

1 **ENROLLED**

2 **Senate Bill No. 605**

3 (BY SENATORS WELLS, YOST, BARNES, EDGELL, GREEN, BOLEY, JENKINS, LAIRD,  
4 WILLIAMS, KLEMPA AND PLYMALE)

5 \_\_\_\_\_  
6 [Passed March 10, 2012; in effect ninety days from passage.]  
7 \_\_\_\_\_

8  
9  
10 AN ACT 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 and duty of landowners  
13 who make land available for military, law-enforcement or  
14 homeland-defense training; defining "military, law-enforcement  
15 or homeland-defense training"; and defining "spelunking" as a  
16 recreational purpose and activity for which a landowner's  
17 liability for injury is limited.

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

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

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

23 **§19-25-1. Purpose.**

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

9 **§19-25-3. Limiting duty of landowner who grants a lease, easement  
10 or license of land to federal, state, county or municipal  
11 government or any agency thereof.**

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

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

10 **§19-25-5. Definitions.**

11 Unless the context used clearly requires a different meaning,  
12 as used in this article:

13 (1) "Charge" means:

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

1 (B) For purposes of limiting liability for military, law-  
2 enforcement or homeland-defense training set forth in section six  
3 of this article, the amount of money asked in return for an  
4 invitation to enter or go upon the land;

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

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

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

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

21 (6) "Wildlife propagation purposes" applies to and includes  
22 all ponds, sediment control structures, permanent water  
23 impoundments or any other similar or like structure created or  
24 constructed as a result of or in connection with surface mining

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

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

1 capacity.

2 **§19-25-6. Limiting duty of landowner for use of land for military,**  
3 **law-enforcement or homeland-security purposes.**

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

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

21 **§19-25-7. Insurance policies.**

22 Any policy or contract of liability insurance providing  
23 coverage for liability sold, issued or delivered in this state to  
24 any owner of lands covered under the provisions of this article

1 shall be read so as to contain a provision or endorsement whereby  
2 the company issuing such policy waives or agrees not to assert as  
3 a defense on behalf of the policyholder or any beneficiary thereof,  
4 to any claim covered by the terms of such policy within the policy  
5 limits, the immunity from liability of the insured by reason of the  
6 use of such insured's land for recreational, wildlife propagation  
7 or military, law-enforcement or homeland-defense purposes, unless  
8 such provision or endorsement is rejected in writing by the named  
9 insured.