

# **WEST VIRGINIA LEGISLATURE**

## **2016 REGULAR SESSION**

**Introduced**

### **Senate Bill 34**

**FISCAL  
NOTE**

BY SENATOR PLYMALE

[Introduced January 13, 2016;

Referred to the Committee on Judiciary.]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section,  
 2 designated §7-11-5a; to amend said code by adding thereto a new section, designated  
 3 §8-21-10a; to amend and reenact §19-25-3 of said code; and to amend said code by  
 4 adding thereto a new section, designated §20-5-3a, all relating to limiting liability of the  
 5 section of Parks and Recreation of the Division of Natural Resources, county parks and  
 6 recreation commissions, boards of parks and recreation commissioners, any officer or  
 7 agent of a nonprofit state park of forest foundation and owners of land used for public  
 8 parks and recreation purposes under an agreement with any of the foregoing entities.

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

1 That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new  
 2 section, designated §7-11-5a; that said code be amended by adding thereto a new section,  
 3 designated §8-21-10a; that §19-25-3 of said code be amended and reenacted; and that said code  
 4 be amended by adding thereto a new section, designated §20-5-3a, all to read as follows:

**CHAPTER 7. COUNTY COMMISSIONS AND OFFICERS.**

**ARTICLE 11. COUNTY PARKS AND RECREATION COMMISSIONS.**

**§7-11-5a. Liability of county parks and recreation commissions.**

1 (a) A commission is not liable for any injury, loss or damage caused intentionally or by the  
 2 negligence of any person who is not an agent or employee of the commission.

3 (b) A commission is not liable for any injury, loss or damage to any person unless the  
 4 injury, loss or damage was directly caused by an agent or employee of the commission and the  
 5 injury, loss or damage occurs within the public parks and recreational properties and facilities  
 6 owned by the county or commission.

**CHAPTER 8. MUNICIPAL CORPORATIONS.**

**ARTICLE 21. BOARD OF PARK AND RECREATION COMMISSIONERS.**

**§8-21-10a. Liability of board.**

1 (a) A board is not liable for any injury, loss or damage caused intentionally or by the  
2 negligence of any person who is not an agent or employee of the board.

3 (b) A board is not liable for any injury, loss or damage to any person unless the injury, loss  
4 or damage was directly caused by an agent or employee of the board and the injury, loss or  
5 damage occurs within the city public parks and recreational properties and facilities owned by the  
6 board.

## CHAPTER 19. AGRICULTURE.

### ARTICLE 25. LIMITING LIABILITY OF LANDOWNERS.

#### §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, with or without remuneration, who grants a  
2 lease, easement or license of land to the federal government or any agency thereof, or the state  
3 or any agency thereof, or any county or municipality or agency thereof, for military, law-  
4 enforcement or homeland-defense training or recreational or wildlife propagation purposes owes  
5 no duty of care to keep that land safe for entry or use by others or to give warning to persons  
6 entering or going upon the land of any dangerous or hazardous conditions, uses, structures or  
7 activities thereon. An owner who, with or without remuneration, grants a lease, easement or  
8 license of land to the federal government or any agency thereof, or the state or any agency  
9 thereof, or any county or municipality or agency thereof, for military, law-enforcement or  
10 homeland-defense training or recreational or wildlife propagation purposes does not by giving a  
11 lease, easement or license: (a) Extend any assurance to any person using the land that the  
12 premises are safe for any purpose; or (b) confer upon those persons the legal status of an invitee  
13 or licensee to whom a duty of care is owed; or (c) assume responsibility for or incur liability for  
14 any injury to person or property caused by an act or omission of a person who enters upon the

15 leased land. The provisions of this section apply whether the person entering upon the leased  
 16 land is an invitee, licensee, trespasser or otherwise: Provided, That equestrians who are using  
 17 the land but who are not engaged in a commercial profit-making venture are exempt from the  
 18 provisions of subsection (d), section five, article four, chapter twenty of this code.

## CHAPTER 20. NATURAL RESOURCES.

### ARTICLE 5. PARKS AND RECREATION.

#### §20-5-3a. Liability of section of Parks and Recreation.

1 (a) The section of Parks and Recreation is not liable for any injury, loss or damage caused  
 2 intentionally or by the negligence of any person who is not an agent or employee of the section  
 3 of Parks and Recreation.

4 (b) The section of Parks and Recreation as well as any officer or agent of any legally  
 5 constituted 26 U. S. C. (c)(3) nonprofit state park or forest foundation is not liable for any injury,  
 6 loss or damage to any person unless the injury, loss or damage was directly caused by an agent  
 7 or employee of the section of Parks and Recreation as well as any officer or agent of any legally  
 8 constituted 26 U. S. C. (c)(3) nonprofit state park or forest foundation and the injury, loss or  
 9 damage occurs within the state parks and public recreational properties and facilities owned by  
 10 the section of Parks and Recreation or the Division of Natural Resources.

NOTE: The purpose of this bill is to limit the liability of the section of Parks and Recreation of the Division of Natural Resources, county parks and recreation commissions, boards of park and recreation commissioners and owners of land used for public parks and recreation purposes under an agreement with any of the foregoing entities.

§7-11-5a, §8-21-10a and §20-5-3a are new; therefore, they have been completely underscored.

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