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HOUSE BILL NO. 661**AMENDMENT IN THE NATURE OF A SUBSTITUTE**

(Proposed by the House Committee on Agriculture, Chesapeake and Natural Resources
on January 23, 2008)

(Patron Prior to Substitute—Delegate Lewis)

A *BILL to amend the Code of Virginia by adding in Subtitle II of Title 28.2 a chapter numbered 11.1, consisting of sections numbered 28.2-1105 through 28.2-1107, relating to marine tourism activity liability.*

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding in Subtitle II of Title 28.2 a chapter numbered 11.1, consisting of sections numbered 28.2-1105 through 28.2-1107 as follows:

CHAPTER 11.1.**MARINE TOURISM ACTIVITY LIABILITY.**

§ 28.2-1105. *Definitions.*

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

"Inherent risks of a marine tourism activity" mean those dangers or conditions that are an integral part of a marine tourism activity, including certain hazards, such as surface and subsurface conditions; natural conditions of water; natural behaviors and dangers of varied marine products; and ordinary dangers of boats, structures, or equipment ordinarily used in commercial fishing operations. Inherent risks of marine tourism activities also includes 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 marine tourism professional or failing to exercise reasonable caution while engaging in the marine tourism activity.

"Marine products" means any marine fish, shellfish, or organism that inhabits marine or estuarine waters. Terrapin and marine mammals are considered to be marine organisms.

"Marine tourism activity" means any activity carried out by a marine tourism professional that allows members of the general public, for recreational, entertainment, or educational purposes, to view or enjoy marine activities related to the historic and contemporary culture, practice, and industry of commercial fishermen. Marine tourism activities may take place on land or water and shall include aquaculture and fishing, as defined in § 28.2-100. An activity is a marine tourism activity whether or not the participant paid to participate in the 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 a marine professional, who engages in marine tourism activities.

§ 28.2-1106. *Liability limited; liability actions prohibited.*

A. Except as provided in subsection B, a marine tourism professional is not liable for injury to or death of a participant resulting from the inherent risks of marine tourism activities, so long as the warning contained in § 28.2-1107 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 a marine tourism professional for injury, loss, damage, or death of the participant resulting exclusively from any of the inherent risks of marine tourism activities; provided that in any action for damages against a marine tourism professional for marine tourism activities, the marine tourism professional shall plead the affirmative defense of assumption of the risk of the marine tourism activity by the participant.

B. Nothing in subsection A shall prevent or limit the liability of a marine tourism professional if the 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 marine product 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

3. Intentionally injures the participant.

C. Any limitation on legal liability afforded by this section to a marine tourism professional is in addition to any other limitations of legal liability otherwise provided by law.

§ 28.2-1107. *Warning required.*

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

66 B. The signs and contracts described in subsection A shall contain the following notice of warning:
67 "WARNING: Under Virginia law, there is no liability for an injury to or death of a participant in a
68 marine tourism activity if such injury or death results from the inherent risks of a marine tourism
69 activity. Inherent risks of a marine tourism activity include, among others, risks of injury to property
70 and the potential for you to act in a negligent manner that may contribute to your injury or death. You
71 are assuming the risk of participating in this marine tourism activity."

72 C. Failure to comply with the requirements concerning warning signs and notices provided in this
73 section shall prevent a marine tourism professional from invoking the privileges of immunity provided by
74 this chapter.