

H. B. 2138

(BY DELEGATE(S) FOLK, GEARHEART, HOUSEHOLDER,
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[Introduced January 20, 2015; referred to the
Committee on the Judiciary.]

A BILL to amend and reenact §19-25-5 of the Code of West Virginia, 1931, as amended, relating to adding aircraft operations on private airstrips and farms to the definition of “recreational purpose” for the purpose of limiting the liability of landowners.

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 meaning,
2 as used in this article:

3 (†) “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 to
7 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 authority
14 or activities sponsored on the Hatfield-McCoy recreation area;

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

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

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

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

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

37 (6) “Wildlife propagation purposes” applies to and includes
38 all ponds, sediment control structures, permanent water

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

57 (7) "Military, law-enforcement or homeland-defense
58 training" includes, but is not limited to, training, encampments,

59 instruction, overflight by military aircraft, parachute drops of
60 personnel or equipment or other use of land by a member of the
61 Army National Guard or Air National Guard, a member of a
62 reserve unit of the armed forces of the United States, a person on
63 active duty in the armed forces of the United States, a state or
64 federal law-enforcement officer, a federal agency or service
65 employee, a West Virginia military authority employee or a
66 civilian contractor supporting the military and/or government
67 employees acting in that capacity.

NOTE: The purpose of this bill is to add noncommercial recreational aircraft operations to the list of protected activities for the purpose of limiting the liability of landowners.

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

