

ENROLLED

Senate Bill No. 605

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

[Passed March 10, 2012; in effect ninety days from passage.]

AN ACT to amend and reenact §19-25-1, §19-25-3, §19-25-5, §19-25-6 and §19-25-7 of the Code of West Virginia, 1931, as amended, all relating to limiting the liability and duty of landowners who make land available for military, law-enforcement or homeland-defense training; defining “military, law-enforcement or homeland-defense training”; and defining “spelunking” as a recreational purpose and activity for which a landowner’s liability for injury is limited.

Be it enacted by the Legislature of West Virginia:

That §19-25-1, §19-25-3, §19-25-5, §19-25-6 and §19-25-7 of the Code of West Virginia, 1931, as amended, be amended and reenacted, 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 land
2 to make available to the public land and water areas for
3 military, law-enforcement or homeland-defense training or
4 recreational or wildlife propagation purposes by limiting
5 their liability for injury to persons entering thereon and for

6 injury to the property of persons entering thereon and
7 limiting their liability to persons who may be injured or
8 otherwise damaged by the acts or omissions of persons
9 entering thereon.

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

1 Unless otherwise agreed in writing, an owner who grants
2 a lease, easement or license of land to the federal government
3 or any agency thereof, or the state or any agency thereof, or
4 any county or municipality or agency thereof, for military,
5 law-enforcement or homeland-defense training or recre-
6 ational or wildlife propagation purposes owes no duty of care
7 to keep that land safe for entry or use by others or to give
8 warning to persons entering or going upon the land of any
9 dangerous or hazardous conditions, uses, structures or
10 activities thereon. An owner who grants a lease, easement or
11 license of land to the federal government or any agency
12 thereof, or the state or any agency thereof, or any county or
13 municipality or agency thereof, for military, law-enforce-
14 ment or homeland-defense training or recreational or
15 wildlife propagation purposes does not by giving a lease,
16 easement or license: (a) Extend any assurance to any person
17 using the land that the premises are safe for any purpose; or
18 (b) confer upon those persons the legal status of an invitee or
19 licensee to whom a duty of care is owed; or (c) assume
20 responsibility for or incur liability for any injury to person
21 or property caused by an act or omission of a person who
22 enters upon the leased land. The provisions of this section
23 apply whether the person entering upon the leased land is an
24 invitee, 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 or
5 wildlife propagation purposes set forth in section two of this
6 article, the amount of money asked in return for an invita-
7 tion to enter or go upon the land, including a one-time fee for
8 a particular event, amusement, occurrence, adventure,
9 incident, experience or occasion which may not exceed \$50
10 a year per recreational participant: *Provided*, That the
11 monetary cap on charges imposed pursuant to this article
12 does not apply to the provisions of article fourteen, chapter
13 twenty of this code pertaining to the Hatfield-McCoy
14 regional recreational authority or activities sponsored on the
15 Hatfield-McCoy recreation area;

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

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

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

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

29 (5) "Recreational purposes" includes, but shall not be
30 limited to, any one or any combination of the following
31 noncommercial recreational activities: Hunting, fishing,
32 swimming, boating, camping, picnicking, hiking, pleasure
33 driving, motorcycle or all-terrain vehicle riding, bicycling,
34 horseback riding, spelunking, nature study, water skiing,
35 winter sports and visiting, viewing or enjoying historical,
36 archaeological, scenic or scientific sites or otherwise using
37 land for purposes of the user;

38 (6) “Wildlife propagation purposes” applies to and
39 includes all ponds, sediment control structures, permanent
40 water impoundments or any other similar or like structure
41 created or constructed as a result of or in connection with
42 surface mining activities as governed by article three,
43 chapter twenty-two of this code or from the use of surface in
44 the conduct of underground coal mining as governed by said
45 article and rules promulgated thereunder, which ponds,
46 structures or impoundments are hereafter designated and
47 certified in writing by the Director of the Division of
48 Environmental Protection and the owner to be necessary and
49 vital to the growth and propagation of wildlife, animals,
50 birds and fish or other forms of aquatic life and finds and
51 determines that the premises have the potential of being
52 actually used by the wildlife for those purposes and that the
53 premises are no longer used or necessary for mining reclama-
54 tion purposes. The certification shall be in form satisfactory
55 to the director and shall provide that the designated ponds,
56 structures or impoundments shall not be removed without
57 the joint consent of the director and the owner; and

58 (7) “Military, law-enforcement or homeland-defense
59 training” includes, but is not limited to, training, encamp-
60 ments, instruction, overflight by military aircraft, parachute
61 drops of personnel or equipment or other use of land by a
62 member of the Army National Guard or Air National Guard,
63 a member of a reserve unit of the armed forces of the United
64 States, a person on active duty in the armed forces of the
65 United States, a state or federal law-enforcement officer, a
66 federal agency or service employee, a West Virginia military
67 authority employee or a civilian contractor supporting the
68 military and/or government employees acting in that
69 capacity.

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

1 Notwithstanding the provisions of section four of this
2 article to the contrary, an owner of land owes no duty of care
3 to keep the premises safe for entry or use by others for
4 military, law-enforcement or homeland-defense training

5 purposes, regardless of whether any charge is made therefor,
6 or to give any warning of a dangerous or hazardous condi-
7 tion, use, 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 directly
11 or indirectly invites or permits, either with or without
12 charge, any person to use the property for military, law-
13 enforcement or homeland-defense training purposes does not
14 thereby: (a) Extend any assurance that the premises are safe
15 for any purpose; (b) confer upon those persons the legal
16 status of an invitee or licensee to whom a duty of care is
17 owed; or (c) assume responsibility for or incur liability for
18 any injury to person or property caused by an act or omission
19 of those persons.

§19-25-7. Insurance policies.

1 Any policy or contract of liability insurance providing
2 coverage for liability sold, issued or delivered in this state to
3 any owner of lands covered under the provisions of this
4 article shall be read so as to contain a provision or endorse-
5 ment whereby the company issuing such policy waives or
6 agrees not to assert as a defense on behalf of the policyholder
7 or any beneficiary thereof, to any claim covered by the terms
8 of such policy within the policy limits, the immunity from
9 liability of the insured by reason of the use of such insured's
10 land for recreational, wildlife propagation or military, law
11 enforcement or homeland defense purposes, unless such
12 provision or endorsement is rejected in writing by the named
13 insured.

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

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Chairman Senate Committee

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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 of the House of Delegates

The within this the
Day of, 2012.

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Governor