WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1986

---

ENROLLED

HOUSE BILL No. 1117

(By Mrs. Del. Hoflet and Del. M. Harman)

---

Passed March 7, 1986

In Effect Ninety Days From Passage
AN ACT to amend and reenact sections one, two, three, four and five, article twenty-five, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to limiting liability of landowners and limiting duty of landowner with respect to ponds and sediment control structures designated for wildlife propagation purposes; providing for the designation of certain ponds and sediment control structures for wildlife propagation purposes.

Be it enacted by the Legislature of West Virginia:

That sections one, two, three, four and five, article twenty-five, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 25. LIMITING LIABILITY OF LANDOWNERS.

§19-25-1. Purpose.

1 The purpose of this article is to encourage owners of land to make available to the public land and water areas for recreational or wildlife propagation purposes by limiting their liability toward persons entering thereon and toward persons who may be injured or otherwise damaged by the acts or omissions of persons entering thereon.

§19-25-2. Limiting duty of landowner generally.
Subject to the provisions of section four of this article, an owner of land owes no duty of care to keep the premises safe for entry or use by others for recreational or wildlife propagation purposes, or to give any warning of a dangerous or hazardous condition, use, structure or activity on such premises to persons entering for such purposes.

Subject to the provisions of section four of this article, an owner of land who either directly or indirectly invites or permits without charge any person to use such property for recreational or wildlife propagation purposes does not thereby (a) extend any assurance that the premises are safe for any purpose, or (b) confer upon such persons the legal status of an invitee or licensee to whom a duty of care is owed, or (c) assume responsibility for or incur liability for any injury to person or property caused by an act or omission of such persons.

§19-25-3. Limiting duty of landowner who leases land to state, counties, municipalities or agencies.

Unless otherwise agreed in writing, an owner of land leased to the state or any agency thereof, or any county or municipality or agency thereof, for recreational or wildlife propagation purposes owes no duty of care to keep that land safe for entry or use by others or to give warning to persons entering or going upon such land of any dangerous or hazardous conditions, uses, structures or activities thereon. An owner who leases land to the state or any agency thereof, or any county or municipality or agency thereof, for recreational or wildlife propagation purposes shall not by giving such lease (a) extend any assurance to any person using the land that the premises are safe for any purpose, or (b) confer upon such persons the legal status of an invitee or licensee to whom a duty of care is owed, or (c) assume responsibility for or incur liability for any injury to person or property caused by an act or omission of a person who enters upon the leased land. The provisions of this section apply whether the person entering upon the leased land is an invitee, licensee, trespasser or otherwise.

§19-25-4. Application of article.
Nothing herein limits in any way any liability which otherwise exists (a) for willful or malicious failure to guard or warn against a dangerous or hazardous condition, use, structure or activity, or (b) for injury suffered in any case where the owner of land charges the person or persons who enter or go on the land other than the amount, if any, paid to the owner of the land by the state or any agency thereof, or any county or municipality or agency thereof.

Nothing herein creates a duty of care or ground of liability for injury to person or property.

Nothing herein limits in any way the obligation of a person entering upon or using the land of another for recreational or wildlife propagation purposes to exercise due care in his use of such land and in his activities thereon.


For purposes of this article: (a) The term “land” shall include, but not be limited to, roads, water, watercourses, private ways and buildings, structures and machinery or equipment thereon when attached to the realty; (b) the term “owner” shall include, but not be limited to, tenant, lessee, occupant or person in control of the premises; (c) the term “recreational purposes” shall include, but not be limited to, any one or any combination of the following: Hunting, fishing, swimming, boating, camping, picnicking, hiking, pleasure driving, nature study, water skiing, winter sports and visiting, viewing or enjoying historical, archaeological, scenic or scientific sites, or otherwise using land for purposes of the user; (d) the term “wildlife propagation purposes” shall apply to and include all ponds, sediment control structures, permanent water impoundments, or any other similar or like structure created or constructed as a result of or in connection with surface mining activities, as governed by article six, chapter twenty of this code, or from the use of surface in the conduct of underground coal mining as governed by articles one and two, chapter twenty-two of this code, and regulations promulgated thereunder, which ponds, structures or
impoundments are hereafter designated and certified in writing by the director of the department of natural resources and the owner to be necessary and vital to the growth and propagation of wildlife, animals, birds and fish or other forms of aquatic life, and finds and determines that such premises has the potential of being actually used by such wildlife for such purposes and that such premises are no longer used or necessary for mining reclamation purposes. Such certification shall be in form satisfactory to the director and shall provide that such designated ponds, structures or impoundments shall not be removed without the joint consent of the director and the owner; and (e) the term “charge” shall mean the amount of money asked in return for an invitation to enter or go upon the land.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Bruce O. Weller
Chairman Senate Committee

Floyd Fuller
Chairman House Committee

Originating in the House.

Takes effect ninety days from passage.

Joseph C. Wells
Clerk of the Senate

Donald J. Kepp
Clerk of the House of Delegates

Dan James
President of the Senate

Joseph P. Alvey
Speaker of the House of Delegates

The within bill approved this the 26th day of November, 1986.

A. A.旺"
Governor
PRESENTED TO THE
GOVERNOR
Date 3/21/86
Time 4:35 p.m.