

WEST VIRGINIA LEGISLATURE

2021 REGULAR SESSION

Introduced

Senate Bill 298

BY SENATORS MAYNARD, SWOPE, AND KARNES

[Introduced February 16, 2021; referred
to the Committee on the Judiciary]

1 A BILL to amend and reenact §19-25-2, §19-25-3, §19-25-4, §19-25-5, and §19-25-6 of the Code
2 of West Virginia, 1931, as amended, all relating generally to limiting landowner liability for
3 injuries to, or caused by, persons entering or going upon land for noncommercial
4 recreational purposes, wildlife propagation purposes, military training purposes, law-
5 enforcement training purposes, or homeland defense training purposes; clarifying that
6 limitation on liability and duty to warn applies only to landowner permitting the general
7 public to enter or go upon such land for recreational or wildlife propagation purposes;
8 providing that a landowner is not liable for, and has no duty to warn of, dangerous or
9 hazardous wild animals on the land; deleting obsolete language providing that a
10 landowner does not confer invitee or licensee status on persons invited or permitted upon
11 land; substituting the term “fee” for the term “charge”; defining the term “fee”; providing
12 that for the purposes of limiting landowner liability, a fee does not include a fee for an
13 annual event or occurrence, if the total of such fees in a year does not exceed \$25 per
14 individual; providing that for the purposes of limiting landowner liability, a fee does not
15 include voluntary donations to certain charitable entities; amending the term “land” to
16 include premises; amending the definition of the term “owner of land” to specifically include
17 any person holding legal possession, ownership, or partial ownership of an interest in land
18 or a person sponsoring land or premises for volunteer improvement or maintenance
19 purposes; amending the definition of the term “recreational purposes” to specifically
20 include parking on or traversing land to engage in recreational activities and maintaining,
21 or making improvements to, land for the purpose of making recreational activities
22 accessible; naming the activities of rock climbing, bouldering, and kayaking as being
23 activities within the definition of “recreational purposes”; and making numerous technical
24 corrections.

Be it enacted by the Legislature of West Virginia:

ARTICLE 25. LIMITING LIABILITY OF LANDOWNERS.

§19-25-2. Limiting duty of landowner generally.

1 (a) Subject to the provisions of §19-25-4 of this code, an owner of land owes no duty of
 2 care to keep ~~the premises~~ the land safe for entry or use by ~~others~~ the general public for
 3 recreational or wildlife propagation purposes, or to give any warning of a dangerous or hazardous
 4 condition, use, structure, wild animal, or activity ~~on such premises~~ thereon to persons members
 5 of the public entering or going upon the land for such purposes.

6 (b) Subject to the provisions of §19-25-4 of this code, an owner of land who, without
 7 charging a fee, either directly or indirectly invites or permits ~~without charge as that term is defined~~
 8 ~~in section five of this article any person to use such property~~ members of the general public to
 9 enter or go upon the land for recreational or wildlife propagation purposes does not thereby (a)
 10 extend any assurance that ~~the premises are~~ the land is safe for any purpose or (b) ~~confer upon~~
 11 ~~such persons the legal status of an invitee or licensee to whom a duty of care is owed; or (c)~~
 12 assume responsibility ~~for~~ or incur liability for any injury to person or property caused by an act or
 13 omission of such persons members of the public.

§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 (a) Unless otherwise agreed in writing, an owner of land who grants a lease, easement,
 2 or license of land to the federal, state, or local government or any agency thereof, ~~or the state or~~
 3 ~~any agency thereof, or any county or municipality or agency thereof,~~ for military training purposes,
 4 law-enforcement training purposes, ~~or~~ homeland defense training purposes, ~~or~~ recreational
 5 purposes, or wildlife propagation purposes owes no duty of care to keep that land safe for entry
 6 or use by others for such purposes, or to give warning to persons entering or going upon the land
 7 for such purposes of any dangerous or hazardous conditions, uses, structures, ~~or~~ activities, or
 8 wild animals thereon.

9 (b) An owner of land ~~who grants~~ does not, by granting a lease, easement, or license of
 10 ~~land to the federal government or any agency thereof, or the state or any agency thereof, or any~~

11 ~~county or municipality or agency thereof for military, law enforcement or homeland defense~~
 12 ~~training, or recreational or wildlife propagation purposes does not by giving a lease, easement, or~~
 13 ~~license (a) described in subsection (a) of this section, extend any assurance to any person using~~
 14 ~~the land that the premises are land is safe for any purpose; or (b) confer upon those persons the~~
 15 ~~legal status of an invitee or licensee to whom a duty of care is owed or (c) assume responsibility~~
 16 ~~for or incur liability for any injury to person or property caused by an act or omission of a person~~
 17 ~~who enters upon the leased land. The provisions of this section apply whether the person entering~~
 18 ~~upon the leased land is an invitee, licensee a trespasser or otherwise.~~

§19-25-4. Application of article.

1 (a) Nothing herein in this article limits in any way any liability which otherwise exists:
 2 ~~(a) (1) For deliberate, willful, or malicious infliction of injury to persons or property; or~~
 3 ~~(b) (2) For injury suffered in any case where the owner of land charges a fee in exchange~~
 4 ~~for the person or persons ~~who~~ to enter or go ~~on~~ upon the land other than the amount, if any, paid~~
 5 ~~to the owner of the land by the federal, state, or local government or any agency thereof. ~~the state~~~~
 6 ~~or any agency thereof, or any county or municipality or agency thereof.~~
 7 (b) Nothing herein in this article creates a duty of care or ground of grounds for liability for
 8 injury to person or property.
 9 (c) Nothing herein in this article limits in any way the obligation of a person entering or
 10 going upon ~~or using~~ the land of another for recreational or wildlife propagation purposes to
 11 exercise due care in his or her use of such the land ~~and in his or her~~ or activities thereon.
 12 (d) The amendments to this article made during the regular session of the Legislature,
 13 2021, removing all provisions related to the absence of invitee or licensee status of persons
 14 entering or going upon land, are intended to remove provisions made obsolete by the holding of
 15 the West Virginia Supreme Court of Appeals in *Mallet v. Pickens*, 206 W.Va. 145, 522 S.E.2d 436
 16 (1999) and do not create any new duty of care or grounds for liability.

§19-25-5. Definitions.

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

2 ~~“Charge” “Fee” means (A) For purposes of limiting liability for recreational or wildlife~~
3 ~~propagation purposes set forth in §19-25-2 of this code, the amount of money asked in return for~~
4 ~~an invitation to enter or go upon the land: including a one-time fee for a particular event,~~
5 ~~amusement, occurrence, adventure, incident, experience, or occasion which may not exceed \$50~~
6 ~~a year per recreational participant: *Provided*, That the monetary cap on charges imposed pursuant~~
7 ~~to this article does not apply to the provisions of Provided, That the term does not include:~~

8 (A) A fee for participation in an annual event or occurrence on the land: *Provided*, however,
9 That a landowner does not charge a total of more than \$25 per individual permitted to enter or go
10 upon the land during a calendar year;

11 (B) The fees charged pursuant to §20-14-1 et seq. of this code pertaining to the Hatfield-
12 McCoy Regional Recreation Authority or activities sponsored on the Hatfield-McCoy Recreation
13 Area; or

14 (C) Any voluntary donation to an organization holding charitable organization status under
15 Section 501(c)(3) of the Internal Revenue Code for the purpose of maintaining, improving, or
16 promoting access to the land at issue.

17 ~~(B) For purposes of limiting liability for military, law enforcement, or homeland defense~~
18 ~~training set forth in §19-25-6 of this code, the amount of money asked in return for an invitation to~~
19 ~~enter or go upon the land~~

20 “Land” includes, but is not limited to, roads, water, watercourses, private ways, and
21 buildings, premises, structures, and machinery or equipment, when attached to the realty.

22 “Noncommercial recreational activity” does not include any activity for which ~~there is any~~
23 ~~charge which exceeds \$50 per year per participant~~ a fee is charged.

24 “Owner of land” means any person holding legal possession, ownership, or partial
25 ownership of an interest in land and includes, but is not limited to, a tenant, lessee, occupant, or
26 person in control of the premises land, or a person sponsoring land for volunteer improvement or
27 maintenance purposes.

28 "Recreational purposes" ~~includes~~ means:

29 (A) Any noncommercial recreational activity undertaken outdoors, or practice or instruction
30 in any such activity, for the purpose of exercise, relaxation, or pleasure, including, but is not limited
31 to, any one or any combination of the following noncommercial recreational activities: Hunting,
32 fishing, swimming, boating, kayaking, camping, picnicking, hiking, rock climbing, bouldering,
33 pleasure driving, motorcycle or all-terrain vehicle riding, bicycling, horseback riding, spelunking,
34 nature study, water skiing, winter sports, and visiting, viewing, or enjoying historical,
35 archaeological, scenic, or scientific sites, or aircraft or ultralight operations on private airstrips or
36 farms; ~~or otherwise using land for purposes of the user~~

37 (B) Parking on or traversing land for the purpose of engaging in a recreational activity
38 described in paragraph (A) of this subdivision; or

39 (C) Maintaining, or making improvements to, land for the purpose of making such land
40 accessible or usable for a recreational activity described in paragraph (A) of this subdivision.

41 "Training purposes", as that term describes military, law-enforcement, and homeland
42 defense activities, includes, but is not limited to, training, encampments, instruction, overflight by
43 military aircraft, parachute drops of personnel or equipment, or other use of land by a member of
44 the Army National Guard or Air National Guard, a member of a reserve unit of the armed forces
45 of the United States, a person on active duty in the armed forces of the United States, a state or
46 federal law-enforcement officer, a federal agency or service employee, a West Virginia Military
47 Authority employee, or a civilian contractor supporting the military or government employees
48 acting in that capacity.

49 "Wildlife propagation purposes" applies to and includes all ponds, sediment control
50 structures, permanent water impoundments, or any other similar structure created in connection
51 with surface mining activities as governed by §22-3-1 *et seq.* of this code or from the use of
52 surface in the conduct of underground coal mining as governed by that article and any rules
53 promulgated because of the article, which ponds, structures, or impoundments are designated
54 and certified in writing by the director of the Division of Environmental Protection and the owner

55 to be necessary and vital to the growth and propagation of wildlife, animals, birds, ~~and~~ fish, or
 56 other forms of aquatic life and finds and determines that the premises have the potential of being
 57 actually used by the wildlife for those purposes and that the premises are no longer used or
 58 necessary for mining reclamation purposes. The certification shall be in form satisfactory to the
 59 director and shall provide that the designated ponds, structures, or impoundments may not be
 60 removed without the joint consent of the director and the owner. ~~and~~

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

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

1 (a) Notwithstanding the provisions of §19-25-4 of this code to the contrary, an owner of
 2 land owes no duty of care to keep ~~the premises~~ the land safe for entry or use by others for military
 3 training purposes, law-enforcement training purposes, or homeland defense training purposes,
 4 regardless of whether any ~~charge is made~~ fee is charged therefor, or to give any warning of a
 5 dangerous or hazardous condition, use, structure, wild animal, or activity ~~on the premises~~ thereon
 6 to persons entering for those purposes.

7 (b) Notwithstanding the provisions of §19-25-4 of this code to the contrary, an owner of
 8 land who either directly or indirectly invites or permits, either with or without ~~charge~~ charging a
 9 fee, any person to use the property for military training purposes, law-enforcement training
 10 purposes, or homeland defense training purposes does not thereby ~~(a)~~ extend any assurance
 11 that the ~~premises are~~ land is safe for any purpose ~~(b)~~ confer upon those persons the legal status
 12 of an invitee or licensee to whom a duty of care is owed; or ~~(c)~~ assume responsibility for or incur

- 13 liability for any injury to person or property caused by an act or omission of ~~these persons~~ the
14 person.

NOTE: The purpose of this bill is to encourage landowners to make land available for recreational purposes by limiting landowner liability.

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