

Stricken language would be deleted from and underlined language would be added to present law.

1 State of Arkansas
2 88th General Assembly
3 Regular Session, 2011
4

As Engrossed: H3/2/11 H3/10/11

A Bill

HOUSE BILL 1424

5 By: Representatives Westerman, Linck
6 By: Senator Fletcher
7

For An Act To Be Entitled

9 AN ACT TO ESTABLISH LIABILITY PROTECTION FOR
10 AGRITOURISM; AND FOR OTHER PURPOSES.
11

Subtitle

14 TO ESTABLISH LIABILITY PROTECTION FOR
15 AGRITOURISM.
16
17

18 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
19

20 SECTION 1. Arkansas Code Title 2, is amended to add an additional
21 chapter to read as follows:

22 Chapter 11 – Agritourism Act

23 2-11-101. Title.

24 This chapter shall be known and may be cited as the "Agritourism Act".
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26 2-11-102. Legislative intent – Construction -- Purpose.

27 (a) It is the intent of this chapter to:

28 (1) Promote rural tourism and rural economic development by
29 encouraging owners or operators of farms, ranches, and other rural land or
30 attractions, including historic, cultural, and natural attractions, to invite
31 members of the public to view, observe, and participate in the operations and
32 attractions for educational, entertainment, or recreational purposes; and

33 (2) Encourage agritourism activities by limiting civil liability
34 of those engaged in agritourism or providing the activities of agritourism.

35 (b) This chapter shall be liberally construed to carry out the
36 purposes described in subsection (a) of this section.



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2 2-11-103. Definitions.

3 As used in this chapter:

4 (1) "Agribusiness operation" means an agricultural,
5 horticultural, viticultural, forestry, dairy, livestock, poultry, bee, or any
6 other farm, ranch, plantation, or range business operation;

7 (2)(A) "Agritourism activity" means an interactive or passive
8 activity carried out with or without payment to an agritourism activity
9 operator on a farm, ranch, or agribusiness operation related to agriculture,
10 food production, historic traditions, or nature-watching conducted by an
11 agritourism activity operator for the education, entertainment, or recreation
12 of participants.

13 (B) "Agritourism activity" includes without limitation:

14 (i) A farming or ranching activity;

15 (ii) The viewing of historic, cultural, or natural
16 attractions;

17 (iii) A harvest-your-own activity;

18 (iv) Nature-watching; and

19 (v) An activity involving an animal exhibition at an
20 agricultural fair.

21 (C) "Agritourism activity" does not include:

22 (i) A road side fruit and vegetable stand; or

23 (ii) An operation exclusively devoted to the sale of
24 merchandise or food at retail;

25 (3) "Agritourism activity operator" means an individual or
26 entity that provides the facilities and equipment necessary to participate in
27 an agritourism activity;

28 (4) "Inherent risk" means dangers or conditions that are an
29 integral part of an agritourism activity including without limitation:

30 (A) The propensity of a wild or domestic animal to behave
31 in ways that may result in injury, harm, or death to persons on or around the
32 wild or domestic animal;

33 (B) Hazards such as surface and subsurface conditions;

34 (C) Natural conditions of land, vegetation, and waters;

35 (D) Ordinary dangers of structures or equipment used in
36 farming or ranching operations; and

1 (E) The potential of a participant to act in a negligent
2 way that may contribute to injury to the participant or others, whether
3 failing to follow safety procedures or failing to act with reasonable caution
4 while engaging in the agritourism activity; and

5 (5) "Participant" is defined as a person, other than the
6 agritourism activity operator, who engages in an agritourism activity.

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8 2-11-104. Assumption of risk by participant.

9 Except as provided in § 2-11-105, a participant assumes the inherent
10 risk of an agritourism activity by engaging in the agritourism activity.

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12 2-11-105. Liability of agritourism activity operator.

13 This chapter shall not prevent or limit the liability of an agritourism
14 activity operator if the agritourism activity operator or an agent of the
15 agritourism activity operator:

16 (1) Commits an act or omission of gross negligence concerning
17 the safety of a participant that proximately causes injury, damage, or death
18 to the participant;

19 (2)(A) Has actual knowledge of a dangerous condition on the
20 land, facilities, or equipment used in the activity or the dangerous
21 propensity of a particular animal used in the activity that proximately
22 causes injury, damage, or death to the participant and does not make the
23 danger known to the participant that proximately causes injury, damage, or
24 death to the participant;

25 (3) Intentionally injures a participant; or

26 (4) Commits other acts, errors, or omissions that constitute
27 willful or wanton misconduct, gross negligence, or criminal conduct that
28 proximately causes injury, damage, or death.

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30 2-11-106. Limitation on liability.

31 (a) An agritourism activity operator or participant is not liable for
32 damages arising from the personal injury or death of a participant if:

33 (1) The injury or death results from an inherent risk; and

34 (2) The warning contained in § 2-11-107 is posted.

35 (b) The limitation of liability provided by this section is in
36 addition to any other limitation of liability provided by law.

1 2-11-107. Warning required.

2 (a) At each agritourism activity, the agritourism activity operator
3 shall post and maintain signage in a clearly visible location at or near the
4 main entrance to the agritourism activity and in black letters at least one
5 (1") in height containing the following warning:
6 "WARNING – Under Arkansas law, an agritourism activity operator is not liable
7 for the injury or death of a participant in an agritourism activity resulting
8 from the inherent risk of agritourism activities. Inherent risks include
9 without limitation the risk of animals, weather, land conditions, and the
10 potential for you as a participant to act in a negligent way that may
11 contribute to your own injury or death. You are assuming the risk of
12 participating in this agritourism activity."

13 (b) The agritourism activity operator shall include, in clearly
14 visible print, the warning contained in subsection (a) of this section
15 in a written contract between the agritourism activity operator and
16 each participant.

17 (c) At each agritourism activity, the agritourism operator shall post
18 and maintain signage of a specific or known hazard in the particular area on
19 or surrounding the agritourism activity.

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21 /s/Westerman
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