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OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

# WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1993

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## ENROLLED

SENATE BILL NO. 576

(By Senator Wootton, et al)

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PASSED April 3, 1993  
In Effect 90 days from Passage

**E N R O L L E D**

**Senate Bill No. 576**

(SENATORS WOOTON, FELTON, PLYMALE, MINARD,  
ANDERSON, DITTMAR AND YODER)

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[Passed April 3, 1993; in effect ninety days from passage.]

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AN ACT to amend and reenact sections one, three, five and six, article twenty-five, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article by adding thereto a new section, designated section seven, all relating to permitting landowners to charge up to twenty-five dollars for the use of land without incurring liability for other than willful or malicious failure to guard or warn against a dangerous or hazardous condition, use, structure or activity; defining terms; limiting the liability of landowners who allow their property to be used for military training purposes; and requiring insurance companies providing liability coverage for landowners who permit others to use their lands for recreational or military purposes to waive or agree not to assert immunity as a defense to a claim made which is within the coverage of such policy made against the landowner and which does not exceed the policy limits unless the landowner waived in writing the requirement that such insurer need not so waive or agree.

*Be it enacted by the Legislature of West Virginia:*

That sections one, three, five and six, article twenty-five, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that said article be further amended by adding thereto a new section, designated section seven, all to read as follows:

**ARTICLE 25. LIMITING LIABILITY OF LANDOWNERS.**

**§19-25-1. Purpose.**

1 The purpose of this article is to encourage owners of  
2 land to make available to the public land and water  
3 areas for military training or recreational or wildlife  
4 propagation purposes by limiting their liability toward  
5 persons entering thereon and toward persons who  
6 may be injured or otherwise damaged by the acts or  
7 omissions of persons entering thereon.

**§19-25-3. Limiting duty of landowner who leases land to  
state, counties, municipalities or agencies.**

1 Unless otherwise agreed in writing, an owner of  
2 land leased to the state or any agency thereof, or any  
3 county or municipality or agency thereof, for military  
4 training or recreational or wildlife propagation pur-  
5 poses owes no duty of care to keep that land safe for  
6 entry or use by others or to give warning to persons  
7 entering or going upon the land of any dangerous or  
8 hazardous conditions, uses, structures or activities  
9 thereon. An owner who leases land to the state or any  
10 agency thereof, or any county or municipality or  
11 agency thereof, for military training or recreational or  
12 wildlife propagation purposes shall not by giving a  
13 lease: (a) Extend any assurance to any person using  
14 the land that the premises are safe for any purpose; or  
15 (b) confer upon those persons the legal status of an  
16 invitee or licensee to whom a duty of care is owed; or  
17 (c) assume responsibility for or incur liability for any  
18 injury to person or property caused by an act or  
19 omission of a person who enters upon the leased land.  
20 The provisions of this section apply whether the  
21 person entering upon the leased land is an invitee,  
22 licensee, trespasser or otherwise.

**§19-25-5. Definitions.**

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

3 (1) "Charge" means:

4 (A) For purposes of limiting liability for recreational  
5 or wildlife propagation purposes set forth in section  
6 two of this article, the amount of money asked in  
7 return for an invitation to enter or go upon the land  
8 including a one time fee for a particular event,  
9 amusement, occurrence, adventure, incident, expe-  
10 rience or occasion but not including an amount of  
11 money not to exceed fifty dollars a year for an  
12 individual for the annual use of land;

13 (B) For purposes of limiting liability for military  
14 training set forth in section six of this article, the  
15 amount of money asked in return for an invitation to  
16 enter or go upon the land;

17 (2) "Land" includes, but shall not be limited to,  
18 roads, water, watercourses, private ways and build-  
19 ings, structures and machinery or equipment thereon  
20 when attached to the realty;

21 (3) "Owner" includes, but shall not be limited to,  
22 tenant, lessee, occupant or person in control of the  
23 premises;

24 (4) "Recreational purposes" includes, but shall not  
25 be limited to, any one or any combination of the  
26 following noncommercial recreational purposes: Hunt-  
27 ing, fishing, swimming, boating, camping, picnicking,  
28 hiking, pleasure driving, motorcycle or all-terrain  
29 vehicle riding, nature study, water skiing, winter  
30 sports and visiting, viewing or enjoying historical,  
31 archaeological, scenic or scientific sites, or otherwise  
32 using land for purposes of the user;

33 (5) "Wildlife propagation purposes" applies to and  
34 includes all ponds, sediment control structures, per-  
35 manent water impoundments or any other similar or  
36 like structure created or constructed as a result of or  
37 in connection with surface mining activities, as gov-

38 earned by article three, chapter twenty-two-a of this  
39 code, or from the use of surface in the conduct of  
40 underground coal mining as governed by articles one,  
41 two and three of said chapter, and rules promulgated  
42 thereunder, which ponds, structures or impoundments  
43 are hereafter designated and certified in writing by  
44 the director of the department of natural resources  
45 and the owner to be necessary and vital to the growth  
46 and propagation of wildlife, animals, birds and fish or  
47 other forms of aquatic life, and finds and determines  
48 that the premises has the potential of being actually  
49 used by the wildlife for those purposes and that the  
50 premises are no longer used or necessary for mining  
51 reclamation purposes. The certification shall be in  
52 form satisfactory to the director and shall provide that  
53 the designated ponds, structures or impoundments  
54 shall not be removed without the joint consent of the  
55 director and the owner; and

56 (6) "Military training" includes, but is not limited to,  
57 training, encampments, instruction, overflight by  
58 military aircraft, parachute drops of personnel or  
59 equipment or other use of land by a member of the  
60 army national guard or air national guard, a member  
61 of a reserve unit of the armed forces of the United  
62 States or a person on active duty in the armed forces  
63 of the United States, acting in that capacity.

**§19-25-6. Limiting duty of landowner for use of land for  
military purposes.**


1 Notwithstanding the provisions of section four of this  
2 article to the contrary, an owner of land owes no duty  
3 of care to keep the premises safe for entry or use by  
4 others for military training purposes, regardless of  
5 whether any charge is made therefore, or to give any  
6 warning of a dangerous or hazardous condition, use,  
7 structure or activity on the premises to persons  
8 entering for those purposes.

9 Notwithstanding the provisions of section four of this  
10 article to the contrary, an owner of land who either  
11 directly or indirectly invites or permits, either with or  
12 without charge, any person to use the property for

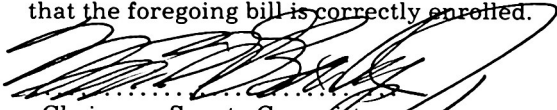
13 military training purposes does not thereby: (a)  
14 Extend any assurance that the premises are safe for  
15 any purpose; or (b) confer upon those persons the legal  
16 status of an invitee or licensee to whom a duty of care  
17 is owed; or (c) assume responsibility for or incur  
18 liability for any injury to person or property caused by  
19 an act or omission of those persons.

**§19-25-7. Insurance policies.**

1 Any policy or contract of liability insurance provid-  
2 ing coverage for liability sold, issued or delivered in  
3 this state to any owner of lands covered under the  
4 provisions of this article shall be read so as to contain  
5 a provision or endorsement whereby the company  
6 issuing such policy waives or agrees not to assert as a  
7 defense on behalf of the policyholder or any benefi-  
8 ciary thereof, to any claim covered by the terms of  
9 such policy within the policy limits, the immunity  
10 from liability of the insured by reason of such insured  
11 recreational or military use status, unless such provi-  
12 sion or endorsement is rejected in writing by the  
13 named insured.



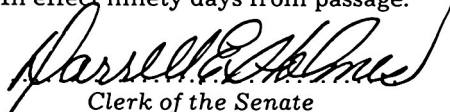
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

  
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Chairman Senate Committee

  
.....  
Chairman House Committee

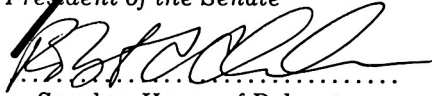
Originated in the Senate.

In effect ninety days from passage.

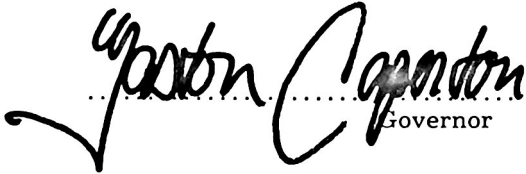
  
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Clerk of the Senate

  
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Clerk of the House of Delegates

  
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President of the Senate

  
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Speaker House of Delegates

The within ~~is~~ *disapproved* ..... this the *7<sup>th</sup>* .....  
day of *April* ....., 1993.

  
.....  
Governor

PRESENTED TO THE

GOVERNOR

Date 4/7/93

Time 9:52 pm