcement, and homeland defense activities, includes, but is not limited to, training, encampments, instruction, overflight by military aircraft, parachute drops of personnel or equipment, or other use of land by a member of the Army National Guard or Air National Guard, a member of a reserve unit of the armed forces of the United States, a person on active duty in the armed forces of the United States, a state or federal law-enforcement officer, a federal agency or service employee, a West Virginia Military Authority employee, or a civilian contractor supporting the military or government employees acting in that capacity.

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

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

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

(a) Notwithstanding the provisions of §19-25-4 of this code to the contrary, an owner of land owes no duty of care to keep ~~the premises~~ the land safe for entry or use by others for military training purposes, law-enforcement training purposes, or homeland defense training purposes, regardless of whether any ~~charge is made~~ fee is charged therefor, or to give any warning of a dangerous or hazardous condition, use, structure, wild animal, or activity ~~on the premises~~ thereon to persons entering for those purposes.

(b) Notwithstanding the provisions of §19-25-4 of this code to the contrary, an owner of land who either directly or indirectly invites or permits, either with or without ~~charge~~ charging a fee, any person to use the property for military training purposes, law-enforcement training purposes, or homeland defense training purposes does not thereby ~~(a)~~ extend any assurance that the ~~premises are~~ land is safe for any purpose ~~(b) confer upon those persons the legal status of an invitee or licensee to whom a duty of care is owed;~~ or ~~(c)~~ assume responsibility ~~for~~ or incur liability for any injury to person or property caused by an act or omission of ~~those persons~~ the person.

NOTE: The purpose of this bill is to encourage landowners to make land available for recreational purposes by limiting landowner liability.

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