

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

As Engrossed: H3/2/11
A Bill

HOUSE BILL 1424

5 By: Representatives Westerman, Linck
6

7 **For An Act To Be Entitled**

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

11 **Subtitle**

12 TO ESTABLISH LIABILITY PROTECTION FOR
13 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".
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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 of gross negligence concerning
16 the safety of a participant that proximately causes injury, damage, or death
17 to 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

