

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

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HOUSE BILL 329
Committee Substitute Favorable 5/16/05

Short Title: Limit Liability for Agritourism Activities.

(Public)

Sponsors:

Referred to:

February 22, 2005

1 A BILL TO BE ENTITLED
2 AN ACT TO LIMIT LIABILITY FOR THOSE WHO PARTICIPATE IN
3 AGRITOURISM ACTIVITIES.

4 The General Assembly of North Carolina enacts:

5 SECTION 1. Chapter 99E of the General Statutes is amended by adding a
6 new Article to read:

7 "Article 4.

8 "Agritourism Activity Liability.

9 **"§ 99E-30. Definitions.**

10 As used in this Article, the term:

- 11 (1) 'Agritourism activity' means any activity carried out on a farm or ranch
12 that allows members of the general public, for recreational,
13 entertainment, or educational purposes, to view or enjoy rural
14 activities, including, by way of illustration and not limitation, farming,
15 ranching, historic, cultural, harvest-your-own activities, or natural
16 activities and attractions. An activity is an agritourism activity whether
17 or not the participant paid to participate in the activity.
- 18 (2) 'Agritourism professional' means any person who is engaged in the
19 business of providing one or more agritourism activities.
- 20 (3) 'Inherent risks of agritourism activity' means those dangers or
21 conditions that are an integral part of an agritourism activity including
22 certain hazards such as surface and subsurface conditions; natural
23 conditions of land, vegetation, and waters; the behavior of wild or
24 domestic animals; and ordinary dangers of structures or equipment
25 ordinarily used in farming and ranching operations. 'Inherent risks of
26 agritourism activity' also includes the potential of a participant to act in
27 a negligent manner that may contribute to injury to the participant or
28 others, such as failing to follow instructions given by the agritourism

1 professional or failing to exercise reasonable caution while engaging in
2 the agritourism activity.

3 (4) 'Participant' means anyone who engages in an agritourism activity.

4 (5) 'Person' means an individual, a fiduciary, a firm, an association, a
5 partnership, a limited liability company, a corporation, a unit of
6 government, or any other group acting as a unit.

7 **"§ 99E-31. Liability.**

8 (a) Except as provided in subsection (b) of this section, an agritourism
9 professional is not liable for injury to or death of a participant resulting from the
10 inherent risks of agritourism activities, so long as the warning contained in subsection
11 (f) of this section is posted as required and, except as provided in subsection (b) of this
12 section, no participant or participant's representative can maintain an action against or
13 recover from an agritourism professional for injury, loss, damage, or death of the
14 participant resulting exclusively from any of the inherent risks of agritourism activities.
15 In any action for damages against an agritourism professional for agritourism activity,
16 the agritourism professional must plead the affirmative defense of assumption of the
17 risk of agritourism activity by the participant.

18 (b) Nothing in subsection (a) of this section prevents or limits the liability of an
19 agritourism professional if the agritourism professional does any one or more of the
20 following:

21 (1) Commits an act or omission that constitutes negligence or willful or
22 wanton disregard for the safety of the participant, and that act or
23 omission proximately causes injury, damage, or death to the
24 participant.

25 (2) Has actual knowledge or reasonably should have known of a
26 dangerous condition on the land, facilities, or equipment used in the
27 activity or the dangerous propensity of a particular animal used in such
28 activity and does not make the danger known to the participant, and
29 the danger proximately causes injury, damage, or death to the
30 participant.

31 (c) Nothing in subsection (a) of this section prevents or limits the liability of an
32 agritourism professional under liability provisions as set forth in Chapter 99B of the
33 General Statutes.

34 (d) Any limitation on legal liability afforded by this section to an agritourism
35 professional is in addition to any other limitations of legal liability otherwise provided
36 by law.

37 (e) The immunities afforded by this section do not apply to agritourism activities
38 that take place at the North Carolina State Fair or at county or regional fairs. As used in
39 this section, 'fairs' has the same meaning as used in G.S. 106-520.1.

40 (f) Every agritourism professional must post and maintain signs that contain the
41 warning notice specified in subdivision (1) of this subsection. The sign must be placed
42 in a clearly visible location at the entrance to the agritourism location and at the site of
43 the agritourism activity. The warning notice must consist of a sign in black letters, with
44 each letter to be a minimum of one inch in height. Every written contract entered into by

1 an agritourism professional for the providing of professional services, instruction, or the
2 rental of equipment to a participant, whether or not the contract involves agritourism
3 activities on or off the location or at the site of the agritourism activity, must contain in
4 clearly readable print the warning notice specified in subdivision (1) of this subsection.

5 (1) The signs and contracts described in subsection (f) of this section must
6 contain the following notice of warning:

7 **'WARNING**

8 Under North Carolina law, there is no liability for an injury to or
9 death of a participant in an agritourism activity conducted at this
10 agritourism location if such injury or death results from the
11 inherent risks of the agritourism activity. Inherent risks of
12 agritourism activities include, among others, risks of injury
13 inherent to land, equipment, and animals, as well as the potential
14 for you to act in a negligent manner that may contribute to your
15 injury or death. You are assuming the risk of participating in this
16 agritourism activity.'

17 (2) Failure to comply with the requirements concerning warning signs and
18 notices provided in this subsection will prevent an agritourism
19 professional from invoking the privileges of immunity provided by
20 G.S. 99E-31."

21 **SECTION 2.** This act becomes effective January 1, 2006, and applies to
22 agritourism activities, as defined in G.S. 99E-30, as enacted in Section 1 of this act, that
23 occur on or after that date.