

HOUSE BILL 434

53RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2017

INTRODUCED BY

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AN ACT

RELATING TO CIVIL LIABILITY; PROVIDING FOR LIMITED LIABILITY IN
AGRITOURISM ACTIVITIES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. [NEW MATERIAL] SHORT TITLE.--This act may be
cited as the "Agritourism Limited Liability Act".

SECTION 2. [NEW MATERIAL] DEFINITIONS.--As used in the
Agritourism Limited Liability Act:

A. "agricultural products" means any livestock,
poultry or aquacultural, horticultural, floricultural,
viticultural, silvicultural or other farm crops;

B. "agritourism activity" means any activity
carried out on a farm or ranch that allows members of the
general public, for recreational, entertainment or educational
purposes, to view or enjoy rural activities, including farming,

1 winemaking, ranching, historical, cultural, harvest-your-own
2 activities or natural activities and attractions. An activity
3 is an "agritourism activity" regardless of whether the
4 participant paid to participate in the activity;

5 C. "agritourism professional" means any person who
6 is engaged in the business of providing one or more agritourism
7 activities, whether or not for compensation;

8 D. "farm or ranch" means one or more areas of land
9 used for the production, cultivation, growing, harvesting or
10 processing of agricultural products;

11 E. "inherent risks of agritourism activity" means
12 those dangers or conditions that are an integral part of an
13 agritourism activity, including:

14 (1) surface and subsurface conditions;
15 (2) natural conditions of land, vegetation and
16 waters;

17 (3) behavior of wild or domestic animals;
18 (4) ordinary dangers of structures or
19 equipment ordinarily used in farming and ranching operations;
20 and

21 (5) the potential of a participant to act in a
22 negligent manner that may contribute to injury to the
23 participant or others, including failing to follow instructions
24 given by an agritourism professional or failing to exercise
25 reasonable caution while engaging in an agritourism activity;

1 and

2 F. "participant" means any person, other than an
3 agritourism professional, who engages in an agritourism
4 activity.

5 SECTION 3. [NEW MATERIAL] LIABILITY LIMITED--LIABILITY
6 ACTIONS PROHIBITED.--

7 A. Except as provided in Subsection B of this
8 section:

9 (1) an agritourism professional is not liable
10 for injury to or the death of a participant resulting from the
11 inherent risks of agritourism activities so long as the warning
12 notice specified in Subsection C of Section 4 of the
13 Agritourism Limited Liability Act is posted as required; and

14 (2) no participant or participant's
15 representative is authorized to maintain an action against or
16 recover from an agritourism professional for injury, loss,
17 damage or death of the participant resulting exclusively from
18 any of the inherent risks of agritourism activities; provided
19 that in any action for damages against an agritourism
20 professional for agritourism activity, the agritourism
21 professional shall plead the affirmative defense of assumption
22 of the inherent risks of agritourism activity by the
23 participant.

24 B. Nothing in Subsection A of this section shall
25 prevent or limit the liability of an agritourism professional

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1 if the agritourism professional:

2 (1) commits an act or omission that
3 constitutes negligence or willful or wanton disregard for the
4 safety of the participant, and that act or omission proximately
5 causes injury, damage or death to the participant;

6 (2) has actual knowledge or reasonably should
7 have known of a dangerous condition on the land or in the
8 facilities or equipment used in the agritourism activity or the
9 dangerous propensity of a particular animal used in the
10 activity, does not make the dangerous condition or propensity
11 known to the participant and the dangerous condition or
12 propensity proximately causes injury, damage or death to the
13 participant; or

14 (3) intentionally injures the participant.

15 C. Any limitation on legal liability provided by
16 this section to an agritourism professional is in addition to
17 any other limitations of legal liability otherwise provided by
18 law.

19 SECTION 4. [NEW MATERIAL] REQUIRED WARNINGS AND
20 NOTICES.--

21 A. The limitation of liability provided in Section
22 3 of the Agritourism Limited Liability Act is applicable to
23 agritourism activities only if signs that contain the warning
24 notice specified in Subsection C of this section are posted at
25 a farm or ranch where the agritourism activities are to take

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1 place. Such signs shall be placed in a clearly visible
2 location at the entrance to a farm or ranch where the
3 agritourism activity is to take place and at the site of the
4 agritourism activity. The warning notice shall consist of a
5 sign in black letters, with each letter to be a minimum of one
6 inch in height.

7 B. Every written contract entered into by an
8 agritourism professional for the providing of professional
9 services or instruction or the rental of equipment to a
10 participant, whether or not the contract involves agritourism
11 activities on or off the farm or ranch or at the site of the
12 agritourism activity, shall contain in clearly readable print
13 the warning notice specified in Subsection C of this section.

14 C. The signs and contract provision described in
15 Subsections A and B of this section shall contain the following
16 notice of warning:

17 "WARNING: Pursuant to New Mexico law, there is no
18 liability for an injury to or the death of a
19 participant in an agritourism activity conducted at
20 this farm or ranch if such injury or death results
21 from the inherent risks of the agritourism activity.
22 Inherent risks of agritourism activities include
23 risks of injury inherent to land, equipment and
24 animals, as well as the potential for you to act in
25 a negligent manner that may contribute to your

injury or death. You are assuming the risk of participating in this agritourism activity."

D. Failure to comply with the requirements concerning warning signs and notices set forth in this section shall prevent an agritourism professional from invoking the privileges of immunity provided by the Agritourism Limited Liability Act.

SECTION 5. SEVERABILITY.--If any part or application of the Agritourism Limited Liability Act is held invalid, the remainder or its application to other situations or persons shall not be affected.

SECTION 6. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2017.

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underscored material = new
[bracketed material] = delete