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**SENATE BILL NO. 246**

Offered January 11, 2012

Prefiled January 10, 2012

A *BILL to amend the Code of Virginia by adding in Chapter 3 of Title 8.01 an article numbered 25, consisting of sections numbered 8.01-227.11 through 8.01-227.20, relating to the limitation of liability for winter sports area operators.*

Patrons—Obenshain, Deeds and Hanger

Referred to Committee for Courts of Justice

**Be it enacted by the General Assembly of Virginia:**

**1. That the Code of Virginia is amended by adding in Chapter 3 of Title 8.01 an article numbered 25, consisting of sections numbered 8.01-227.11 through 8.01-227.20 as follows:**

*Article 25.**Winter Sports Safety Act.**§ 8.01-227.11. Definitions.*

"ANSI Ski Lift Code" means the American National Standard (B77.1-2006): Passenger Ropeways - Aerial Tramways, Aerial Lifts, Surface Lifts, Tows, and Conveyors - Safety Requirements, as published by the American National Standards Institute, including any supplements thereto or revisions thereof.

"Competition" means any contest or event operated by a winter sports area operator or any other party authorized by the operator at a winter sports area involving comparison of skills, including, but not limited to, a ski race, mogul contest, jumping event, freestyle event, snowcross contest, or other similar contest or event. "Competition" includes training sessions or practice for a contest or event.

"Competition terrain" means any part of a winter sports area in which an operator has authorized a competition to take place.

"Competitor" means a winter sports participant who actually is engaged in a competition in any portion of a winter sports area made available by the winter sports area operator.

"Designated trail" means a winter sports area trail on which a participant is permitted by the operator to participate in a winter sport.

"Freestyle terrain" and "freestyle terrain park" mean any portion of a winter sports area that has been designated as such by the operator for freestyle skiing, freestyle snowboarding, or similar freestyle winter sports and includes, but is not limited to, the terrain park itself and features such as rails, boxes, jumps, hits, jibs, tabletops, spines, ramps, banks, pipes, half-pipes, quarter-pipes, tables, logs, or other man-made features such as buses and other vehicles, propane tanks, and tractor tires; snowcross terrain and features; and other constructed or natural features, but does not include moguls, bumps, or rollers or jumps not built by the operator, unless they are within a designated freestyle terrain park.

"Freestyler" means a winter sports participant utilizing freestyle terrain or a freestyle terrain park.

"Helmet" means a type of molded headgear equipped with a neck or chin strap specifically designed by the manufacturer to be used while engaged in the winter sport of alpine skiing.

"Inherent risk of winter sports" means the conditions, dangers, and risks associated with winter sports, including but not limited to:

1. Existing and changing weather conditions and visibility;
2. Hazards associated with varying surface or subsurface conditions on a single trail or from one trail to another, including but not limited to hazards such as participant use, snow in any condition and changing snow conditions, man-made snow, synthetic snow, ice, synthetic ice, snow or ice falling from a tree or natural or man-made structure, crust, slush, soft spots, ridges, rollers, knobs, holes, grooves, tracks from winter sports area vehicles, bare spots, rocks, boulders, stumps, logs, and brush or other forest growth or debris, or piles thereof;
3. Variations in difficulty of terrain, whether natural or as a result of slope use, slope design, or both;

4. Trails that have, or fall away or drop off toward, natural or man-made obstacles or hazards, including but not limited to, sharp corners, ridges, jumps, bumps, rollers, moguls, valleys, dips, compressions, cliffs, ravines, drop-offs, streams, rivers, ponds, lakes, stream beds, open water or water with thin ice, holes, steep, flat and uphill sections, and all variants and combinations thereof;

5. The potential for collision with other participants or other individuals, including winter sports area personnel, whether or not those personnel are on duty or off duty, with wild or domestic animals, or with equipment or objects such as winter sports area infrastructure, snowmaking equipment, buildings and posts, and stationary and moving winter sports area vehicles;

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59 6. The potential for a participant to act in a negligent, willful and wanton, knowing, or intentional  
60 manner that may cause or contribute to the injury or death of the participant or other individuals or  
61 damage to property;

62 7. The location, construction, design, layout, configuration, and condition of trails, freestyle terrain,  
63 competition terrain, and tubing parks;

64 8. The fact that use of trails, freestyle terrain, competition terrain, and tubing parks and  
65 participation in or being near races or other competitions or events, including but not limited to as a  
66 participant, employee at a winter sports area, spectator, or observer, involves the risk of serious injury  
67 or death or damage to property;

68 9. The fact that a helmet may not afford protection in all instances and that failure to wear a helmet  
69 that is properly sized, fitted, and secured may increase the risk of injury or death or the risk of more  
70 severe injury;

71 10. The fact that the use of passenger tramways may be hazardous to passengers, including but not  
72 limited to, dangers resulting from loading or unloading a tramway and the potential for a passenger to  
73 fall from a tramway; and

74 11. Any other equivalent, comparable, or similar condition, danger, or risk of winter sports not  
75 specifically referenced in subdivisions 1 through 10.

76 "Operator" or "winter sports area operator" means any person who has responsibility for the  
77 operations of a winter sports area.

78 "Participant" or "winter sports participant" means an individual of any age or physical or mental  
79 ability who is an amateur or professional invitee of the operator or a trespasser and who participates in  
80 a winter sport at the winter sports area, whether or not consideration is paid to participate in the  
81 winter sport and whether or not the participant holds a valid admissions ticket for all or a portion of  
82 the winter sports area, and any employee of the operator who participates in a winter sport either as  
83 part of his employment duties or as recreation.

84 "Participates in a winter sport" or "participating in a winter sport" means:

85 1. Using a trail or other terrain at a winter sports area to engage in a winter sport;

86 2. Participating in training or lessons for a winter sport as either a teacher or a student;

87 3. Being a spectator, observer, bystander, or pedestrian of or to any activity on a trail or other  
88 terrain at or near a winter sports area; or

89 4. Being a passenger on a passenger tramway.

90 "Passenger" means any individual, including a winter sports participant, while being transported or  
91 conveyed by a passenger tramway, while waiting in the immediate vicinity for such transportation or  
92 conveyance, while moving away from the disembarkation or unloading point of a passenger tramway to  
93 clear the way for the following passengers, or while boarding or embarking upon or unloading or  
94 disembarking from a passenger tramway.

95 "Passenger tramway" means any ski lift, chairlift, gondola, tramway, cable car, or other aerial lift,  
96 and any rope tow, conveyor, t-bar, j-bar, handle tow, or other surface lift used by an operator to  
97 transport participants, spectators, observers, or pedestrians at a winter sports area, and any associated  
98 components including, but not limited to, lift towers, concrete tower foundations, tower bolts, tower  
99 ladders, lift terminals, chairs, gondolas, t-bars, j-bars, conveyors, and other structures relating to  
100 passenger tramways.

101 "Person" means any individual, corporation, partnership, association, cooperative, limited liability  
102 company, trust, joint venture, government, political subdivision, or any other legal or commercial entity  
103 and any successor, representative, agent, agency, or instrumentality thereof.

104 "Snowmaking equipment" means any machine used to make snow, including, but not limited to, snow  
105 guns, and any associated towers, components, pipe, hydrant, hose, or other structures or equipment,  
106 including electrical equipment.

107 "Trail" or "winter sports area trail" means any slope, trail, run, freestyle terrain, competition terrain,  
108 or tubing park located in a winter sports area. "Trail" includes edges and transition areas to other  
109 terrain.

110 "Tubing" means sliding on inflatable tubes, minibobs, sleds, toboggans, or any other comparable  
111 devices down a prepared course or lanes at a winter sports area.

112 "Tubing park" means an area designated by an operator for tubing.

113 "Winter sport" means any single activity, or any combination, of sliding, jumping, walking or  
114 traveling for alpine skiing, Nordic skiing, telemark skiing, freestyle skiing, snowboarding, freestyle  
115 snowboarding, snowshoeing, tobogganing, sledding, tubing, or use of a snowmobile, minibob, snowbike  
116 or comparable device, or any similar activity or use of a device that takes place at any time of the year  
117 on natural snow, man-made snow, ice, synthetic snow, synthetic ice, or any other synthetic surface,  
118 including a competition or the use of any device by a disabled or adaptive participant for a winter  
119 sport. "Winter sport" includes ice skating only when ice skating is offered by an operator that also  
120 offers at the winter sports area at least one of the other listed activities.

"Winter sports area" means all the real and personal property under control of the operator or on the premises of such property that is being occupied by the operator by fee simple, lease, license, easement, permission, or otherwise, including but not limited to any and all trails, freestyle terrain, competition terrain, tubing parks, passenger tramways, or other areas of real property.

"Winter sports area infrastructure" means:

1. Passenger tramways;
2. Snowmaking equipment;
3. Towers, buildings, shacks, fixtures, furniture, and other structures, including utility infrastructure, located on the winter sports area property; and
4. Signs, fences, ropes, flags, posts, racing poles, and any other materials or structures used for posting signs or to manage or direct winter sports participants, spectators, observers, or pedestrians or any combination thereof.

"Winter sports area vehicle" means a vehicle used in the operation and maintenance of winter sports areas and competitions or used in the transportation of participants or other persons within the winter sports area and includes, but is not limited to, snowmobiles, all-terrain vehicles, and any other similarly-sized vehicles as well as larger maintenance and transportation vehicles such as snow grooming equipment and ice resurfacing vehicles.

§ 8.01-227.12. Warnings and other winter sports area operator requirements.

A. Each winter sports area operator shall include the following warning on each ticket, season pass, and written contract for professional services, instruction, or the rental of equipment to a winter sports participant, and on each sign required by this subsection:

"WARNING: Under Virginia law, a ski area operator or other winter sports area operator is not liable for an injury to or death of a winter sports participant in a winter sport conducted at this location, or for damage to property, if such injury, death, or damage results from the inherent risks of the winter sport or from the participant's own negligence. Inherent risks of a winter sport include, among others, risks inherent to the land, equipment, other participants, and animals, as well as the potential for you or another participant to act in a negligent manner that may contribute to the injury, death, or damage. You are assuming the risk of participating in a winter sport at this location. Complete copies of the applicable Virginia law and the participant responsibility code published by the National Ski Areas Association are available for review at each ticket sales office of this winter sports area and online at [insert website for winter sports area]."

Every ticket, season pass, and written contract for professional services, instruction, or the rental of equipment to a participant shall contain the warning required by this subsection in clearly readable print. Every sign required by this section shall contain the warning required by this subsection in black letters, with each letter to be a minimum of one inch in height. An operator also may print on a ticket, season pass, written contract for professional services, instruction, or rental of equipment to a participant or any sign required by this section any additional warning it deems appropriate.

B. Each operator shall install and maintain a sign containing the warning set forth in subsection A (i) at each entrance to the winter sports area, (ii) at each front desk at each building or facility at which guests check in, (iii) at or near each ticket sales office of the winter sports area, (iv) at or near the entrance to a tubing park, and (v) at, near, or en route to the loading area of each passenger tramway.

C. Each operator shall install and maintain at or near the beginning of each designated trail a sign that contains the name of the trail and any of the applicable difficulty-level words and emblems contained in this subsection, as determined by the operator. Directional arrows may be included on any sign, but shall be included if the sign is located at such a distance or position relative to the beginning of a trail that it would not be understandable by a reasonably prudent participant without directional arrows. As applicable, the signs shall indicate: (i) "Easiest," and include a green circle emblem; (ii) "More Difficult," and include a blue square emblem; (iii) "Most Difficult," and include a black diamond emblem; (iv) "Expert" or "Extreme Terrain," and include a two black diamond emblem; (v) "Freestyle Terrain," and include an orange oval emblem; or (vi) "Closed," and include a border around a black figure in the shape of a skier inside with a band running diagonally across the sign.

D. Each operator shall install and maintain at, near, or en route to the loading area for each passenger tramway, other than a tubing park passenger tramway, that does not service trails that are designated by the operator as "Easier," a sign that includes the following warning:

"WARNING. This lift does not service any trails that are designated Easier (green circle emblem). All of the trails serviced by this lift are designated [as applicable, More Difficult (blue square emblem), Most Difficult (black diamond emblem), Expert (two black diamond emblem), or Freestyle Terrain (orange emblem)]."

E. Each operator shall install and maintain at, near, or en route to the entrance to each trail containing freestyle terrain a sign that indicates the location of the freestyle terrain. Each sign shall be

denoted by an orange oval emblem, a stop sign emblem, and the statements, "Freestyle skills required," and "Helmets are recommended." Each sign also may include any other freestyle warning the operator deems appropriate.

F. Whenever trail grooming or snowmaking operations are being undertaken on a trail that is at that time open to the public, the operator shall place or cause to be placed a sign to that effect at the top or beginning of the trail.

G. An operator may vary from the specific location requirements required by this section provided that the location is substantially the same as the location required by this section and that the sign is plainly visible to a reasonably prudent winter sports participant abiding by all of the participant's duties and responsibilities.

H. Each operator shall make available, by oral or written report or otherwise, information concerning the daily conditions of its trails.

I. Each operator that offers a winter sport at nighttime shall meet the lighting standards for that winter sport provided by Illuminating Engineering Society of North America RP-6-01, Sports and Recreational Area Lighting § 6.24, including any supplements thereto or revisions thereof.

J. Each operator shall, upon request, provide (i) a freestyler who holds a valid admission ticket to the winter sports area's freestyle terrain a reasonable opportunity to view the freestyle terrain, (ii) a competitor who has properly registered for the competition a reasonable opportunity to visually inspect the portion of the winter sports area designated by the operator for the competition, and (iii) a participant intending to use a tubing park a reasonable opportunity to view the tubing park.

K. Each operator shall provide a ski patrol and first-aid services.

L. Each operator shall make available on the winter sports area's website and at each ticket sales office of the winter sports area for review by any winter sports participant, upon request, a copy of the skier responsibility code as published by the National Ski Areas Association and a copy of this article.

§ 8.01-227.13. Winter sports area trail maps.

Each operator, upon request, shall provide to a participant a trail map of all trails located in the operator's winter sports area. The maps shall be available at each ticket sales office and at other locations at the winter sports area such that the maps are easily accessible to participants. All trail maps shall indicate the skill-level designation for each trail at the winter sports area as designated in subsection C of § 8.01-227.12.

§ 8.01-227.14. Freestyle terrain.

In addition to providing the signage and warnings set forth in subsections C and E of § 8.01-227.12, an operator shall construct a barricade through use of fencing, flagging, or similar means at the entrance to any trail containing freestyle terrain. The barricade shall contain an entrance opening not wider than 30 feet.

§ 8.01-227.15. Winter sports area vehicles.

An operator shall install and maintain on or near the top of each winter sports area vehicle that is present on any designated trail of a winter sports area during the operating hours of any passenger tramway serving that trail a flashing or rotating light that flashes or rotates whenever the vehicle is on any such trail. An operator also shall install and maintain on any snowmobile, all-terrain vehicle, or any other similarly-sized vehicle that is present on any designated trail during the operating hours of any passenger tramway serving that trail a red or orange flag that is at least 40 square inches in size and is mounted at least five feet from the bottom of the vehicle's tracks or tires.

§ 8.01-227.16. Passenger tramways.

A. Each operator shall be responsible for the safe operation and maintenance of each passenger tramway in its winter sports area whenever the tramway is in use, and for the safe construction of any passenger tramway that the operator constructed. At least once during each calendar year, each operator shall have all passenger tramways within the operator's winter sports area inspected by an individual who is qualified pursuant to Virginia law to inspect passenger tramways for compliance with the requirements of the ANSI Ski Lift Code and shall not operate a passenger tramway that is not in compliance until that passenger tramway is certified by such an individual as being in compliance.

B. If a participant or a passenger using a passenger tramway at a winter sports area with the permission of the operator is unfamiliar with the use of a passenger tramway and asks for instruction on its use, the operator shall provide a reasonable opportunity for such instruction. In addition to the signs required by subsections A, B, and D of § 8.01-227.12, an operator shall install and maintain at or near the loading area for each passenger tramway in the winter sports area a sign stating that if a participant or other passenger is unfamiliar with the use of the passenger tramway and asks for instruction for its use, the operator will provide a reasonable opportunity for such instruction.

§ 8.01-227.17. Duties and responsibilities of winter sports participants and certain other individuals.

A. A winter sports participant has a duty and responsibility to:

1. Comply at all times with each element of the responsibility code published by the National Ski Areas Association that shall be available for review on each winter sports area's website and, upon

request, at each ticket sales office of the winter sports area;

2. Exercise reasonable care in engaging in winter sports at the winter sports area, including, but not limited to, the exercise of reasonable care in:

a. Avoiding the inherent risks of winter sports;

b. Participating in a winter sport at a winter sports area only on designated trails that are not marked "closed," and refraining from participating in a winter sport in any portion of a winter sports area that is not a designated trail or is marked "closed," and from using the property of a winter sports area to access property outside the winter sports area;

c. Knowing the range of his ability to participate in the winter sport in which he is participating and acting within the limits of that ability;

d. Being the sole judge of his knowledge of and ability to successfully negotiate any trail or passenger tramway, and refraining from negotiating any trail or passenger tramway until obtaining sufficient knowledge and ability to do so;

e. Heeding and obeying all warnings, notices and signs provided by an operator, and not altering, defacing, removing, or destroying any such warning, notice, or sign;

f. Maintaining control of his speed and course at all times, and maintaining a proper lookout so as to be able to avoid other participants and objects;

g. Staying clear of any winter sports area vehicle or infrastructure, other than when embarking on or disembarking from a passenger tramway, or when present at or in a residential building or other building that is open to the public;

h. Wearing retention straps, ski brakes, or other devices to prevent runaway equipment;

i. Making a visual inspection of any winter sports area competition terrain and viewing any freestyle terrain or tubing park the participant intends to use;

j. Acting in a safe manner that will avoid contributing to the injury or death of himself or others or the damage to property, including refraining from participating in a winter sport when the participant's ability to do so safely is impaired by the consumption of alcohol or by the use of any narcotic or other drug or while under the influence of alcohol or any narcotic or other drug, or placing, fabricating, or shaping any object in a trail;

k. Embarking on a passenger tramway only with the authority of the operator;

l. Boarding or dismounting from a passenger tramway only at a designated area;

m. Acting in a manner while riding a passenger tramway that is consistent with posted rules and that will not interfere with the proper and safe operation of the passenger tramway;

n. Refraining from throwing or expelling any object while riding on a passenger tramway, and from placing an object on or about the uphill track, the entry area, or the exit area of any passenger tramway;

o. Crossing the uphill track of a passenger tramway only at designated locations; and

p. When involved in a winter sports collision or other accident involving another individual who the participant knows or reasonably should know is in need of medical or other assistance, obtaining assistance for that individual, notifying the proper authorities, and not leaving the scene of the collision or accident without giving the participant's personal identification, including his name and local and permanent address, to an employee or representative of the operator or to someone providing assistance to the individual, except for the purpose of obtaining assistance for the individual, in which case the participant shall give his personal identification to an employee or representative of the operator or to someone providing assistance to the individual after obtaining such assistance.

3. When requested, provide his personal identification to an employee or representative of the winter sports area or operator.

Failure by a participant to abide by and fulfill each duty or responsibility set forth in this subsection shall constitute negligence by the participant.

B. Each passenger using a passenger tramway with the permission of an operator shall abide by and fulfill each duty and responsibility set forth in subsection A that is applicable to use of a passenger tramway. Failure of such passenger to abide by and fulfill each such duty and responsibility shall constitute negligence by the passenger.

C. Each participant, and each passenger using a passenger tramway with the permission of an operator, shall be deemed as a matter of law to have seen and understood all postings, signs, and other warnings provided by the winter sports area operator as required by this article.

D. An operator is entitled to assume that each passenger who boards a passenger tramway has sufficient knowledge, ability, and physical dexterity to embark, disembark from, and negotiate the passenger tramway. Any passenger who is unfamiliar with the use of a passenger tramway or who believes he does not have sufficient knowledge to embark, disembark from, and negotiate a passenger tramway shall ask the operator for instruction on such use or to provide such knowledge. Nothing in this article shall be construed to extend liability to an operator for injury to or death of a participant or

305 other individual or damage to property resulting from a passenger who is unfamiliar with the use of a  
306 passenger tramway or believes he does not have sufficient knowledge to embark, disembark from, or  
307 negotiate a passenger tramway and does not ask the operator for instruction on such use or to provide  
308 such knowledge, or who does not have the ability or physical dexterity to embark, disembark from, or  
309 negotiate a passenger tramway.

310 E. Each participant, and each passenger using a passenger tramway with the permission of an  
311 operator, shall be liable for any injury or death to an individual or damage to property caused by his  
312 negligent violation of any duty or responsibility set forth in this section.

313 F. Any individual who is not authorized by the operator to use or be present at the winter sports  
314 area shall be deemed a trespasser.

315 § 8.01-227.18. Helmets.

316 Each winter sports participant, or the parent or legal guardian of, or adult acting in a supervisory  
317 position over, a participant under the age of 18, shall be responsible for determining whether the  
318 participant will wear a helmet and whether the helmet is sufficiently protective and properly sized, fitted,  
319 and secured.

320 Nothing in this article shall be construed to extend liability to an operator for injury to or death of a  
321 participant or other individual or damage to property resulting from a participant not wearing a helmet  
322 while participating in a winter sport.

323 § 8.01-227.19. Assumption of risks.

324 A. A winter sports participant shall be presumed to have assumed legal responsibility for any injury  
325 or death to an individual or damage to property proximately caused by an inherent risk of the winter  
326 sport in which he participates at a winter sports area, even if a particular risk was not specifically  
327 presented or stated to the participant by the operator. A passenger who uses a passenger tramway with  
328 the permission of an operator shall be presumed to have assumed legal responsibility for any injury or  
329 death to an individual or damage to property proximately caused by any inherent risk of a winter sport  
330 that is applicable to the use of passenger tramways, even if a particular risk was not specifically  
331 presented or stated to the individual by the operator. Such presumption may be rebutted by the  
332 participant or passenger by a preponderance of the evidence proving that the participant or passenger  
333 did not assume the particular inherent risk of winter sports that was the proximate cause of the injury  
334 or death or damage to property at issue.

335 B. Whether a particular circumstance or set of circumstances constitutes an inherent risk of winter  
336 sports shall be determined as a question of law.

337 § 8.01-227.20. Liability of winter sports area operator.

338 A. A winter sports area operator shall be liable if the operator does any of the following:

339 1. Commits an act or omission that constitutes negligence or gross negligence regarding the safety of  
340 a winter sports participant or other individual, or of property, and that act or omission proximately  
341 causes injury to or the death of the participant or other individual or damage to property; or

342 2. Recklessly, knowingly, or intentionally commits an act or omission that proximately causes injury  
343 to or the death of a winter sports participant or other individual or damage to property.

344 B. An operator shall not be liable, and no winter sports participant or other individual or  
345 participant's or individual's representative may maintain an action against or recover from an operator  
346 under subdivision A 1 when a proximate cause of the injury, death, or damage was an inherent risk of  
347 winter sports assumed by the participant or other individual or the failure of a participant or other  
348 individual to abide by or fulfill his duties and responsibilities as set forth in § 8.01-227.17, provided  
349 that in any action for damages against an operator pursuant to subdivision A 1, the operator shall  
350 plead, as appropriate, the affirmative defense of (i) assumption of the risk by the participant or other  
351 individual of an inherent risk of winter sports or (ii) contributory negligence by the participant or other  
352 individual because of a failure to abide by or fulfill his duties and responsibilities as set forth in  
353 § 8.01-227.17.

354 C. A winter sports area operator shall not be considered a common carrier under Virginia law but  
355 shall be liable for any injury to or death of a participant or other individual or damage to property  
356 caused by the operator's failure to operate a passenger tramway in a reasonable manner or to comply  
357 with any mandatory provision of the ANSI Ski Lift Code.

358 D. The liability of a winter sports area operator to a participant or other individual who is not  
359 authorized by the operator to use or be present at the winter sports area shall be only the liability for  
360 the duty owed under Virginia law to a trespasser.