

5B605

**WEST VIRGINIA LEGISLATURE**  
**EIGHTIETH LEGISLATURE**  
**REGULAR SESSION, 2012**

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**ENROLLED**

**Senate Bill No. 605**

(BY SENATORS WELLS, YOST, BARNES, EDGELL,  
GREEN, BOLEY, JENKINS, LAIRD, WILLIAMS, UNGER AND KLEMPA)

[PASSED MARCH 10, 2012; IN EFFECT NINETY DAYS FROM PASSAGE.]

OFFICE OF THE  
SECRETARY OF STATE

2012 APR -2 PM 4:55

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## Senate Bill No. 605

(BY SENATORS WELLS, YOST, BARNES, EDGELL,  
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[Passed March 10, 2012; in effect ninety days from passage.]

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AN ACT to amend and reenact §19-25-1, §19-25-3, §19-25-5, §19-25-6 and §19-25-7 of the Code of West Virginia, 1931, as amended, all relating to limiting the liability and duty of landowners who make land available for military, law-enforcement or homeland-defense training; defining “military, law-enforcement or homeland-defense training”; and defining “spelunking” as a recreational purpose and activity for which a landowner’s liability for injury is limited.

*Be it enacted by the Legislature of West Virginia:*

That §19-25-1, §19-25-3, §19-25-5, §19-25-6 and §19-25-7 of the Code of West Virginia, 1931, as amended, be amended and reenacted, 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  
2 to make available to the public land and water areas for  
3 military, law-enforcement or homeland-defense training or  
4 recreational or wildlife propagation purposes by limiting  
5 their liability for injury to persons entering thereon and for

6 injury to the property of persons entering thereon and  
7 limiting their liability to persons who may be injured or  
8 otherwise damaged by the acts or omissions of persons  
9 entering thereon.

**§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 Unless otherwise agreed in writing, an owner who grants  
2 a lease, easement or license of land to the federal government  
3 or any agency thereof, or the state or any agency thereof, or  
4 any county or municipality or agency thereof, for military,  
5 law-enforcement or homeland-defense training or recre-  
6 ational or wildlife propagation purposes owes no duty of care  
7 to keep that land safe for entry or use by others or to give  
8 warning to persons entering or going upon the land of any  
9 dangerous or hazardous conditions, uses, structures or  
10 activities thereon. An owner who grants a lease, easement or  
11 license of land to the federal government or any agency  
12 thereof, or the state or any agency thereof, or any county or  
13 municipality or agency thereof, for military, law-enforce-  
14 ment or homeland-defense training or recreational or  
15 wildlife propagation purposes does not by giving a lease,  
16 easement or license: (a) Extend any assurance to any person  
17 using the land that the premises are safe for any purpose; or  
18 (b) confer upon those persons the legal status of an invitee or  
19 licensee to whom a duty of care is owed; or (c) assume  
20 responsibility for or incur liability for any injury to person  
21 or property caused by an act or omission of a person who  
22 enters upon the leased land. The provisions of this section  
23 apply whether the person entering upon the leased land is an  
24 invitee, licensee, trespasser or otherwise.

**§19-25-5. Definitions.**

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

3 (1) "Charge" means:

4 (A) For purposes of limiting liability for recreational or  
5 wildlife propagation purposes set forth in section two of this  
6 article, the amount of money asked in return for an invita-  
7 tion to enter or go upon the land, including a one-time fee for  
8 a particular event, amusement, occurrence, adventure,  
9 incident, experience or occasion which may not exceed \$50  
10 a year per recreational participant: *Provided*, That the  
11 monetary cap on charges imposed pursuant to this article  
12 does not apply to the provisions of article fourteen, chapter  
13 twenty of this code pertaining to the Hatfield-McCoy  
14 regional recreational authority or activities sponsored on the  
15 Hatfield-McCoy recreation area;

16 (B) For purposes of limiting liability for military, law-  
17 enforcement or homeland-defense training set forth in  
18 section six of this article, the amount of money asked in  
19 return for an invitation to enter or go upon the land;

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

24 (3) "Noncommercial recreational activity" shall not  
25 include any activity for which there is any charge which  
26 exceeds \$50 per year per participant;

27 (4) "Owner" includes, but shall not be limited to, tenant,  
28 lessee, occupant or person in control of the premises;

29 (5) "Recreational purposes" includes, but shall not be  
30 limited to, any one or any combination of the following  
31 noncommercial recreational activities: Hunting, fishing,  
32 swimming, boating, camping, picnicking, hiking, pleasure  
33 driving, motorcycle or all-terrain vehicle riding, bicycling,  
34 horseback riding, spelunking, nature study, water skiing,  
35 winter sports and visiting, viewing or enjoying historical,  
36 archaeological, scenic or scientific sites or otherwise using  
37 land for purposes of the user;

38 (6) "Wildlife propagation purposes" applies to and  
39 includes all ponds, sediment control structures, permanent  
40 water impoundments or any other similar or like structure  
41 created or constructed as a result of or in connection with  
42 surface mining activities as governed by article three,  
43 chapter twenty-two of this code or from the use of surface in  
44 the conduct of underground coal mining as governed by said  
45 article and rules promulgated thereunder, which ponds,  
46 structures or impoundments are hereafter designated and  
47 certified in writing by the Director of the Division of  
48 Environmental Protection and the owner to be necessary and  
49 vital to the growth and propagation of wildlife, animals,  
50 birds and fish or other forms of aquatic life and finds and  
51 determines that the premises have the potential of being  
52 actually used by the wildlife for those purposes and that the  
53 premises are no longer used or necessary for mining reclama-  
54 tion purposes. The certification shall be in form satisfactory  
55 to the director and shall provide that the designated ponds,  
56 structures or impoundments shall not be removed without  
57 the joint consent of the director and the owner; and

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

**§19-25-6. Limiting duty of landowner for use of land for military,  
law-enforcement or homeland-security purposes.**

1 Notwithstanding the provisions of section four of this  
2 article to the contrary, an owner of land owes no duty of care  
3 to keep the premises safe for entry or use by others for  
4 military, law-enforcement or homeland-defense training

5 purposes, regardless of whether any charge is made therefor,  
6 or to give any warning of a dangerous or hazardous condi-  
7 tion, use, structure or activity on the premises to persons  
8 entering for those purposes.

9 Notwithstanding the provisions of section four of this  
10 article to the contrary, an owner of land who either directly  
11 or indirectly invites or permits, either with or without  
12 charge, any person to use the property for military, law-  
13 enforcement or homeland-defense training purposes does not  
14 thereby: (a) Extend any assurance that the premises are safe  
15 for any purpose; (b) confer upon those persons the legal  
16 status of an invitee or licensee to whom a duty of care is  
17 owed; or (c) assume responsibility for or incur liability for  
18 any injury to person or property caused by an act or omission  
19 of those persons.

**§19-25-7. Insurance policies.**

1 Any policy or contract of liability insurance providing  
2 coverage for liability sold, issued or delivered in this state to  
3 any owner of lands covered under the provisions of this  
4 article shall be read so as to contain a provision or endorse-  
5 ment whereby the company issuing such policy waives or  
6 agrees not to assert as a defense on behalf of the policyholder  
7 or any beneficiary thereof, to any claim covered by the terms  
8 of such policy within the policy limits, the immunity from  
9 liability of the insured by reason of the use of such insured's  
10 land for recreational, wildlife propagation or military, law  
11 enforcement or homeland defense purposes, unless such  
12 provision or endorsement is rejected in writing by the named  
13 insured.

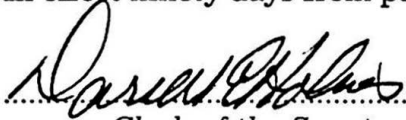
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

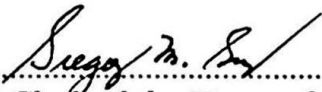
  
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Chairman Senate Committee

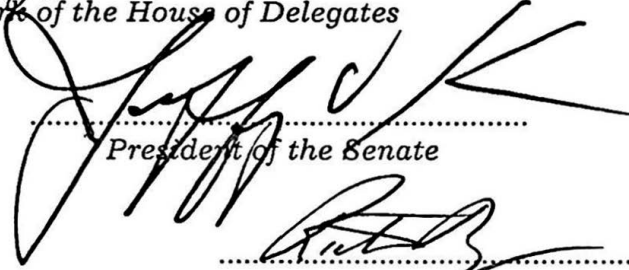
  
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Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

  
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Clerk of the Senate

  
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Clerk of the House of Delegates

  
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President of the Senate

  
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Speaker of the House of Delegates

FILED

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OFFICE WEST VIRGINIA  
SECRETARY OF STATE

The within *is approved* ..... this the *2nd* ..  
Day of *April* ....., 2012.

  
.....  
Governor

PRESENTED TO THE GOVERNOR

MAR 29 2012

Time 4:25 pm