

WEST VIRGINIA LEGISLATURE

2023 REGULAR SESSION

Introduced

Senate Bill 229

By Senators Maynard, Karnes, and Rucker

[Introduced January 16, 2023; referred
to the Committee on the Judiciary]

1 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
2 of West Virginia, 1931, as amended, all relating to limiting landowner liability for injuries to,
3 or caused by, persons entering or going upon land for noncommercial recreational
4 purposes, wildlife propagation purposes, military training purposes, law-enforcement
5 training purposes, or homeland defense training purposes; clarifying that limitation on
6 liability and duty to warn applies only to landowner permitting the general public to enter or
7 go upon such land for recreational or wildlife propagation purposes; providing that a
8 landowner is not liable for, and has no duty to warn of, dangerous or hazardous wild
9 animals on the land; deleting obsolete language providing that a landowner does not
10 confer invitee or licensee status on persons invited or permitted upon land; substituting the
11 term "fee" for the term "charge"; defining the term "fee"; providing that for the purposes of
12 limiting landowner liability, a fee does not include a fee for an annual event or occurrence, if
13 the total of such fees in a year does not exceed \$25 per individual; providing that for the
14 purposes of limiting landowner liability, a fee does not include voluntary donations to
15 certain charitable entities; amending the term "land" to include premises; amending the
16 definition of the term "owner of land" to specifically include any person holding legal
17 possession, ownership, or partial ownership of an interest in land or a person sponsoring
18 land or premises for volunteer improvement or maintenance purposes; amending the
19 definition of the term "recreational purposes" to specifically include parking on or traversing
20 land to engage in recreational activities and maintaining, or making improvements to, land
21 for the purpose of making recreational activities accessible; naming the activities of rock
22 climbing, bouldering, and kayaking as being activities within the definition of "recreational
23 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.

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

5 (b) Subject to the provisions of §19-25-4 of this code, an owner of land who, either directly
6 or indirectly invites or permits without charge as that term is defined in §19-25-5 of this code any
7 person to use such property for recreational or wildlife propagation purposes does not thereby: (a)
8 ~~extend any assurance that the premises are safe for any purpose or (b) confer upon such persons~~
9 ~~the legal status of an invitee or licensee to whom a duty of care is owed; or (c) assume~~
10 ~~responsibility for or incur liability for any injury to person or property caused by an act or omission~~
11 ~~of such persons~~

12 (1) Extend any assurance that the premises are safe for any purpose;

13 (2) Confer upon those persons the legal status of an invitee or licensee to whom a duty of
14 care is owed; or

15 (3) Assume responsibility for or incur liability for any injury to person or property caused by
16 an act or omission of those persons.

17 (c) Subject to the provisions of §19-25-4 of this code, an owner of land who invites or
18 permits without charge, as that term is defined in §19-25-5 of this code, any person to enter onto
19 an owner's land for the purpose of utilizing the owner's land for any agricultural purpose does not
20 thereby:

21 (1) Extend any assurance that the premises are safe for any purpose;

22 (2) Confer upon those persons the legal status of an invitee or licensee to whom a duty of
23 care is owed; or

24 (3) Assume responsibility for or incur liability for any injury to person or property caused by
25 an act or omission of those persons.

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

9 (b) An owner of land who grants does not, by granting a lease, easement, or license ~~of land~~
10 ~~to the federal government or any agency thereof, or the state or any agency thereof, or any county~~
11 ~~or municipality or agency thereof for military, law enforcement or homeland defense training, or~~
12 ~~recreational or wildlife propagation purposes~~ does not by giving a lease, easement, or license ~~(a)~~
13 described in subsection (a) of this section, extend any assurance to any person using the land that
14 ~~the premises are~~ land is safe for any purpose; ~~or (b) confer upon those persons the legal status of~~
15 ~~an invitee or licensee to whom a duty 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 omission of a person who enters
17 upon the ~~leased~~ land. The provisions of this section apply whether the person entering upon the
18 leased land is an ~~invitee, licensee~~ a trespasser or otherwise.

§19-25-4. Application of article.

1 (a) Nothing ~~herein in this article~~ limits in any way any liability which otherwise exists:
2 (a) (1) For deliberate, willful, or malicious infliction of injury to persons or property; or
3 (b) (2) For injury suffered in any case where the owner of land charges a fee in exchange
4 for the person or persons ~~who to~~ enter or go ~~on~~ upon the land other than the amount, if any, paid to
5 the owner of the land by the federal, state, or local government or any agency thereof. ~~the state or~~
6 any agency thereof, or any county or municipality or agency thereof

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

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

12 (d) The amendments to this article made during the regular session of the Legislature,
13 2023, removing all provisions related to the absence of invitee or licensee status of persons
14 entering or going upon land, are intended to remove provisions made obsolete by the holding of
15 the West Virginia Supreme Court of Appeals in *Mallet v. Pickens*, 206 W.Va. 145, 522 S.E.2d 436
16 (1999) and do not create any new duty of care or grounds for liability.

§19-25-5. Definitions.

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

2 "Agricultural purposes" means the raising, cultivation, drying, harvesting, marketing,
3 production, or storage of agricultural products, including both crops and livestock, for sale or use in
4 agriculture or agricultural production, or the storage of machinery or equipment used in support of
5 agricultural production;

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

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

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

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

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

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

26 "Noncommercial recreational activity" does not include any activity for which ~~there is any~~
27 ~~charge which exceeds \$50 per year per participant~~ a fee is charged.

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

32 "Recreational purposes" ~~includes~~ means:

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

41 (B) Parking on or traversing land for the purpose of engaging in a recreational activity

42 described in paragraph (A) of this subdivision; or

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

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

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

65 ~~"Military, law enforcement, or homeland defense training" includes, but is not limited to,~~
66 ~~training, encampments, instruction, overflight by military aircraft, parachute drops of personnel or~~
67 ~~equipment, or other use of land by a member of the Army National Guard or Air National Guard, a~~
68 ~~member of a reserve unit of the armed forces of the United States, a person on active duty in the~~

69 ~~armed forces of the United States, a state or federal law enforcement officer, a federal agency or~~
 70 ~~service employee, a West Virginia military authority employee or a civilian contractor supporting~~
 71 ~~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.**

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

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