

SENATE BILL 2164

By Tracy

AN ACT to amend Tennessee Code Annotated, Title 43
and Title 70, Chapter 7, relative to agritourism.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 43, is amended by adding Sections 2 through 4 as a new, appropriately designated chapter.

SECTION 2. For purposes of this chapter, unless the context otherwise requires:

(1) "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, ranching, historic, cultural, or harvest-your-own activities, or natural activities and attractions. An activity is an agritourism activity whether or not a participant provides compensation in money or other valuable compensation to participate in the activity. Agritourism activity includes an activity involving any animal exhibition at an agricultural fair;

(2) "Agritourism professional" means any person who is engaged in the business of providing one (1) or more agritourism activities, whether or not for compensation;

(3) "Inherent risks of agritourism activity" means those dangers, conditions, or hazards that are an integral part of an agritourism activity including, but not limited to, surface and subsurface conditions; natural conditions of land, vegetation, and waters; the behavior of wild or domestic animals; and ordinary dangers of structures or equipment ordinarily used in farming and ranching operations. Inherent risks of agritourism activity also include the potential of a participant to act in a negligent manner that may contribute to injury to the participant or others, including failing to follow

instructions given by an agritourism professional or failing to exercise reasonable caution while engaging in an agritourism activity;

(4) "Participant" means any person, other than the agritourism professional, who engages in an agritourism activity; and

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

SECTION 3.

(a) Except as provided in subsection (b):

(1) No agritourism professional shall be liable for injury to or death of a participant resulting from the inherent risks of agritourism activities; and

(2) No participant or participant's representative shall maintain an action against or recover from an agritourism professional for injury, loss, damage, or death of the participant resulting exclusively from any of the inherent risks of agritourism activities.

(b) Nothing in subsection (a) prevents or limits the liability of an agritourism professional if the agritourism professional or any of its agents does any one (1) or more of the following:

(1) Commits an act or omission that constitutes reckless disregard for the safety of the participant, and that act or omission proximately causes injury, damage, or death to the participant;

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

(3) Fails to train, or improperly or inadequately trains, employees who are actively involved in agritourism activities and an act or omission of the employee proximately causes injury, damage, or death to the participant;

(4) Intentionally injures the participant; or

(5) Commits any other act, error, or omission that constitutes willful or wanton misconduct, gross negligence, or criminal conduct.

(c) Nothing in subsection (a):

(1) Prevents or limits the liability of an agritourism professional under the product liability provisions in title 29, chapter 28; or

(2) Shall be construed so as to negate that assumption of the risk is an affirmative defense.

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

SECTION 4.

(a)

(1) Every agritourism professional shall post and maintain a sign that contains the warning notice specified in subsection (b). The sign shall be placed in a clearly visible location at the entrance to the agritourism location and at the site of the agritourism activity. The warning notice shall consist of a sign in black letters, with each letter to be a minimum of one inch (1") in height.

(2) Every written contract entered into by an agritourism professional for the providing of professional services, instruction, or the rental of equipment to a participant for purposes of engaging in or participating in an agritourism activity, whether or not the contract involves agritourism activities on or off the site of the

agritourism activity, shall contain in clearly readable print the warning notice specified in subsection (b).

(b) The signs and contracts described in subsection (a) shall contain the following language or substantially similar language:

WARNING

Under Tennessee law, there is no liability for an injury to or death of a participant in an agritourism activity conducted at this agritourism location or by this agritourism professional if such injury or death results from the inherent risks of the agritourism activity.

Inherent risks of agritourism activities include, among others, risks of injury inherent to land, equipment, and animals, as well as the potential for you to act in a negligent manner that may contribute to your injury or death. You are assuming the risk of participating in this agritourism activity.

(c) Failure to comply with this section shall prevent an agritourism professional from invoking the privileges of immunity provided by this chapter.

SECTION 5. This act shall take effect July 1, 2009, the public welfare requiring it.