

# **WEST VIRGINIA LEGISLATURE**

**2019 REGULAR SESSION**

**Introduced**

## **Senate Bill 547**

BY SENATORS MAYNARD, BEACH, CLINE, AND SWOPE

[Introduced February 7, 2019; Referred  
to the Committee on the Judiciary]

1 A BILL to amend and reenact §19-25-2, §19-25-3, §19-25-4, and §19-25-5 of the Code of West  
2 Virginia, 1931, as amended, all relating generally to limiting landowner liability for  
3 noncommercial recreational or wildlife propagation use of lands; providing that an owner  
4 of land has no duty to keep his or her land safe for persons permitted or trespassing upon  
5 such land for recreational or wildlife propagation purposes; clarifying that an owner of land  
6 is not liable for death or injury to, or caused by, a person present on the owner's land for  
7 the purpose of engaging in recreational or wildlife propagation purposes; providing that an  
8 owner of land is not liable to persons present on the owner's land for the purpose of  
9 engaging in recreational or wildlife propagation purposes for injury or death resulting from  
10 a wild animal attack; providing that an owner of land who grants a lease, easement, or  
11 license of land to the federal government or any agency thereof, or the state or any agency  
12 thereof, or any county or municipality or agency thereof, for military, law-enforcement, or  
13 homeland defense training or recreational or wildlife propagation purposes does not, by  
14 doing so, owe a duty to warn persons entering or going upon the land regarding dangerous  
15 wild animals and is not liable for injury or death resulting from wild animal attacks;  
16 substituting the term "charge" with the term "fee"; clarifying that the term "fee" does not  
17 include a one-time charge for an event that is less than \$50 per person per annum;  
18 providing that the term "fee" does not include a parking fee charged per vehicle entering  
19 the land; providing that the term "fee" does not include a voluntary donation to a nonprofit  
20 for the purpose of maintaining land for recreational purposes; altering the definition of the  
21 term "owner of land" to include any person holding legal possession, ownership, or partial  
22 ownership of an interest in land, including a person sponsoring land or premises for  
23 volunteer improvement or maintenance purposes; defining the term "person"; altering the  
24 definition of the term "recreational purposes" to include any outdoor activity undertaken,  
25 or practice or instruction in any such activity, for the purpose of exercise, relaxation, or

26 pleasure; specifically including the activities of rock climbing and kayaking in the definition  
27 of “recreational use”; and making technical 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~~ his or her land safe for entry or use by others for recreational or wildlife  
3 propagation purposes, or to give any warning of a dangerous or hazardous condition, use,  
4 structure or activity on ~~such premises~~ the land to persons entering or going upon the land for such  
5 purposes. The provisions of this section apply regardless of whether the person entering or going  
6 upon the leased land is permitted to enter the land or is a trespasser.

7 (b) Subject to the provisions of §19-25-4 of this code, an owner of land who, without  
8 charging a fee, either directly or indirectly invites or permits ~~without charge as that term is defined~~  
9 ~~in section five of this article~~ any person to use ~~such~~ the property for recreational or wildlife  
10 propagation purposes does not thereby: ~~(a)~~ (1) Extend any assurance ~~that the premises are his~~  
11 or her land is safe for any purpose; or ~~(b)~~ (2) confer upon ~~such~~ the persons the legal status of an  
12 ~~invitee or licensee of a party~~ invitee or licensee of a party to whom a duty of care is owed; or ~~(c)~~ (3) assume responsibility for  
13 or incur liability for any injury to person or property or any death caused by an act or omission of  
14 ~~such~~ the persons.

15 (c) An owner of land is not liable to any person present on his or her land for recreational  
16 or wildlife propagation purposes for any injury to person or property or for any death resulting from  
17 an attack by a wild animal.

**§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 or  
2 license of land to the federal government or any agency thereof, or the state or any agency

3 thereof, or any county or municipality or agency thereof, for military, law-enforcement or  
 4 homeland-defense training or recreational or wildlife propagation purposes owes no duty of care  
 5 to keep that land safe for entry or use by others or to give warning to persons entering or going  
 6 upon the land of any dangerous or hazardous conditions, uses, structures, ~~or~~ activities, or wild  
 7 animals thereon.

8 (b) An owner of land who grants a lease, easement or license of land to the federal  
 9 government or any agency thereof, or the state or any agency thereof, or any county or  
 10 municipality or agency thereof, for military, law-enforcement or homeland-defense training or  
 11 recreational or wildlife propagation purposes does not by giving a lease, easement or license: ~~(a)~~  
 12 (1) Extend any assurance to any person using the land that the ~~premises are~~ land is safe for any  
 13 purpose; or ~~(b)~~ (2) confer upon those persons ~~the a~~ legal status ~~of an invitee or licensee of a party~~  
 14 to whom a duty of care is owed; or ~~(c)~~ (3) assume responsibility for or incur liability for any injury  
 15 to person or property caused by an act or omission of a person who enters upon the leased land.  
 16 The provisions of this section apply whether the person entering or going upon the leased land is  
 17 ~~an invitee, licensee, trespasser or otherwise~~ permitted to enter the land or is a trespasser.

18 (c) An owner of land who grants a lease, easement or license of land to the federal  
 19 government or any agency thereof, or the state or any agency thereof, or any county or  
 20 municipality or agency thereof, for military, law-enforcement or homeland-defense training or  
 21 recreational or wildlife propagation purposes does not by giving a lease, easement or license  
 22 assume responsibility or incur liability for any injury or death to a person or property resulting from  
 23 an attack by a wild animal.

#### **§19-25-4. Application of article.**

1 (a) Nothing ~~herein~~ in this article limits in any way any liability which otherwise exists: ~~(a)~~  
 2 (1) For deliberate, willful or malicious infliction of injury to persons or property; or ~~(b)~~ (2) for injury  
 3 suffered in any case where the owner of land charges a fee in exchange for the person or persons  
 4 ~~who~~ to enter or go on the land other than the amount, if any, paid to the owner of the land by the

5 federal government or any agency thereof, the state or any agency thereof, or any county or  
6 municipality or agency thereof.

7 (b) Nothing herein in this article creates a duty of care or ground of liability for injury to  
8 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 activities thereon.

**§19-25-5. Definitions.**

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

2 ~~“Charge”~~ (1) “Fee” means:

3 (A) For purposes of limiting liability for recreational or wildlife propagation purposes set  
4 forth in section two of this article, the amount of money asked in return for an invitation to enter  
5 or go upon the land: ~~including~~ Provided, That the term does not include:

6 (i) A one-time fee for a particular event, amusement, occurrence, adventure, incident,  
7 experience or occasion which may does not exceed \$50 a year per recreational participant;  
8 ~~Provided, That the monetary cap on charges imposed pursuant to this article does not apply to~~  
9 ~~the provisions of~~

10 (ii) The fees charged pursuant to §20-14-1 et seq. of this code pertaining to the Hatfield-  
11 McCoy regional recreational authority or activities sponsored on the Hatfield-McCoy recreation  
12 area;

13 (iii) A parking fee charged per vehicle permitted onto land, if the occupants of the vehicle  
14 are parking on the land to engage in recreational purposes; or

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

18 (B) For purposes of limiting liability for military, law enforcement or homeland-defense

19 training set forth in section six of this article, the amount of money asked in return for an invitation  
20 to enter or go upon the land;

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

23 (3) "Noncommercial recreational activity" does not include any activity for which there is  
24 any charge which exceeds \$50 per year per participant a fee is charged,

25 (4) "Owner of land" means any person holding legal possession, ownership or partial  
26 ownership of an interest in land and includes, but is not limited to, a tenant, lessee, occupant, or  
27 person in control of the land or premises, or a person sponsoring land or premises for volunteer  
28 improvement or maintenance purposes;

29 (5) "Person" means any public or private corporation, institution, association, society, firm,  
30 organization or company organized or existing under the laws of this or any other state or country;  
31 the State of West Virginia; any state governmental agency; any political subdivision of the state  
32 or of its counties or municipalities; a sanitary district; a public service district; a drainage district;  
33 a conservation district; a watershed improvement district; a partnership, trust or estate; a person  
34 or individual; a group of persons or individuals acting individually or as a group; or any other legal  
35 entity. The term "person", when used in this article, includes and refers to any authorized agent,  
36 lessee or trustee of any of the foregoing or receiver or trustee appointed by any court for any of  
37 the foregoing.

38 (6) "Recreational purposes" includes means:

39 (A) Any outdoor activity undertaken, or practice or instruction in any such activity, for the  
40 purpose of exercise, relaxation or pleasure, including, but is not limited to, any one or any  
41 combination of the following noncommercial recreational activities: hunting, fishing, swimming,  
42 boating, kayaking, camping, picnicking, hiking, rock climbing, bouldering, pleasure driving,  
43 motorcycle or all-terrain vehicle riding, bicycling, horseback riding, spelunking, nature study, water  
44 skiing, winter sports and visiting, viewing or enjoying historical, archaeological, scenic or scientific

45 sites, aircraft or ultralight operations on private airstrips or farms or otherwise using land for  
46 purposes of the user;

47 (B) Parking on or traversing property for the purpose of engaging in a recreational activity  
48 described in subdivision (1) of this subsection; or

49 (C) Maintaining or making improvements, including, but not limited to, artificial  
50 improvements, on property for the purpose of making such land accessible or usable for a  
51 recreational activity described in subdivision (1) of this subsection;

52 (7) "Wildlife propagation purposes" applies to and includes all ponds, sediment control  
53 structures, permanent water impoundments or any other similar structure created in connection  
54 with surface mining activities as governed by article three, chapter twenty-two of this code or from  
55 the use of surface in the conduct of underground coal mining as governed by that article and any  
56 rules promulgated because of the article, which ponds, structures or impoundments are  
57 designated and certified in writing by the Director of the Division of Environmental Protection and  
58 the owner to be necessary and vital to the growth and propagation of wildlife, animals, birds and  
59 fish or other forms of aquatic life and finds and determines that the premises have the potential  
60 of being actually used by the wildlife for those purposes and that the premises are no longer used  
61 or necessary for mining reclamation purposes. The certification shall be in form satisfactory to the  
62 director and shall provide that the designated ponds, structures or impoundments may not be  
63 removed without the joint consent of the director and the owner; and

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

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