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HOUSE BILL NO. 1381

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on Agriculture, Conservation, and Natural Resources
on March 2, 1998)

(Patron Prior to Substitute—Delegate Tata)

A BILL to amend and reenact §§ 29.1-700, 29.1-736, 29.1-801, 29.1-808, 29.1-813, and 29.1-818 of the Code of Virginia, to amend the Code of Virginia by adding a section numbered 29.1-808.1, and to repeal 29.1-747, relating to mandatory boating safety education; penalty.

Be it enacted by the General Assembly of Virginia:

1. That §§ 29.1-736, 29.1-801, 29.1-808, 29.1-813, and 29.1-818 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding a section numbered 29.1-808.1 as follows:

§ 29.1-700. Definitions.

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

"Motorboat" means any vessel propelled by machinery whether or not the machinery is the principal source of propulsion.

"Operate" means to navigate or otherwise control the movement of a motorboat or a vessel.

"Owner" means a person, other than a lien holder, having the property in or title to a motorboat. The term includes a person entitled to the use or possession of a motorboat subject to an interest in another person, reserved or created by agreement and securing payment of performance of an obligation, but the term excludes a lessee under a lease not intended as security.

"Personal watercraft" means a motorboat less than sixteen feet in length which uses an inboard motor powering a jet pump as its primary motive power and which is designed to be operated by a person sitting, standing, or kneeling on, rather than in the conventional manner of sitting or standing inside, the vessel.

"Vessel" means every description of watercraft, other than a seaplane on the water, used or capable of being used as a means of transportation on water.

"Waters of the Commonwealth" means any public waters within the territorial limits of the Commonwealth, the adjacent marginal sea and the high seas when navigated as a part of a journey or ride to or from the Virginia shore.

§ 29.1-736. Boat rentals; equipment; safety course.

A. It shall be unlawful to rent a motorboat to any person unless the provisions of this chapter have been complied with. It shall be the duty of persons renting motorboats to equip them as required by this chapter.

B. It shall be unlawful for any person to regularly offer a boat or boats, other than a motorboat, for rent for use on the public waters of the Commonwealth unless such person provides, for the use of each passenger in the boat, a life preserver of the sort prescribed by the regulations of the Board.

C. It shall be unlawful for any person, without first successfully completing a basic boating safety education course approved by the Director, to rent a personal watercraft to another person.

§ 29.1-801. Definitions.

Unless the context otherwise requires, the following words and terms for the purpose of this chapter shall have the following meanings:

"Board" means the Board of Game and Inland Fisheries.

"Certificate of origin" means the document provided by the manufacturer of a new watercraft, or its distributor, which is the only valid indication of ownership between the manufacturer, its distributor, its franchised new watercraft dealers, and the original purchaser not for resale.

"Department" means the Department of Game and Inland Fisheries.

"Director" means the director of the Department.

"Distributor" means a person who sells or distributes new watercraft, pursuant to a written agreement with the manufacturer, to new watercraft dealers in this Commonwealth.

"Distributor branch" means a branch office maintained by a distributor for the sale of watercraft to watercraft dealers or for directing or supervising, in whole or in part, its representatives in this Commonwealth.

"Distributor representative" means a person employed by a distributor or wholesaler, or by a distributor branch, for the purpose of making or promoting the sale of watercraft dealt in by it or for supervising or contacting its dealers, prospective dealers, or representatives in this Commonwealth.

"Established place of business" means a salesroom in a permanent enclosed building or structure, either owned in fee or leased, at which a permanent business of bartering, trading and selling of watercraft will be carried on as such in good faith and at which place of business shall be kept and

60 maintained the books, records and files necessary to conduct the business at such place. It shall not
61 mean ~~residence~~ *residences*, tents, temporary stands or other temporary quarters, nor permanent quarters
62 occupied pursuant to any temporary arrangement, devoted principally to the business of a watercraft
63 dealer, as herein defined.

64 "Factory branch" means a branch office, maintained by a person for the sale of watercraft to
65 distributors or for the sale of watercraft to watercraft dealers, or for directing or supervising, in whole or
66 in part, its representatives in this Commonwealth.

67 "Factory representative" means a person employed by a person who manufactures or assembles
68 watercraft or by a factory branch for the purpose of making or promoting the sale of its watercraft or
69 for supervising or contacting its dealers, prospective dealers, or representatives in this Commonwealth.

70 "Franchise" means a written contract or agreement between two or more persons whereby one
71 person, the franchisee, is granted the right to engage in the business of offering, selling and servicing
72 new watercraft manufactured or distributed by the grantor of the right, the franchisor, and where the
73 operation of the franchisee's business is substantially associated with the franchisor's trademark, trade
74 name, advertising, or other commercial symbol designating the franchisor, the watercraft or its
75 manufacturer or distributor.

76 "Manufacturer" means a person engaged in the business of constructing or assembling new
77 watercraft.

78 "New watercraft" means any watercraft which (i) has not been previously sold except in good faith
79 for the purpose of resale; (ii) has not been used as a rental or demonstration watercraft, or for the
80 personal and business transportation of the manufacturer or dealer or any of their employees, ~~or~~ for any
81 use other than the limited use necessary in testing the watercraft prior to delivery to a customer; (iii) is
82 transferred by a certificate of origin; and (iv) has the manufacturer's certification that it conforms to all
83 applicable federal watercraft safety standards.

84 "New watercraft dealer" means a dealer in new watercraft or new and used watercraft.

85 "Person" means any natural person or individual, partnership, firm, association, corporation or other
86 entity.

87 "Retail installment sale" means and includes every sale of one or more watercraft to a buyer for his
88 use and not for resale, in which the price thereof is payable in one or more installments over a period of
89 time and in which the seller has either retained title to the goods or has taken or retained a security
90 interest in the goods under form of contract designated either as a conditional sale, bailment lease,
91 chattel mortgage or otherwise.

92 "Sale at retail" or "retail sale" means the act or attempted act of selling, bartering, exchanging, or
93 otherwise disposing of a watercraft to a buyer for his personal use and not for resale.

94 "Sale at wholesale" or "wholesale" means a sale to watercraft dealers or wholesalers other than to
95 consumers or a sale to one who intends to resell.

96 "Used watercraft" means any watercraft other than a new watercraft as defined herein.

97 "Used watercraft dealer" means a dealer in used watercraft that does not deal in new watercraft.

98 "Watercraft" means that as defined in § 29.1-712 except that (i) United States naval watercraft; (ii)
99 watercraft which have a valid marine document issued by the United States Coast Guard, other than
100 recreational watercraft under seventy feet in length; and (iii) watercraft documented outside the United
101 States shall not be included in such definition for purposes of this chapter.

102 "Watercraft dealer" means any person which:

103 1. For commission, money or other thing of value, buys, sells, exchanges, either outright or on
104 conditional sale, bailment lease, chattel mortgage or otherwise howsoever, or arranges or offers or
105 attempts to solicit or negotiate on behalf of others a sale, purchase or exchange of an interest in, new
106 watercraft or new and used watercraft or used watercraft alone whether or not such watercraft are owned
107 by such person; or

108 2. Is engaged, wholly or in part, in the business of selling new watercraft or new and used
109 watercraft, or used watercraft only, whether or not such watercraft are owned by such person; or

110 3. Sells, offers to sell, displays or permits the display for sale, of two or more watercraft, within any
111 twelve consecutive months.

112 For the purpose of this chapter, the term "watercraft dealer" does not include:

113 1. Receivers, trustees, administrators, executors, guardians, conservators or other persons appointed
114 by or acting under judgment or order of any court or their employees when engaged in the specific
115 performance of their duties as such employees; or

116 2. Public officers, their deputies, assistants or employees, while performing their official duties; or

117 3. Persons, other than corporations or other business entities primarily engaged in the leasing or
118 renting of watercraft to others, (i) when selling or offering such watercraft for sale at retail, or (ii)
119 disposing of watercraft acquired for their own use and actually so used, when the same shall have been
120 so acquired and used in good faith and not for the purpose of avoiding the provisions of this chapter; or

121 4. Any corporation duly chartered or authorized to do a banking or trust business under the authority

of the laws of this Commonwealth, or the United States, which may have received title to a watercraft in the normal course of its business by reason of a foreclosure, other taking, repossession or voluntary reconveyance to said corporation arising or occurring as a result of any loan secured by a lien on said watercraft; or

5. An employee of an organization arranging for the purchase or lease by the organization of watercraft for use in the organization's business; or

6. Any person who permits the operation of a watercraft show or permits the display of watercraft for sale by any watercraft dealer licensed under this chapter; or

7. An insurance company licensed or otherwise authorized to do business in this Commonwealth that sells or disposes of watercraft under a contract with their insured and in the regular course of its business.

"Watercraft demonstrator" means any person who is employed or contracted by a watercraft dealer to demonstrate watercraft to prospective buyers.

"Watercraft salesman" or "salesman" means any person who is employed as a salesman by, or has an agreement with, a watercraft dealer to sell or exchange watercraft.

"Watercraft show" means a display of watercraft to the general public at a location other than a dealer's location licensed under this chapter where such watercraft may be offered for sale or exchange during or as part of the display.

§ 29.1-808. Licenses required.

It is unlawful for any person to engage in business in this Commonwealth as a new watercraft dealer, used watercraft dealer, watercraft salesman, *watercraft demonstrator*, manufacturer, factory branch, distributor, distributor branch, or factory or distributor representative without first obtaining a license as provided in this chapter. If any watercraft dealer acts as watercraft salesman, he shall obtain a watercraft salesman's license in addition to a watercraft dealer's license. *Any watercraft salesman who acts as a watercraft demonstrator shall not be required to obtain an additional license as a watercraft demonstrator.* The offering or grant of a watercraft dealer franchise in this Commonwealth shall be deemed the engaging in business in this Commonwealth for purposes of this section, and no new watercraft may be sold or offered for sale in this Commonwealth unless the franchisor of watercraft dealer franchises for that line make in this Commonwealth (whether such franchisor be a manufacturer, factory branch, distributor, distributor branch, or otherwise) is licensed under this chapter. In the event a license issued under this chapter to a franchisor of watercraft dealer franchises shall be suspended or revoked or shall not be renewed, nothing in this section shall be deemed to prevent the sale of any new watercraft of such franchisor's line made, manufactured in or brought into this Commonwealth for sale prior to the suspension, revocation or expiration of the license.

§ 29.1-808.1. *Boating safety education required.*

It shall be unlawful for any watercraft salesman or watercraft demonstrator to engage in business in this Commonwealth as a watercraft salesman or watercraft demonstrator without first (i) completing successfully a basic boating safety education course approved by the Director or (ii) by December 31, 1998, passing a test approved by the Director; however, any watercraft salesman or demonstrator licensed after December 31, 1998, shall have a period of sixty days from the issuance of his license in which to complete the approved course.

§ 29.1-813. License fees; additional to other licenses and fees required by law.

A. The fee for each license year or part thereof shall be as follows:

1. For watercraft dealers, manufacturers, factory branches, distributors, distributor branches and wholesalers, seventy-five dollars for each principal place of business, plus twenty-five dollars for a supplemental license for each lot more than twenty-five yards distant from a principal place of business.

2. For each temporary supplemental license, twenty-five dollars.

3. For watercraft salesmen *or watercraft demonstrators*, fifteen dollars.

4. For factory representatives, distributor representatives, or distributor branch representatives, fifteen dollars.

B. The licenses and fees required by this chapter are in addition to licenses, taxes and fees imposed by other provisions of law. Nothing contained in this section or in any other section of this chapter shall be construed as exempting any person, firm or corporation from any license, tax or fee imposed by any other provision of law.

§ 29.1-818. Licenses of salesmen, etc., to be carried, etc.; change of employer.

Every *watercraft dealer*, *watercraft salesman*, *watercraft demonstrator*, factory representative and distributor representative shall carry his license when engaged in his business and shall display the same upon request. The license shall name his employer and, in the event of a change of employer, he shall immediately mail his license to the Director, who shall endorse such change on the license without a charge.

2. That § 29.1-747 of the Code of Virginia is repealed.

183 3. That the provisions of this act shall become effective on January 1, 1999.