WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1993

ENROLLED

SENATE BILL NO. 576

(By Senator Wooton, et al.)

PASSED April 3, 1993
In Effect 90 days from Passage
ENROLLED

Senate Bill No. 576

(Senators Wooton, Felton, Plymale, Minard, Anderson, Dittmar and Yoder)

[Passed April 3, 1993; in effect ninety days from passage.]

AN ACT to amend and reenact sections one, three, five and six, article twenty-five, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article by adding thereto a new section, designated section seven, all relating to permitting landowners to charge up to twenty-five dollars for the use of land without incurring liability for other than willful or malicious failure to guard or warn against a dangerous or hazardous condition, use, structure or activity; defining terms; limiting the liability of landowners who allow their property to be used for military training purposes; and requiring insurance companies providing liability coverage for landowners who permit others to use their lands for recreational or military purposes to waive or agree not to assert immunity as a defense to a claim made which is within the coverage of such policy made against the landowner and which does not exceed the policy limits unless the landowner waived in writing the requirement that such insurer need not so waive or agree.

Be it enacted by the Legislature of West Virginia:
Enr. S. B. No. 576] 2

That sections one, three, five and six, article twenty-five, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that said article be further amended by adding thereto a new section, designated section seven, all 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 military training or 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.

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

1 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 military training or 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 the 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 military training or recreational or wildlife propagation purposes shall not by giving a lease: (a) Extend any assurance to any person using the land that the premises are safe for any purpose; or (b) confer upon those 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.

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

2. (1) "Charge" means:

3. (A) For purposes of limiting liability for recreational or wildlife propagation purposes set forth in section two of this article, the amount of money asked in return for an invitation to enter or go upon the land including a one time fee for a particular event, amusement, occurrence, adventure, incident, experience or occasion but not including an amount of money not to exceed fifty dollars a year for an individual for the annual use of land;

4. (B) For purposes of limiting liability for military training set forth in section six of this article, the amount of money asked in return for an invitation to enter or go upon the land;

5. (2) "Land" includes, but shall not be limited to, roads, water, watercourses, private ways and buildings, structures and machinery or equipment thereon when attached to the realty;

6. (3) "Owner" includes, but shall not be limited to, tenant, lessee, occupant or person in control of the premises;

7. (4) "Recreational purposes" includes, but shall not be limited to, any one or any combination of the following noncommercial recreational purposes: Hunting, fishing, swimming, boating, camping, picnicking, hiking, pleasure driving, motorcycle or all-terrain vehicle riding, 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;

8. (5) "Wildlife propagation purposes" applies to and includes 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 gov-
erned by article three, chapter twenty-two-a of this
code, or from the use of surface in the conduct of
underground coal mining as governed by articles one,
two and three of said chapter, and rules 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 the premises has the potential of being actually
used by the wildlife for those purposes and that the
premises are no longer used or necessary for mining
reclamation purposes. The certification shall be in
form satisfactory to the director and shall provide that
the designated ponds, structures or impoundments
shall not be removed without the joint consent of the
director and the owner; and

(6) "Military training" includes, but is not limited to,
training, encampments, instruction, overflight by
military aircraft, parachute drops of personnel or
equipment or other use of land by a member of the
army national guard or air national guard, a member
of a reserve unit of the armed forces of the United
States or a person on active duty in the armed forces
of the United States, acting in that capacity.

§19-25-6. Limiting duty of landowner for use of land for
military purposes.

Notwithstanding the provisions of section four of this
article to the contrary, an owner of land owes no duty
of care to keep the premises safe for entry or use by
others for military training purposes, regardless of
whether any charge is made therefore, or to give any
warning of a dangerous or hazardous condition, use,
structure or activity on the premises to persons
entering for those purposes.

Notwithstanding the provisions of section four of this
article to the contrary, an owner of land who either
directly or indirectly invites or permits, either with or
without charge, any person to use the property for
military training purposes does not thereby: (a) Extend any assurance that the premises are safe for any purpose; or (b) confer upon those 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 those persons.


Any policy or contract of liability insurance providing coverage for liability sold, issued or delivered in this state to any owner of lands covered under the provisions of this article shall be read so as to contain a provision or endorsement whereby the company issuing such policy waives or agrees not to assert as a defense on behalf of the policyholder or any beneficiary thereof, to any claim covered by the terms of such policy within the policy limits, the immunity from liability of the insured by reason of such insured recreational or military use status, unless such provision or endorsement is rejected in writing by the named insured.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Ernest O. Moore
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker House of Delegates

The within is disapproved this the 7th day of April, 1993.

Governor
PRESENTED TO THE
GOVERNOR
Date 4/1/93
Time 2:50 PM