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HOUSE BILL NO. 2004

Offered January 9, 2013

Prefiled January 9, 2013

A BILL to amend the Code of Virginia by adding a section numbered 8.01-226.13, relating to liability for injury to trespasser.

Patrons—Cline, Bell, Richard P., Bell, Robert B., Cox, J.A., Edmunds, Fariss, Head, Helsel, Hodges, Kilgore, Massie, Miller, Morris, Rush, Scott, E.T., Sherwood, Villanueva, Ware, R.L., Webert, Wright, Yancey and Yost

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 a section numbered 8.01-226.13 as follows:

§ 8.01-226.13. Responsibility of possessor of real property for harm to trespasser.

A. As used in this section, unless the context requires a different meaning:

"Possessor" includes an owner, lessee, renter, or other lawful occupant of real property.

"Trespasser" means a person who enters the real property of another without any legal right to do so and without the actual or implied permission of the possessor of the real property or who, after lawfully entering upon the real property of another, intentionally remains on the property after the consent or license to enter or use the property has been terminated.

B. A possessor of real property owes no duty of care to a trespasser except to refrain from injuring the trespasser by an intentional, willful, or wanton act.

C. Notwithstanding subsection B, a possessor of real property may be liable for injury or death to a trespasser in the following situations:

1. The possessor knew or should have known of the trespasser's presence on the property and failed to exercise ordinary care to protect the trespasser from an unsafe condition that is not open and obvious.

2. If the trespasser is a child of tender years and (i) the child was injured by an instrument, machine, or other object that contained a concealed or latent danger where the dangerous nature of the instrument, machine, or other object was not obvious to the child, (ii) the instrument, machine, or other object was easily accessible to children, and (iii) the instrument, machine, or other object was in a location where children frequently gather.

D. This section does not create or increase the liability of any possessor of real property and does not affect any immunities from or defenses to liability established by any other provision of law or available at common law to which a possessor of real property may be entitled under circumstances not governed by this section.

INTRODUCED

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