

790: 1117

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1986



ENROLLED

HOUSE BILL No. 1117.....

(By ~~Mr~~ Del. *Shiflet* + Del. *M. Harman*)



Passed *March 7,* 1986

In Effect *Ninety Days From* Passage

ENROLLED
H. B. 1117

(By DELEGATE SHIFLET and DELEGATE 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
2 land to make available to the public land and water
3 areas for recreational or wildlife propagation purposes
4 by limiting their liability toward persons entering
5 thereon and toward persons who may be injured or
6 otherwise damaged by the acts or omissions of persons
7 entering thereon.

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

1 Subject to the provisions of section four of this article,
2 an owner of land owes no duty of care to keep the
3 premises safe for entry or use by others for recreational
4 or wildlife propagation purposes, or to give any warning
5 of a dangerous or hazardous condition, use, structure or
6 activity on such premises to persons entering for such
7 purposes.

8 Subject to the provisions of section four of this article,
9 an owner of land who either directly or indirectly invites
10 or permits without charge any person to use such
11 property for recreational or wildlife propagation pur-
12 poses does not thereby (a) extend any assurance that the
13 premises are safe for any purpose, or (b) confer upon
14 such persons the legal status of an invitee or licensee to
15 whom a duty of care is owed, or (c) assume responsibility
16 for or incur liability for any injury to person or property
17 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.**

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

§19-25-4. Application of article.

1 Nothing herein limits in any way any liability which
2 otherwise exists (a) for willful or malicious failure to
3 guard or warn against a dangerous or hazardous
4 condition, use, structure or activity, or (b) for injury
5 suffered in any case where the owner of land charges the
6 person or persons who enter or go on the land other than
7 the amount, if any, paid to the owner of the land by the
8 state or any agency thereof, or any county or municipal-
9 ity or agency thereof.

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

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

§19-25-5. Definitions.

1 For purposes of this article: (a) The term "land" shall
2 include, but not be limited to, roads, water, water-
3 courses, private ways and buildings, structures and
4 machinery or equipment thereon when attached to the
5 realty; (b) the term "owner" shall include, but not be
6 limited to, tenant, lessee, occupant or person in control
7 of the premises; (c) the term "recreational purposes"
8 shall include, but not be limited to, any one or any
9 combination of the following: Hunting, fishing, swim-
10 ming, boating, camping, picnicking, hiking, pleasure
11 driving, nature study, water skiing, winter sports and
12 visiting, viewing or enjoying historical, archaeological,
13 scenic or scientific sites, or otherwise using land for
14 purposes of the user; (d) the term "wildlife propagation
15 purposes" shall apply to and include all ponds, sediment
16 control structures, permanent water impoundments, or
17 any other similar or like structure created or constructed
18 as a result of or in connection with surface mining
19 activities, as governed by article six, chapter twenty of
20 this code, or from the use of surface in the conduct of
21 underground coal mining as governed by articles one
22 and two, chapter twenty-two of this code, and regulations
23 promulgated thereunder, which ponds, structures or

24 impoundments are hereafter designated and certified in
25 writing by the director of the department of natural
26 resources and the owner to be necessary and vital to the
27 growth and propagation of wildlife, animals, birds and
28 fish or other forms of aquatic life, and finds and
29 determines that such premises has the potential of being
30 actually used by such wildlife for such purposes and that
31 such premises are no longer used or necessary for mining
32 reclamation purposes. Such certification shall be in form
33 satisfactory to the director and shall provide that such
34 designated ponds, structures or impoundments shall not
35 be removed without the joint consent of the director and
36 the owner; and (e) the term "charge" shall mean the
37 amount of money asked in return for an invitation to
38 enter or go upon the land.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Bruce O. Wellons

Chairman Senate Committee

Floyd Fullen

Chairman House Committee

Originating in the House.

Takes effect ninety days from passage.

John C. Wells

Clerk of the Senate

Donald J. Kopp

Clerk of the House of Delegates

Don Tonkovich

President of the Senate

Joseph P. Allright

Speaker of the House of Delegates

The within *approved* this the *26th*
March
day of _____, 1986.

Andrew Bruneau

Governor

PRESENTED TO THE

GOVERNOR

Date 3/21/86

Time 4:35 p.m.

RECEIVED

1986 MAR 26 AM 11:01

SECRETARY OF STATE

SECRETARY OF STATE
WEST VIRGINIA

THIS DATE 3/26/86