

# **WEST VIRGINIA LEGISLATURE**

## **2025 REGULAR SESSION**

**Introduced**

### **Senate Bill 68**

By Senator Maynard

[Introduced February 12, 2025; referred  
to the Committee on the Judiciary]

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, relating generally 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 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~~ or local 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, ~~or the state or any~~  
 3 ~~agency thereof, or any county or municipality or agency thereof for military training purposes, law-~~  
 4 ~~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 safe  
 6 for entry or use by others for such purposes, or to give warning to persons entering or going upon  
 7 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 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 persons 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 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 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 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 an~~  
8 ~~invitation to enter or go upon the land: including a one-time fee for a particular event, amusement,~~  
9 ~~occurrence, adventure, incident, experience, or occasion which may not exceed \$50 a year per~~  
10 ~~recreational participant: *Provided*, That the monetary cap on charges imposed pursuant to this~~  
11 ~~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 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

61 by the wildlife for those purposes, and that the premises are no longer used or necessary for  
 62 mining reclamation purposes. The certification shall be in a form satisfactory to the director and  
 63 shall provide that the designated ponds, structures, or impoundments may not be removed without  
 64 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, 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, 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, or  
 4 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 (c)  
 14 assume responsibility ~~for~~ or incur liability for any injury to a person or property caused by an act or

15 omission of ~~these persons~~ the person.

NOTE: The purpose of this bill is to limit 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. It also clarifies statutory language in light of *Mallet v. Pickens*, 206 W.Va. 145, 522 S.E.2d 436 (1999); defines terms, and makes technical corrections.

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