WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1994

ENROLLED

Committee Substitute for

SENATE BILL NO. 424

(By Senator Plymale)

PASSED March 12, 1994

In Effect 90 days from Passage
ENROLLED
COMMITTEE SUBSTITUTE
FOR
Senate Bill No. 426
(SENATOR PLYMALE, original sponsor)

[Passed March 12, 1994, in effect ninety days from passage.]

AN ACT to amend and reenact sections 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 the liability of landowners who make their land available to the public; extending the limitation to the granting of easements and licenses on land; extending the limitation to the granting of leases, easements or licenses to federal entities; changing the definitions of “charge” and “recreational purposes”; and adding the definition of “noncommercial recreational activity”.

Be it enacted by the Legislature of West Virginia:

That sections 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.

§19-25-3. Limiting duty of landowner who grants a lease, easement or license of land to federal, state, county or municipal government or any agency thereof.

Unless otherwise agreed in writing, an owner who grants a lease, easement or license of land to the federal government or any agency thereof, or 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 grants a lease, easement or license of land to the federal government or any agency thereof, or the state or any agency thereof, or any county or municipality or agency thereof, for military training or recreational or wildlife propagation purposes does not by giving a lease, easement or license:

(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.

§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
federal government or any agency thereof, 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 or her use of such land and in his or her
activities thereon.


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

(1) “Charge” means:

(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,
ocurrence, adventure, incident, experience or occasion
which may not exceed fifty dollars a year per recre-
tional participant;

(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;

(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;

(3) “Noncommercial recreational activity” shall not
(4) "Owner" includes, but shall not be limited to, tenant, lessee, occupant or person in control of the premises;

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

(6) "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 governed 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 division 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

(7) "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.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Ernest C. Moore
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

Clerk of the Senate

Donald L. Kepp
Clerk of the House of Delegates

President of the Senate

Speaker House of Delegates

The within be approved, this the 30th day of March, 1994.

Governor
PRESENTED TO THE
GOVERNOR
Date 3/28/93
Time 11:40am