

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

# A Bill

HOUSE BILL 1424

5 By: Representatives Westerman, Linck  
6

## For An Act To Be Entitled

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

### Subtitle

11 TO ESTABLISH LIABILITY PROTECTION FOR  
12 AGRITOURISM.  
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17 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:  
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19 SECTION 1. Arkansas Code Title 2, is amended to add an additional  
20 chapter to read as follows:

21 Chapter 11 – Agritourism Act

22 2-11-101. Title.

23 This chapter shall be known and may be cited as the "Agritourism Act".  
24

25 2-11-102. Legislative intent – Construction -- Purpose.

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

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

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

34 (b) This chapter shall be liberally construed to carry out the  
35 purposes described in subsection (a) of this section.  
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1           2-11-103. Definitions.

2           As used in this chapter:

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

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

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

13                                   (i) A farming or ranching activity;

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

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

17                                   (iv) Nature-watching; and

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

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

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

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

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

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

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

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

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

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

36                           (E) The potential of a participant to act in a negligent

1 way that may contribute to injury to the participant or others, whether  
2 failing to follow safety procedures or failing to act with reasonable caution  
3 while engaging in the agritourism activity; and

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

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7 2-11-104. Assumption of risk by participant.

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

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

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

15 (1) Commits an act or omission in reckless disregard for the  
16 safety of a participant that proximately causes injury, damage, or death to  
17 the participant;

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

24 (3) Fails to train or inadequately trains an employee who is  
25 actively involved in an agritourism activity if an act or omission of the  
26 employee attributable to the lack or the inadequacy of the employee's  
27 training proximately causes injury, damage, or death to the participant;

28 (4) Intentionally injures a participant; or

29 (5) Commits other acts, errors, or omissions that constitute  
30 willful or wanton misconduct, gross negligence, or criminal conduct that  
31 proximately causes injury, damage, or death.

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33 2-11-106. Limitation on liability.

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

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

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

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

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5           2-11-107. Warning required.

6           (a) At each agritourism activity, the agritourism activity operator  
7 shall post and maintain signage in a clearly visible location at or near the  
8 agritourism activity and in black letters at least one inch (1") in height  
9 containing the following warning:

10 "WARNING – Under Arkansas law, an agritourism activity operator is not liable  
11 for the injury or death of a participant in an agritourism activity resulting  
12 from the inherent risk of agritourism activities. Inherent risks include  
13 without limitation the risk of animals, weather, land conditions, and the  
14 potential for you as a participant to act in a negligent way that may  
15 contribute to your own injury or death. You are assuming the risk of  
16 participating in this agritourism activity."

17           (b) The agritourism activity operator shall include, in clearly  
18 visible print, the warning contained in subsection (a) of this section in a  
19 written contract between the agritourism activity operator and each  
20 participant.

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