

1 SB85
2 126182-1
3 By Senator Allen
4 RFD: Judiciary
5 First Read: 01-MAR-11

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8 SYNOPSIS: Under existing law, an agritourism
9 professional operating an agritourism activity may
10 be held liable for injury or death to a person
11 participating in the agritourism activity.

12 This bill would limit the liability of an
13 agritourism professional to a participant in an
14 agritourism activity if the cause of the injury or
15 death is an inherent risk of the agritourism
16 activity and would provide exceptions.

17 This bill would require the agritourism
18 professional to post certain warning notices at the
19 main point of entrance to the agritourism activity
20 and would require the warning notice to be included
21 in a written contract with a participant under
22 certain conditions.

23
24 A BILL
25 TO BE ENTITLED
26 AN ACT
27

1 Relating to agritourism; to limit the liability of
2 an agritourism professional under certain circumstances; to
3 provide exceptions; to require certain warning notices to be
4 posted at the main point of entrance to the agritourism
5 activity; and to require certain warning notices to be
6 included in a written contract with a participant under
7 certain conditions.

8 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

9 Section 1. For the purposes of this act, the
10 following terms shall have the following meanings:

11 (1) AGRITOURISM ACTIVITY. Any of the following,
12 whether or not a participant provides monetary or other
13 valuable compensation to participate:

14 a. An activity at an agricultural, horticultural, or
15 agribusiness operation where the general public is allowed or
16 invited to participate in, view, or enjoy the activities for
17 recreational, entertainment, or educational purposes,
18 including farming, ranching, historic and cultural
19 agricultural activities, self-pick farms, or farmers' markets.

20 b. An activity involving an animal exhibition at an
21 agricultural fair.

22 c. A natural resource based activity or attraction,
23 including hunting, fishing, hiking, or trail riding.

24 (2) AGRITOURISM PROFESSIONAL. A person who is
25 engaged in the business of providing agritourism activities
26 whether or not the participant pays to participate in the
27 activity, including employees or authorized agents who offer

1 or conduct agritourism activities on behalf of an agritourism
2 professional.

3 (3) INHERENT RISKS OF AGRITOURISM ACTIVITIES. Those
4 conditions, dangers, or hazards that are an integral part of
5 an agritourism activity, including any of the following:

6 a. Surface and subsurface conditions and natural
7 conditions of land, vegetation, and waters.

8 b. The behavior of wild or domestic animals.

9 c. The ordinary dangers of structures or equipment
10 ordinarily used on a working agricultural, horticultural, or
11 agribusiness operation.

12 d. The negligent acts of a participant that may
13 contribute to injury to the participant or others, including
14 failing to follow instructions given by an agritourism
15 professional, failing to exercise reasonable caution while
16 engaging in the agritourism activity, or failing to obey
17 written warnings or postings on the premises of the
18 agritourism operation.

19 (4) PARTICIPANT. Any person, other than an
20 agritourism professional, who engages in an agritourism
21 activity.

22 (5) PERSON. An individual, governmental entity,
23 corporation, limited liability company, partnership,
24 unincorporated association, or other legal or commercial
25 entity.

26 Section 2. (a) Except as provided in Section 3, an
27 agritourism professional may not be liable for an injury to a

1 participant or the death of a participant resulting from an
2 inherent risk of an agritourism activity.

3 (b) Except as provided in Section 3, a participant
4 or a representative of a participant may not make a claim
5 against, maintain an action against, or recover from an
6 agritourism professional for injury, loss, damage, or death of
7 a participant resulting from an inherent risk of an
8 agritourism activity.

9 Section 3. (a) Section 2 may not prevent or limit
10 the liability of an agritourism professional who:

11 (1) Has actual knowledge of a dangerous condition on
12 the land, facilities, or equipment used in the agritourism
13 activity or actual knowledge of the dangerous propensity of a
14 particular animal used in the agritourism activity, does not
15 make the danger known to the participant, and the danger
16 proximately causes injury, damage, or death to the
17 participant.

18 (2) Fails to properly train or improperly or
19 inadequately trains an employee who is actively involved in
20 the agritourism activity and an act or omission of the
21 employee proximately causes injury, damage, or death to the
22 participant.

23 (3) Commits an act or omission that constitutes
24 willful or wanton disregard for the safety of the participant
25 and such act or omission causes the injury or death of a
26 participant.

27 (4) Intentionally injures the participant.

1 Section 4. (a) This act does not apply unless an
2 agritourism professional posts and maintains a sign on which
3 is printed a warning notice printed in black letters, with
4 each letter being at least one inch in height.

5 (b) The warning notice required under subsection (a)
6 shall be placed in a clearly visible location at the main
7 point of entrance to the agritourism activity.

8 (c) The warning notice required under subsection (a)
9 shall read as follows:

10 "WARNING

11 "Under Alabama law, an agritourism professional is
12 not liable for an injury to, or the death of, a participant in
13 an agritourism activity at this location if the death or
14 injury results from the inherent risks of the agritourism
15 activity.

16 "Inherent risks of an agritourism activity include
17 risks of injury inherent to land, equipment, and animals as
18 well as the potential for you to act in a negligent manner
19 that may contribute to your injury or death, or for another
20 participant to act in a manner that may cause you injury or
21 death.

22 "You are assuming the risk of participating in this
23 agritourism activity."

24 Section 5. (a) If there is a written contract
25 between an agritourism professional and a participant for the
26 providing of professional services, instruction, or the rental
27 of equipment to a participant for the purposes of engaging in

1 or participating in an agritourism activity, the contract
2 shall contain in clearly legible print the warning notice
3 required under Section 4.

4 (b) The warning notice required under Section 4
5 shall be included in a written contract as required under
6 subsection (a) whether or not the contract involves an
7 agritourism activity on or off the site of the agricultural,
8 horticultural, or agribusiness operation.

9 Section 6. (a) This act does not apply to an
10 activity if the participant is paid to participate in the
11 activity.

12 (b) This act does not apply to an agritourism
13 professional who does not comply with the requirements of this
14 act concerning signs and warning notices.

15 Section 7. This act shall become effective on the
16 first day of the third month following its passage and
17 approval by the Governor, or its otherwise becoming law.