

1 **SENATE FLOOR VERSION**

2 March 26, 2013

3 ENGROSSED HOUSE
4 BILL NO. 1638

By: Biggs and Hickman of the
House

5 and

6 Justice of the Senate

7
8 An Act relating to agriculture; enacting the Oklahoma
9 Agritourism Activities Liability Limitations Act;
10 defining terms; providing immunity from liability for
11 agritourism professionals; providing immunity as
12 affirmative defense; providing exceptions from
immunity; requiring agritourism professionals to post
certain warnings; requiring agritourism contracts to
contain certain warnings; providing for codification;
and declaring an emergency.

13
14
15 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

16 SECTION 1. NEW LAW A new section of law to be codified
17 in the Oklahoma Statutes as Section 5-14 of Title 2, unless there is
18 created a duplication in numbering, reads as follows:

19 This act shall be known and may be cited as the "Oklahoma
20 Agritourism Activities Liability Limitations Act".

21 SECTION 2. NEW LAW A new section of law to be codified
22 in the Oklahoma Statutes as Section 5-15 of Title 2, unless there is
23 created a duplication in numbering, reads as follows:

1 As used in the Oklahoma Agritourism Activities Liability
2 Limitations Act:

3 1. "Agritourism activity" means any activity carried out on a
4 farm or ranch that allows members of the general public, for
5 recreational, entertainment, or educational purposes, to view or
6 enjoy rural activities, including farming, ranching, historic,
7 cultural, harvest-your-own activities, or natural activities and
8 attractions. An activity is an agritourism activity whether or not
9 the participant paid to participate in the activity;

10 2. "Agritourism professional" means any person who is engaged
11 in the business of providing one or more agritourism activities,
12 whether or not for compensation and whose agritourism activity is
13 registered with the Oklahoma Department of Agriculture, Food, and
14 Forestry;

15 3. "Inherent risks of agritourism activity" means those dangers
16 or conditions that are an integral part of an agritourism activity
17 including certain hazards, surface and subsurface conditions,
18 natural conditions of land, vegetation, and waters, the behavior of
19 wild or domestic animals, and ordinary dangers of structures or
20 equipment ordinarily used in farming and ranching operations.
21 Inherent risks of agritourism activity also include the potential of
22 a participant to act in a negligent manner that may contribute to
23 injury to the participant or others, including failing to follow
24 instructions given by the agritourism professional or failing to

1 exercise reasonable caution while engaging in the agritourism
2 activity; and

3 4. "Participant" means any person, other than the agritourism
4 professional, who engages in an agritourism activity.

5 SECTION 3. NEW LAW A new section of law to be codified
6 in the Oklahoma Statutes as Section 5-16 of Title 2, unless there is
7 created a duplication in numbering, reads as follows:

8 A. Except as provided in subsection B of this section, an
9 agritourism professional is not liable for injury to or death of a
10 participant resulting from the inherent risks of agritourism
11 activities, so long as the warning contained in Section 4 of this
12 act is posted as required and, except as provided in subsection B of
13 this section, no participant or participant's representative can
14 maintain an action against or recover from an agritourism
15 professional for injury, loss, damage, or death of the participant
16 resulting exclusively from any of the inherent risks of agritourism
17 activities. In any action for damages against an agritourism
18 professional for agritourism activity, the agritourism professional
19 must plead the affirmative defense of assumption of the risk of
20 agritourism activity by the participant.

21 B. Nothing in subsection A of this section prevents or limits
22 the liability of an agritourism professional if the agritourism
23 professional does any one or more of the following:

24

1 1. Commits an act or omission that constitutes negligence or
2 willful or wanton disregard for the safety of the participant, and
3 that act or omission proximately causes injury, damage, or death to
4 the participant;

5 2. Has actual knowledge or reasonably should have known of a
6 dangerous condition on the land, facilities, or equipment used in
7 the activity or the dangerous propensity of a particular animal used
8 in such activity and does not make the danger known to the
9 participant, and the danger proximately causes injury, damage, or
10 death to the participant.

11 C. Any limitation on legal liability afforded by this section
12 to an agritourism professional is in addition to any other
13 limitations of legal liability otherwise provided by law.

14 SECTION 4. NEW LAW A new section of law to be codified
15 in the Oklahoma Statutes as Section 5-17 of Title 2, unless there is
16 created a duplication in numbering, reads as follows:

17 A. Every agritourism professional shall post and maintain signs
18 that contain the warning notice specified in subsection B of this
19 section. The sign shall be placed in a clearly visible location at
20 the entrance to the agritourism location and at the site of the
21 agritourism activity. The warning notice shall consist of a sign in
22 black letters, with each letter to be a minimum of one (1) inch in
23 height. Every written contract entered into by an agritourism
24 professional for the providing of professional services,

1 instruction, or the rental of equipment to a participant, whether or
2 not the contract involves agritourism activities on or off the
3 location or at the site of the agritourism activity, shall contain
4 in clearly readable print the warning notice specified in subsection
5 B of this section.

6 B. The signs and contracts described in subsection A of this
7 section must contain the following notice of warning:

8 "WARNING

9 Under Oklahoma law, there is no liability for an injury to or
10 death of a participant in an agritourism activity conducted at this
11 agritourism location if such injury or death results from the
12 inherent risks of the agritourism activity. Inherent risks of
13 agritourism activities include, among others, risks of injury
14 inherent to land, equipment, and animals, as well as the potential
15 for you to act in a negligent manner that may contribute to your
16 injury or death. You are assuming the risk of participating in this
17 agritourism activity."

18 C. Failure to comply with the requirements concerning warning
19 signs and notices provided in this section shall prevent an
20 agritourism professional from invoking the privileges of immunity
21 provided by the Oklahoma Agritourism Activities Liability
22 Limitations Act.

23 SECTION 5. It being immediately necessary for the preservation
24 of the public peace, health and safety, an emergency is hereby

1 declared to exist, by reason whereof this act shall take effect and
2 be in full force from and after its passage and approval.

3 COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY
4 March 26, 2013 - DO PASS

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24