

1 SB306
2 136805-1
3 By Senator Allen
4 RFD: Judiciary
5 First Read: 14-FEB-12

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

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

This bill would require the agritourism professional to post certain warning notices and would require the warning notice to be included in a written contract with a participant under certain conditions.

A BILL
TO BE ENTITLED
AN ACT

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; and to require certain warning notices to be included
5 in a written contract with a participant under certain
6 conditions.

7 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

10 (1) AGRICULTURAL. As defined in Section 41-14-51,
11 Code of Alabama 1975.

12 (2) AGRITOURISM ACTIVITY. Any of the following,
13 whether or not a participant provides monetary or other
14 valuable compensation to participate in, view, or enjoy:

15 a. An activity at an agricultural operation, which
16 is not already addressed under Sections 6-5-337 or 35-15-40,
17 Code of Alabama 1975, including, but not limited to, farming,
18 ranching, historic and cultural agricultural activities,
19 self-pick farms, or farmers' markets.

20 b. An activity involving an animal exhibition, show,
21 or competition at an agricultural fair or youth livestock
22 show, which is not already addressed under Section 6-5-337,
23 Code of Alabama 1975, including, but not limited to, FFA, 4-H,
24 group, club, or other association shows or expositions.

25 (3) AGRITOURISM PROFESSIONAL. A person who is
26 engaged in the business of providing agritourism activities
27 including employees or authorized agents who offer or conduct

1 agritourism activities on behalf of an agritourism
2 professional.

3 (4) INHERENT RISKS OF AGRITOURISM ACTIVITIES. Those
4 conditions, dangers, or hazards that are in 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 operation.

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

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

21 (6) PERSON. An individual, governmental entity,
22 corporation, limited liability company, partnership,
23 unincorporated association, group, club, or other legal or
24 commercial entity.

25 Section 2. (a) Except as provided in Section 3, an
26 agritourism professional has no duty of care to inspect for an
27 inherent risk of agritourism activity and may not be liable

1 for an injury to a participant or the death of a participant
2 resulting from an inherent risk of an agritourism activity. An
3 agritourism professional does not confer upon any participant
4 the legal status of invitee or licensee.

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

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

13 (1) Has actual knowledge of a dangerous condition on
14 the land, facilities, or equipment that is not open and
15 obvious or actual knowledge of the dangerous propensity of a
16 particular animal that is not open and obvious, does not make
17 the danger known to the participant, and the danger
18 proximately causes injury, damage, or death to the
19 participant.

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

25 (3) Intentionally or willfully injures the
26 participant.

1 Section 4. (a) This act does not apply to an
2 activity if the participant is paid to participate in the
3 activity.

4 (b) This act does not enlarge or diminish the open
5 and obvious doctrine.

6 Section 5. This act shall become effective on the
7 first day of the third month following its passage and
8 approval by the Governor, or its otherwise becoming law.