

WEST VIRGINIA LEGISLATURE

2024 REGULAR SESSION

Committee Substitute

for

Senate Bill 577

BY SENATORS MAYNARD, KARNES, AND WOODRUM

[Originating in the Committee on the Judiciary;

reported February 7, 2024]

1 A BILL to amend and reenact §19-25-3, §19-25-4, §19-25-5, and §19-25-6 of the Code of West
2 Virginia, 1931, as amended, all relating generally to limiting landowner liability for injuries
3 to, 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 statutory language in
6 light of *Mallet v. Pickens*, 206 W.Va. 145, 522 S.E.2d 436 (1999); defining terms, and
7 making numerous technical corrections.

Be it enacted by the Legislature of West Virginia:

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~~ local government, or any agency thereof.**

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

9 (b) An owner of land ~~who grants~~ does not, by granting a lease, easement, or license of
10 ~~land to the federal government or any agency thereof, or the state or any agency thereof, or any~~
11 ~~county or municipality or agency thereof for military, law-enforcement or homeland defense~~
12 ~~training, or recreational or wildlife propagation purposes does not by giving a lease, easement, or~~
13 ~~license (a) described in subsection (a) of this section, extend any assurance to any person using~~
14 ~~the land that the premises are land is safe for any purpose; or (b) confer upon these persons the~~
15 ~~legal status of an invitee or licensee to whom a duty of care is owed or (c) assume responsibility,~~

16 ~~for~~ or incur liability for any injury to persons or property caused by an act or omission of a person
17 who enters upon the ~~leased~~ land. ~~The provisions of this section apply whether the person entering~~
18 ~~upon the leased land is an invitee, licensee trespasser or otherwise.~~

§19-25-4. Application of article.

1 ~~(a)~~ (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
5 to the owner of the land by the federal, state, or local government, or any agency thereof. ~~the~~
6 ~~state or 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 persons 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~~ on the
12 land.

13 (d) The amendments to this article codify Syllabus Point 4 of *Mallet v. Pickens*, 206 W.Va.
14 145, 522 S.E.2d 436 (1999) by removing the distinction of licensees and invitees who enter upon
15 land.

§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
4 in agriculture or agricultural production, or the storage of machinery or equipment used in support
5 of 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) Payment for participation in an annual event or occurrence on the land: *Provided,*
13 *however, That a landowner does not charge a total of more than \$25 per individual permitted to*
14 *enter or go upon the land during a calendar year;*

15 (B) Payments made or funds owed pursuant to §20-14-1 et seq. of this code pertaining to
16 the Hatfield-McCoy Regional Recreation Authority or activities sponsored on the Hatfield-McCoy
17 regional recreational authority Recreation Area; or

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

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

24 "Land" includes, but is not limited to, roads, water, watercourses, rocks, boulders, caves,
25 private ways, and buildings, 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.~~

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.

31 "Recreational purposes" ~~includes~~ means:

32 (A) Any noncommercial recreational activity undertaken outdoors, or practice or instruction
33 in any such activity, for the purpose of exercise, relaxation, or pleasure, including, but is not limited
34 to, any one or any combination of the following noncommercial recreational activities: Hunting,
35 fishing, swimming, boating, kayaking, camping, picnicking, hiking, rock climbing, bouldering,
36 caving, rappelling, slacklining, pleasure driving, motorcycle or all-terrain vehicle riding, bicycling,
37 horseback riding, spelunking, nature study, water skiing, winter sports, motorsports, and visiting,
38 viewing, or enjoying historical, archaeological, scenic, or scientific sites, or aircraft or ultralight
39 operations on private airstrips or farms; ~~or otherwise using land for purposes of the user~~ provided
40 that no fee is charged.

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 improving land for the purpose of making such land accessible or usable
44 for recreational purposes.

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
49 of 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
56 surface in the conduct of underground coal mining as governed by that article and any rules
57 promulgated because of the article, which ponds, structures, or impoundments are designated

58 and certified in writing by the director of the Division of Environmental Protection and the owner
59 to be necessary and vital to the growth and propagation of wildlife, animals, birds, and fish, or
60 other forms of aquatic life, and finds and determines that the premises have the potential of being
61 actually used by the wildlife for those purposes, and that the premises are no longer used or
62 necessary for mining reclamation purposes. The certification shall be in a form satisfactory to the
63 director and shall provide that the designated ponds, structures, or impoundments may not be
64 removed without the 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,~~
68 ~~a member of a reserve unit of the armed forces of the United States, a person on active duty in~~
69 ~~the armed forces of the United States, a state or federal law enforcement officer, a federal agency~~
70 ~~or 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, unless
2 otherwise agreed in writing, an owner of land owes no duty of care to keep ~~the premises~~ the land
3 safe for entry or use by others for military training purposes, law-enforcement training purposes,
4 or homeland defense training purposes, regardless of whether any ~~charge is made~~ fee is charged
5 therefor, or to give any warning of a dangerous or hazardous condition, use, structure, wild animal,
6 domesticated animal and livestock, or activity on the premises to persons entering for those
7 purposes.

8 (b) Notwithstanding the provisions of §19-25-4 of this code to the contrary, unless
9 otherwise agreed in writing, an owner of land who either directly or indirectly invites or permits,
10 either with or without ~~charge~~ charging a fee, any person to use the property for military training

11 ~~purposes,~~ law-enforcement training purposes, or homeland defense training purposes does not
12 thereby ~~(a)~~ extend any assurance that the ~~premises are~~ land is safe for any purpose ~~(b) confer~~
13 ~~upon those persons the legal status of an invitee or licensee to whom a duty of care is owed;~~ or
14 ~~(c)~~ assume responsibility ~~for~~ or incur liability for any injury to a person or property caused by an
15 act or omission of ~~those persons~~ the person.