

23105239D

HOUSE BILL NO. 1958

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee for Courts of Justice on January 23, 2023)

(Patron Prior to Substitute—Delegate Leftwich)

A BILL to amend and reenact § 35.1-1 of the Code of Virginia and to amend the Code of Virginia by adding in Chapter 2 of Title 35.1 sections numbered 35.1-17.1 and 35.1-17.2, relating to campgrounds; inherent risks; liability.

Be it enacted by the General Assembly of Virginia:

1. That § 35.1-1 of the Code of Virginia is amended and reenacted and that the Code of Virginia is amended by adding in Chapter 2 of Title 35.1 sections numbered 35.1-17.1 and 35.1-17.2 as follows:

§ 35.1-1. Definitions.

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

"Bed-and-breakfast operation" means a residential-type establishment that provides (i) two or more rental accommodations for transient guests and food service to a maximum of 18 transient guests on any single day for five or more days in any calendar year or (ii) at least one rental accommodation for transient guests and food service to a maximum of 18 transient guests on any single day for 30 or more days in any calendar year.

"Board" or "State Board" means the State Board of Health.

"Campground" means any area, place, parcel, or tract of land, by whatever name called, on which three or more campsites are occupied or intended for occupancy, or facilities are established or maintained, wholly or in part, for the accommodation of camping units for periods of overnight or longer, whether the use of the campsites and facilities is granted gratuitously, or by rental fee, lease, or conditional sale, or by covenants, restrictions, and easements, including any travel trailer camp, recreation camp, family campground, camping resort, or camping community. "Campground" does not mean a summer camp, migrant labor camp, or park for manufactured homes as defined in this section and in §§ 32.1-203 and 36-85.3, or a construction camp, storage area for unoccupied camping units, or property upon which the individual owner may choose to camp and not be prohibited or encumbered by covenants, restrictions, and conditions from providing his sanitary facilities within his property lines.

"Camping participant" means any person, other than a camping professional, who visits or uses a campground or campsite.

"Camping professional" means any person who is engaged in the business of owning, operating, or maintaining a campground or campsite, whether or not for compensation.

"Camping unit" means any device or vehicular type structure for use as temporary living quarters or shelter during periods of recreation, vacation, leisure time, or travel, including any tent, tent trailer, travel trailer, camping trailer, pickup camper, or motor home.

"Campsite" means any plot of ground within a campground used or intended for occupation by the camping unit.

"Certified food protection manager" means a person who has demonstrated proficiency in food safety issues, regulations, and techniques in maintaining a safe-food environment by passing a test and receiving a certification as part of a program that is accredited by the Board.

"Commissioner" means the State Health Commissioner.

"Department" means the State Department of Health.

"Hotel" means any place offering to the public for compensation transitory lodging or sleeping accommodations, overnight or otherwise, including facilities known by varying nomenclatures or designations as hotels, motels, travel lodges, tourist homes, or hostels.

"Inherent risks of camping" means those dangers, conditions, or hazards naturally occurring in nature, including surface and subsurface conditions; natural conditions of land, vegetation, and waters; the behavior of wild or non-domesticated animals; the presence or absence of natural lighting; and fires.

"Person" means an individual, corporation, partnership, association, or any other legal entity.

"Restaurant" means:

1. Any place where food is prepared for service to the public on or off the premises, or any place where food is served, including lunchrooms, short order places, cafeterias, coffee shops, cafes, taverns, delicatessens, dining accommodations of public or private clubs, kitchen facilities of hospitals and nursing homes, dining accommodations of public and private schools and institutions of higher education, and kitchen areas of local correctional facilities subject to standards adopted under § 53.1-68.

2. Any place or operation that prepares or stores food for distribution to persons of the same

60 business operation or of a related business operation for service to the public, including operations
61 preparing or storing food for catering services, push cart operations, hotdog stands, and other mobile
62 points of service.

63 3. Mobile points of service to which food is distributed by a place or operation described in
64 subdivision 2 unless the point of service and of consumption is in a private residence.

65 "Restaurant" does not include any place manufacturing packaged or canned foods that are distributed
66 to grocery stores or other similar retailers for sale to the public.

67 "Summer camp" means any building, tent, or vehicle, or group of buildings, tents, or vehicles, if
68 operated as one place or establishment, or any other place or establishment, public or private, together
69 with the land and waters adjacent thereto, that is operated or used in this Commonwealth for the
70 entertainment, education, recreation, religious instruction or activities, physical education, or health of
71 persons under 18 years of age who are not related to the operator of such place or establishment by
72 blood or marriage within the third degree of consanguinity or affinity, if 12 or more such persons at any
73 one time are accommodated, gratuitously or for compensation, overnight and during any portion of more
74 than two consecutive days.

75 **§ 35.1-17.1. Campgrounds; liability limited; liability actions prohibited.**

76 A. Except as provided in subsection B, (i) a camping professional is not liable for injury to or death
77 of a camping participant resulting from the inherent risks of camping, so long as the warning contained
78 in § 35.1-17.2 is posted as required, and (ii) no camping participant or camping participant's
79 representative is authorized to maintain an action against or recover from a camping professional for
80 injury to, loss or damage by, or death of the camping participant resulting exclusively from any of the
81 inherent risks of camping, provided that in any action for damages against a camping professional for
82 camping activity, the camping professional shall plead the affirmative defense of assumption of the risk
83 of camping activity by the participant.

84 B. Nothing in subsection A shall prevent or limit the liability of a camping professional if the
85 camping professional:

86 1. Commits an act or omission that constitutes gross negligence or willful or wanton disregard for
87 the safety of the camping participant, and that act or omission proximately causes injury to or damage
88 or death of the camping participant;

89 2. Has actual knowledge or reasonably should have known of a dangerous condition on the land or
90 in the facilities or equipment used in the activity and does not make the danger known to the camping
91 participant, and the danger proximately causes injury to or damage or death of the camping participant;
92 or

93 3. Intentionally injures the participant.

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

96 **§ 35.1-17.2. Notice required.**

97 A. Every camping professional shall post and maintain signs that contain the notice specified in
98 subsection B. The signs shall be placed in a clearly visible location at the entrance to the campground
99 and conspicuous locations on the campground property. The notice shall consist of a sign in black
100 letters, with each letter to be a minimum of one inch in height. Every written contract entered into
101 between a camping professional and a camping participant for use of the campground or campsite shall
102 contain in clearly readable print the notice specified in subsection B.

103 B. The signs and contracts described in subsection A shall contain the following notice: "WARNING"
104 or "ATTENTION" followed by, "Under Virginia law, there is no liability for an injury to or death of a
105 camping participant in a camping activity conducted at this campground or campsite if such injury or
106 death results from the inherent risks of camping. Inherent risks of camping include, among others, risks
107 of injury inherent to land, equipment, and animals, as well as the potential for you to act in a negligent
108 manner that may contribute to your injury or death. You are assuming the risk of participating in this
109 camping activity."

110 C. Failure to comply with the requirements concerning signs and notices provided in this section
111 shall prevent a camping professional from invoking the privileges of immunity provided by this chapter.