

# H. B. 2793

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(BY DELEGATES T. CAMPBELL AND BOGGS)

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[Introduced January 11, 2012; referred to the  
Committee on Natural Resources then the Judiciary.]

A BILL to amend and reenact §19-25-5 of the Code of West Virginia, 1931, as amended, relating to 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 §19-25-5 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

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

### **§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 invitation  
7 to enter or go upon the land, including a one-time fee for a  
8 particular event, amusement, occurrence, adventure, incident,  
9 experience or occasion which may not exceed \$50 a year per  
10 recreational participant: *Provided*, That the monetary cap on  
11 charges imposed pursuant to this article does not apply to the  
12 provisions of article fourteen, chapter twenty of this code  
13 pertaining to the Hatfield-McCoy regional recreational  
14 authority or activities sponsored on the Hatfield-McCoy  
15 recreation area;

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

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

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

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

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

37 (6) "Wildlife propagation purposes" applies to and  
38 includes all ponds, sediment control structures, permanent  
39 water impoundments or any other similar or like structure  
40 created or constructed as a result of or in connection with  
41 surface mining activities as governed by article three,

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

58 (7) "Military training" includes, but is not limited to,  
59 training, encampments, instruction, overflight by military  
60 aircraft, parachute drops of personnel or equipment or other

61 use of land by a member of the Army National Guard or Air  
62 National Guard, a member of a reserve unit of the Armed  
63 Forces of the United States or a person on active duty in the  
64 Armed Forces of the United States, acting in that capacity.

NOTE: The purpose of this bill is to define “caving” or “spelunking” as a recreational purpose and activity for which a landowner’s liability for injury is limited.

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