

1 **H. B. 4453**

2
3 (By Delegates Swartzmiller, Iaquina and Longstreth)

4 (By Request of the Adjutant General)

5 [Introduced February 7, 2012; referred to the
6 Committee on Veterans' Affairs and Homeland Security then the
7 Judiciary.]
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10 A BILL to amend and reenact §19-25-1, §19-25-3, §19-25-5, §19-25-6
11 and §19-25-7 of the Code of West Virginia, 1931, as amended,
12 all relating to limiting the liability of landowners who make
13 land available for military, law enforcement or homeland
14 defense training.

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

16 That §19-25-1, §19-25-3, §19-25-5, §19-25-6 and §19-25-7 of
17 the Code of West Virginia, 1931, as amended, be amended and
18 reenacted, all to read as follows:

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

20 **§19-25-1. Purpose.**

21 The purpose of this article is to encourage owners of land to
22 make available to the public land and water areas for ~~military~~
23 ~~training~~ military, law enforcement or homeland defense training or

1 recreational or wildlife propagation purposes by limiting their
2 liability for injury to persons entering thereon and for injury to
3 the property of persons entering thereon and limiting their
4 liability to persons who may be injured or otherwise damaged by the
5 acts or omissions of persons entering thereon.

6 **§19-25-3. Limiting duty of landowner who grants a lease, easement
7 or license of land to federal, state, county or
8 municipal government or any agency thereof.**

9 Unless otherwise agreed in writing, an owner who grants a
10 lease, easement or license of land to the federal government or any
11 agency thereof, or the state or any agency thereof, or any county
12 or municipality or agency thereof, for ~~military training~~ military,
13 law enforcement or homeland defense training or recreational or
14 wildlife propagation purposes owes no duty of care to keep that
15 land safe for entry or use by others or to give warning to persons
16 entering or going upon the land of any dangerous or hazardous
17 conditions, uses, structures or activities thereon. An owner who
18 grants a lease, easement or license of land to the federal
19 government or any agency thereof, or the state or any agency
20 thereof, or any county or municipality or agency thereof, for
21 ~~military training~~ military, law enforcement or homeland defense
22 training or recreational or wildlife propagation purposes does not
23 by giving a lease, easement or license: (a) Extend any assurance
24 to any person using the land that the premises are safe for any

1 purpose; or (b) confer upon those persons the legal status of an
2 invitee or licensee to whom a duty of care is owed; or (c) assume
3 responsibility for or incur liability for any injury to person or
4 property caused by an act or omission of a person who enters upon
5 the leased land. The provisions of this section apply whether the
6 person entering upon the leased land is an invitee, licensee,
7 trespasser or otherwise.

8 **§19-25-5. Definitions.**

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

11 (1) "Charge" means:

12 (A) For purposes of limiting liability for recreational or
13 wildlife propagation purposes set forth in section two of this
14 article, the amount of money asked in return for an invitation to
15 enter or go upon the land, including a one-time fee for a
16 particular event, amusement, occurrence, adventure, incident,
17 experience or occasion which may not exceed \$50 a year per
18 recreational participant: *Provided*, That the monetary cap on
19 charges imposed pursuant to this article does not apply to the
20 provisions of article fourteen, chapter twenty of this code
21 pertaining to the Hatfield-McCoy regional recreational authority or
22 activities sponsored on the Hatfield-McCoy recreation area;

23 (B) For purposes of limiting liability for ~~military training~~
24 military, law enforcement or homeland defense training set forth in

1 section six of this article, the amount of money asked in return
2 for an invitation to enter or go upon the land;

3 (2) "Land" includes, but shall not be limited to, roads,
4 water, watercourses, private ways and buildings, structures and
5 machinery or equipment thereon when attached to the realty;

6 (3) "Noncommercial recreational activity" shall not include
7 any activity for which there is any charge which exceeds \$50 per
8 year per participant;

9 (4) "Owner" includes, but shall not be limited to, tenant,
10 lessee, occupant or person in control of the premises;

11 (5) "Recreational purposes" includes, but shall not be limited
12 to, any one or any combination of the following noncommercial
13 recreational activities: Hunting, fishing, swimming, boating,
14 camping, picnicking, hiking, pleasure driving, motorcycle or
15 all-terrain vehicle riding, bicycling, horseback riding, nature
16 study, water skiing, winter sports and visiting, viewing or
17 enjoying historical, archaeological, scenic or scientific sites or
18 otherwise using land for purposes of the user;

19 (6) "Wildlife propagation purposes" applies to and includes
20 all ponds, sediment control structures, permanent water
21 impoundments or any other similar or like structure created or
22 constructed as a result of or in connection with surface mining
23 activities as governed by article three, chapter twenty-two of this
24 code or from the use of surface in the conduct of underground coal

1 mining as governed by said article and rules promulgated
2 thereunder, which ponds, structures or impoundments are hereafter
3 designated and certified in writing by the Director of the Division
4 of Environmental Protection and the owner to be necessary and vital
5 to the growth and propagation of wildlife, animals, birds and fish
6 or other forms of aquatic life and finds and determines that the
7 premises have the potential of being actually used by the wildlife
8 for those purposes and that the premises are no longer used or
9 necessary for mining reclamation purposes. The certification shall
10 be in form satisfactory to the director and shall provide that the
11 designated ponds, structures or impoundments shall not be removed
12 without the joint consent of the director and the owner; and

13 (7) ~~"Military training"~~ "Military, law enforcement or homeland
14 defense training" includes, but is not limited to, training,
15 encampments, instruction, overflight by military aircraft,
16 parachute drops of personnel or equipment or other use of land by
17 a member of the army National Guard or air National Guard, a member
18 of a reserve unit of the Armed Forces of the United States, ~~or~~ a
19 person on active duty in the Armed Forces of the United States, a
20 state or federal law-enforcement officer, a federal agency or
21 service employee, a West Virginia military authority employee, or
22 a civilian contractor supporting the military and/or government
23 employees acting in that capacity.

24 **§19-25-6. Limiting duty of landowner for use of land for military,**

1 **law enforcement or homeland security purposes.**

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

9 Notwithstanding the provisions of section four of this article
10 to the contrary, an owner of land who either directly or indirectly
11 invites or permits, either with or without charge, any person to
12 use the property for ~~military training~~ military, law enforcement or
13 homeland defense training purposes does not thereby: (a) Extend
14 any assurance that the premises are safe for any purpose; or (b)
15 confer upon those persons the legal status of an invitee or
16 licensee to whom a duty of care is owed; or (c) assume
17 responsibility for or incur liability for any injury to person or
18 property caused by an act or omission of those persons.

19 **§19-25-7. Insurance policies.**

20 Any policy or contract of liability insurance providing
21 coverage for liability sold, issued or delivered in this state to
22 any owner of lands covered under the provisions of this article
23 shall be read so as to contain a provision or endorsement whereby
24 the company issuing such policy waives or agrees not to assert as

1 a defense on behalf of the policyholder or any beneficiary thereof,
2 to any claim covered by the terms of such policy within the policy
3 limits, the immunity from liability of the insured by reason of the
4 use of such insured's land for recreational, wildlife propagation
5 or military, law enforcement or homeland defense purposes, unless
6 such provision or endorsement is rejected in writing by the named
7 insured.

NOTE: The purpose of this bill is to limit the liability of landowners who make land available for military, law enforcement or homeland defense training.

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