

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 397 Session of 2013

INTRODUCED BY M. K. KELLER, MASSER, EMRICK, BLOOM, MILLARD, CUTLER, PICKETT, KORTZ, TALLMAN, KAUFFMAN, C. HARRIS, LAWRENCE, OBERLANDER, CAUSER, CLYMER, STEVENSON, SWANGER, HESS, GILLEN, MOUL, DENLINGER, GIBBONS, TURZAI, QUINN, SIMMONS AND BROOKS, JANUARY 29, 2013

AS AMENDED ON SECOND CONSIDERATION, HOUSE OF REPRESENTATIVES, OCTOBER 23, 2013

AN ACT

1 Providing for limited immunity for persons that sponsor farm-
2 related tourism activities.

3 The General Assembly of the Commonwealth of Pennsylvania
4 hereby enacts as follows:

5 Section 1. Short title.

6 This act shall be known and may be cited as the Agritourism
7 ~~Immunity~~ PROTECTION Act. <--

8 Section 2. Definitions.

9 The following words and phrases when used in this act shall
10 have the meanings given to them in this section unless the
11 context clearly indicates otherwise:

12 "Agritourism activity." A farm-related tourism activity,
13 ~~regardless of whether a~~ WHERE NO fee is charged, which: <--

- 14 (1) takes place on real property used primarily for the
15 purpose of engaging in a normal agricultural operation; and
16 (2) is designed for recreational, entertainment or

1 educational purposes.

2 The term includes, but is not limited to, a corn maze, a hay  
3 maze, farm tours, a select and cut-your-own Christmas tree  
4 operation and a pick-your-own-crop operation.

5 "Agritourism operator." A person that sponsors, organizes,  
6 conducts or provides facilities for an agritourism activity.

7 "Inherent risks of agritourism activity." The dangers or  
8 conditions that are an integral part of an agritourism activity,  
9 including certain hazards, such as surface or subsurface  
10 conditions, natural conditions of land, vegetation and waters,  
11 the behavior of animals and the ordinary dangers of structures  
12 or equipment ordinarily used in a normal agricultural operation.

13 "Normal agricultural operation." As defined in section 2 of  
14 the act of June 10, 1982 (P.L.454, No.133), referred to as the  
15 Right-to-Farm Law.

16 Section 3. ~~Immunity~~ PROTECTION. <--

17 (a) Scope. ~~Immunity~~ PROTECTION under this section applies <--  
18 to a person if all of the following apply:

19 (1) The person is an agritourism operator.

20 (2) The following notice is conspicuously posted at the  
21 entrance to and in at least one other location on the  
22 premises where the agritourism activity takes place on a sign  
23 at least three feet by two feet:

24 Under Pennsylvania law, an agritourism operator is not  
25 liable for injury to or death of a participant in an  
26 agritourism activity conducted at this location if such  
27 injury or death results from the inherent risks of the  
28 agritourism activity. Inherent risks include, among other  
29 things, risks from the condition of land, operation of  
30 equipment and behavior of animals. You are assuming the

1 risk of participating in this agritourism activity.

2 (b) Grant.--A person that meets the requirements of  
3 subsection (a) shall be ~~immune~~ PROTECTED from liability in a <--  
4 negligence action for personal injury or death to a participant  
5 in the agritourism activity who is injured or killed as a result  
6 of that participation if all of the following apply:

7 (1) The participant ~~voluntarily and intelligently~~ <--  
8 KNOWINGLY, VOLUNTARILY, INTELLIGENTLY AND UNREASONABLY <--  
9 undertakes participation in the agritourism activity.

10 (2) The personal injury or death results from the  
11 inherent risks of the agritourism activity.

12 (C) EXCEPTIONS.--THIS ACT DOES NOT PRECLUDE OR LIMIT THE <--  
13 LIABILITY OF AN AGRITOURISM OPERATOR WHO:

14 (1) (I) HAS ACTUAL KNOWLEDGE OR REASONABLY SHOULD HAVE  
15 KNOWN OF:

16 (A) A DANGEROUS CONDITION ON THE LAND,  
17 FACILITIES OR EQUIPMENT USED IN THE AGRITOURISM  
18 ACTIVITY; OR

19 (B) THE DANGEROUS PROPENSITY OF A PARTICULAR  
20 ANIMAL USED IN THE AGRITOURISM ACTIVITY; AND

21 (II) DOES NOT MAKE THE DANGER KNOWN TO THE  
22 PARTICIPANT AND THE DANGER PROXIMATELY CAUSES INJURY,  
23 DAMAGE OR DEATH TO THE PARTICIPANT.

24 (2) FAILS TO PROPERLY TRAIN, OR IMPROPERLY OR  
25 INADEQUATELY TRAINS, EMPLOYEES OR UNPAID WORKERS WHO ARE  
26 ACTIVELY INVOLVED IN AGRITOURISM ACTIVITIES AND AN ACT OR  
27 OMISSION OF THE EMPLOYEE PROXIMATELY CAUSES INJURY, DAMAGE OR  
28 DEATH TO THE PARTICIPANT.

29 (3) COMMITS AN ACT OR OMISSION THAT:

30 (I) CONSTITUTES GROSS NEGLIGENCE FOR THE SAFETY OF

1 THE PARTICIPANT; AND

2 (II) CAUSED THE INJURY OR DEATH OF THE PARTICIPANT.

3 (4) INTENTIONALLY INJURES THE PARTICIPANT.

4 SECTION 4. EXCEPTIONS.

5 (A) INJURY OR DEATH.--THIS ACT SHALL NOT APPLY TO INJURY OR  
6 DEATH OF:

7 (1) A PERSON UNDER 18 YEARS OF AGE;

8 (2) A PERSON WITH A MENTAL HEALTH CONDITION,  
9 INTELLECTUAL DISABILITY OR PHYSICAL DISABILITY; OR

10 (3) A PERSON OVER 65 YEARS OF AGE.

11 (B) AGRITOURISM.--IMMUNITY UNDER THIS ACT MAY NOT BE  
12 PROVIDED TO ANY AGRITOURISM OPERATOR:

13 (1) WHO SERVES OR PROVIDES FOOD OR BEVERAGES TO  
14 PARTICIPANTS IN VIOLATION OF 3 PA.C.S. CH. 57 (RELATING TO  
15 FOOD PROTECTION) OR ANY OTHER LAW OR REGULATION PROVIDING FOR  
16 FOOD OR BEVERAGE SAFETY;

17 (2) WHO OFFERS LODGING FOR A FEE ON THE PREMISES WHERE  
18 THE AGRITOURISM ACTIVITY TAKES PLACE; OR

19 (3) WHERE THE AGRITOURISM OPERATOR OR HIS AGENT SELLS OR  
20 PROVIDES ALCOHOLIC BEVERAGES TO PARTICIPANTS.

21 SECTION 5. BURDEN OF PROOF.

22 THE BURDEN OF PROOF OF ESTABLISHING THE PROTECTION UNDER THIS  
23 ACT SHALL BE ON THE DEFENDANT.

24 Section 19. Applicability.

25 This act shall apply to any cause of action which arises on  
26 or after the effective date of this section.

27 Section 20. Effective date.

28 This act shall take effect in 60 days.