

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~~

~~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) Payment 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) Payments made or funds owed 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 regional recreational authority Recreation Area; or

~~(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~~

(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.

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

"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.

"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, caving, rappelling, slacklining, pleasure driving, motorcycle or all-terrain vehicle riding, bicycling, horseback riding, spelunking, nature study, water skiing, winter sports, motorsports, 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 provided~~ that no fee is charged.

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

"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

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.