

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

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SENATE BILL 389*

Short Title: Limit Liability for Agritourism Activities. (Public)

Sponsors: Senators Snow, Presnell; Apodaca, Atwater, Berger of Franklin, Berger of Rockingham, Bingham, Blake, Brown, Clodfelter, East, Forrester, Garwood, Goodall, Jacumin, Rand, Thomas, and Tillman.

Referred to: Judiciary I.

March 7, 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 that allows members of the
12 general public, for recreational, entertainment, or educational
13 purposes, to view or enjoy rural activities, including, by way of
14 illustration and not limitation, farming, ranching, historic, cultural, or
15 natural activities and attractions. An activity is an agritourism activity
16 whether or not the participant paid to participate in the activity.
17 (2) 'Agritourism professional' means any person who is engaged in the
18 business of providing one or more agritourism activities.
19 (3) 'Inherent risks of agritourism activity' means those dangers or
20 conditions that are an integral part of an agritourism activity including
21 certain hazards such as surface and subsurface conditions; natural
22 conditions of land, vegetation, and waters; the behavior of wild or
23 domestic animals; and ordinary dangers of structures or equipment
24 ordinarily used in farming and ranching operations. 'Inherent risks of
25 agritourism activity' also includes the potential of a participant to act in
26 a negligent manner that may contribute to injury to the participant or
27 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 willful or wanton
22 disregard for the safety of the participant, and that act or omission
23 proximately causes injury, damage, or death to the participant.

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

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

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

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

38 (f) Every agritourism professional must post and maintain signs that contain the
39 warning notice specified in subdivision (1) of this subsection. The sign must be placed
40 in a clearly visible location at the entrance to the agritourism location and at the site of
41 the agritourism activity. The warning notice must consist of a sign in black letters, with
42 each letter to be a minimum of one inch in height. Every written contract entered into by
43 an agritourism professional for the providing of professional services, instruction, or the
44 rental of equipment to a participant, whether or not the contract involves agritourism

1 activities on or off the location or at the site of the agritourism activity, must contain in
2 clearly readable print the warning notice specified in subdivision (1) of this subsection.

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

5 **'WARNING**

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

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

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