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HOUSE BILL NO. 661

Offered January 9, 2008

Prefiled January 8, 2008

A BILL to amend and reenact §§ 3.1-796.137, 3.1-796.138, and 3.1-796.139 of the Code of Virginia, relating to agritourism and marine tourism activity liability.

Patron—Lewis

Referred to Committee on Agriculture, Chesapeake and Natural Resources

Be it enacted by the General Assembly of Virginia:

1. That §§ 3.1-796.137, 3.1-796.138, and 3.1-796.139 of the Code of Virginia are amended and reenacted as follows:

§ 3.1-796.137. Definitions.

As used in this chapter, unless the context requires a different meaning:

"Agricultural or marine products" means any fish, shellfish, livestock, aquaculture, poultry, horticultural, floricultural, viticultural, silvicultural, or other farm crops.

"Agritourism or marine tourism activity" means any activity ~~carried out on a farm or ranch~~ that allows members of the general public, for recreational, entertainment, or educational purposes, to view or enjoy rural or marine activities, including farming, fishing, wineries, ranching, historical, cultural, harvest-your-own activities, or natural activities and attractions. An activity is an agritourism or marine tourism activity whether or not the participant paid to participate in the activity.

"Agritourism professional" means any person who is engaged in the business of providing one or more agritourism activities on a farm or a ranch, whether or not for compensation.

"Farm or ranch" means one or more areas of land used for the production, cultivation, growing, harvesting or processing of agricultural products.

"Inherent risks of agritourism activity" mean those dangers or conditions that are an integral part of an agritourism or marine tourism activity including certain hazards, including surface and subsurface conditions; natural conditions of land, vegetation, and waters; the behavior of wild or domestic animals; and ordinary dangers of boats, structures, or equipment ordinarily used in farming, fishing, and ranching operations. Inherent risks of an agritourism or marine tourism activity also include the potential of a participant to act in a negligent manner that may contribute to injury to the participant or others, including failing to follow instructions given by the agritourism or marine tourism professional or failing to exercise reasonable caution while engaging in the agritourism or marine tourism activity.

"Marine tourism professional" means any commercial fisherman, as defined in subsection D of § 28.2-241, or any person supervised by a commercial fisherman who is engaged in the business of providing one or more marine tourism activities, whether or not for compensation.

"Participant" means any person, other than an agritourism or marine professional, who engages in an agritourism or marine tourism activity.

§ 3.1-796.138. Liability limited; liability actions prohibited.

A. Except as provided in subsection B, an agritourism or marine tourism professional is not liable for injury to or death of a participant resulting from the inherent risks of agritourism or marine tourism activities, so long as the warning contained in § 3.1-796.139 is posted as required and, except as provided in subsection B, no participant or participant's representative is authorized to maintain an action against or recover from an agritourism or marine tourism professional for injury, loss, damage, or death of the participant resulting exclusively from any of the inherent risks of agritourism or marine tourism activities; provided that in any action for damages against an agritourism or marine tourism professional for agritourism activity or marine tourism activities, the agritourism or marine tourism professional shall plead the affirmative defense of assumption of the risk of the agritourism or marine tourism activity by the participant.

B. Nothing in subsection A shall prevent or limit the liability of an agritourism or marine tourism professional if the agritourism or marine tourism professional does any one or more of the following:

1. Commits an act or omission that constitutes negligence or willful or wanton disregard for the safety of the participant, and that act or omission proximately causes injury, damage, or death to the participant;

2. Has actual knowledge or reasonably should have known of a dangerous condition on the land or water, or in the facilities or equipment used in the activity, or the dangerous propensity of a particular animal used in such activity and does not make the danger known to the participant, and the danger proximately causes injury, damage, or death to the participant; or

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59 3. Intentionally injures the participant.

60 C. Any limitation on legal liability afforded by this section to an agritourism *or marine tourism*
61 professional is in addition to any other limitations of legal liability otherwise provided by law.

62 § 3.1-796.139. Warning required.

63 A. Every agritourism *and marine tourism* professional shall post and maintain signs that contain the
64 warning notice specified in subsection B. The sign shall be placed in a clearly visible location at the
65 entrance ~~to the agritourism location~~ and at the site of the agritourism *or marine tourism* activity. The
66 warning notice shall consist of a sign in black letters, with each letter to be a minimum of one inch in
67 height. Every written contract entered into by an agritourism *or marine tourism* professional for the
68 providing of professional services, instruction, or the rental of equipment to a participant, whether or not
69 the contract involves agritourism *or marine tourism* activities on or off the location or at the site of the
70 agritourism *or marine tourism* activity, shall contain in clearly readable print the warning notice
71 specified in subsection B.

72 B. The signs and contracts described in subsection A shall contain the following notice of warning:

73 "WARNING: Under Virginia law, there is no liability for an injury to or death of a participant in an
74 agritourism *or marine tourism* activity ~~conducted at this agritourism location~~ if such injury or death
75 results from the inherent risks of the agritourism *or marine tourism* activity. Inherent risks of
76 agritourism *and marine tourism* activities include, among others, risks of injury ~~inherent to land,~~
77 ~~equipment, and animals, as well as property~~ and the potential for you to act in a negligent manner that
78 may contribute to your injury or death. You are assuming the risk of participating in this agritourism *or*
79 *marine tourism* activity."

80 C. Failure to comply with the requirements concerning warning signs and notices provided in this
81 section shall prevent an agritourism *or marine tourism* professional from invoking the privileges of
82 immunity provided by this chapter.