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## HOUSE BILL NO. 1289

Offered January 25, 1994

A BILL to amend the Code of Virginia by adding in Chapter 4 of Title 8.01 an article numbered 1.1, consisting of sections numbered 8.01-235.1, 8.01-235.2 and 8.01-235.3, establishing the Sailplane Activity Liability Act.

Patron—Cranwell

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 4 of Title 8.01 an article numbered 1.1, consisting of sections numbered 8.01-235.1, 8.01-235.2 and 8.01-235.3, as follows:**

*Article 1.1.*

*The Sailplane Activity Liability Act.*

**§ 8.01-235.1. Definitions.**

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

*"Directly engages in a sailplane activity" means a person who pilots, operates, or is a passenger in a sailplane; such other persons who are customarily involved in movement of the sailplane on the surface; and such other persons as are customarily involved in the launch of the sailplane, including a wing runner, winch operator for winch launch, automobile driver for auto tow, and tow plane pilot for aerotow.*

*"Participant" means any person, whether a licensed pilot, passenger or student pilot, who directly engages in a sailplane activity, whether or not a fee is paid to participate in the sailplane activity and whether or not the participant has shared in any expenses of such activity.*

*"Sailplane" means a heavier-than-air aircraft which is supported in flight by the dynamic reaction of the air against its lifting surfaces and whose free flight does not depend principally on an engine.*

*"Sailplane activity" means: (i) recreational flights regardless of whether the passenger was acquainted with the pilot prior to the flight, sailplane competitions, aerobatics, performances, or exhibitions; (ii) sailplane training, teaching or instructional activities; (iii) sailplane storage activities; (iv) riding in, inspecting or evaluating a sailplane belonging to another whether or not the owner has received some monetary consideration or other thing of value for the use of the sailplane or is permitting a prospective purchaser of the sailplane to ride in, inspect, or evaluate the sailplane; and (v) rides in, trips in, performs aerobatics in, or otherwise uses or operates sailplanes of any type, however formal, informal or impromptu, sponsored by a sailplane activity sponsor.*

*"Sailplane activity sponsor" means any person, glider club, glider society, soaring club, soaring society, whether incorporated or unincorporated, the owner or operator of any sailplane facility, any instructor or administrator of a school-sponsored sailplane program or event, and any organizer, manager, promoter or director of any sailplane activity.*

*"Sailplane facility" means any location from which a sailplane activity is conducted, regardless of whether such activity is regular or occasional. The term also includes the lessor, lessee, and operator of any such facility.*

*"Sailplane professional" means a person or his agent engaged for compensation who (i) provides instruction for sailplane activity or who launches, or rents to a participant, a sailplane for the purpose of flying, riding, operating, or being a passenger or (ii) rents equipment or sailplane parts to a participant.*

**§ 8.01-235.2. Liability limited; liability actions prohibited.**

*A. Except as provided in § 8.01-235.3, a sailplane activity sponsor or a sailplane professional shall not be liable for an injury to or the death of a participant engaged in a sailplane activity.*

*B. Except as provided in § 8.01-235.3, no participant or parent or guardian of a participant who has agreed to assume all risks specifically enumerated under this subsection and has knowingly executed a waiver of his right to sue may maintain an action against or recover from a sailplane activity sponsor or a sailplane professional for an injury to or the death of a participant engaged in a sailplane activity. The waiver shall give notice to the participant of the risk inherent in sailplane activities, including (i) the propensity of the weather or environment to change and thereby adversely affect the flight characteristics or controllability of the sailplane despite efforts by the pilot in command; (ii) the inability to predict the useful life of component parts of the sailplane such as, by way of illustration and not limitation, control surfaces, cables, gauges, and structural members; (iii) hazards above, on or below the surface, whether caused by any natural or manmade activity; or (iv) the potential that the*

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60 pilot may be rendered incapable of operating the sailplane due to a sudden occurrence or medical  
61 emergency.

62 C. The waiver shall remain valid unless expressly revoked by the participant, or parent or guardian  
63 of a minor. In the case of any school- or college-sponsored sailplane activity, the waiver shall apply to  
64 all sailplane activities in which the participant is involved in the next succeeding twelve-month period  
65 unless earlier expressly revoked in writing. Execution of this waiver by a parent or guardian shall act  
66 as an agreement by such signor to indemnify and hold harmless anyone who directly engages in a  
67 sailplane activity, including a sponsor, from actions which may be brought by the minor for whom they  
68 signed.

69 § 8.01-235.3. Liability of sailplane activity sponsors or sailplane professional.

70 No provision of this article shall prevent or limit the liability of a sailplane activity sponsor or  
71 sailplane professional who:

72 1. Intentionally injures the participant;

73 2. Commits an act or omission that constitutes negligence for the safety of the participant and such  
74 act or omission caused the injury, unless such participant, parent, or guardian has expressly assumed  
75 the risk causing the injury in accordance with subsection B of § 8.01-253.2;

76 3. Knowingly provides a sailplane without an airworthiness certificate; or

77 4. Acts in any capacity in any sailplane activity within eight hours after the consumption of any  
78 alcoholic beverage or while under the influence of alcohol or any narcotic drug or any other  
79 self-administered intoxicant or drug of whatever nature.