

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1348 Session of 2019

INTRODUCED BY GLEIM, GREINER, CAUSER, PYLE, ECKER, M. K. KELLER, BERNSTINE, ZIMMERMAN, GILLESPIE, PICKETT, GROVE, KAUFFMAN, JOZWIAK, OWLETT, MENTZER, HERSHEY, STRUZZI, PASHINSKI, HAHN, RYAN, IRVIN, MILLARD, BURGOS, BOROWICZ, LAWRENCE, SNYDER, GREGORY, KLUNK, WARNER, OBERLANDER, RADER, KAIL, GAYDOS, METCALFE, ROTHMAN, REESE, RIGBY, MOUL, TOPPER, KEEFER AND JONES, MAY 1, 2019

AS REPORTED FROM COMMITTEE ON AGRICULTURE AND RURAL AFFAIRS, HOUSE OF REPRESENTATIVES, AS AMENDED, JUNE 5, 2019

AN ACT

1 Providing for limited civil liability for agritourism activity
2 providers, for notice of limited civil liability and for
3 acknowledgment of limited civil liability.

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

6 Section 1. Short title.

7 This act shall be known and may be cited as the Agritourism
8 Activity Protection Act.

9 Section 2. Definitions.

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

13 "Agritourism activity." As follows:

14 (1) A farm-related tourism or farm-related entertainment
15 activity that:

1           ~~(i) takes place on a farm where agricultural,~~  
2           ~~horticultural or silvicultural crops are grown or farm-~~  
3           ~~animals or farmed fish are raised; and~~

4           ~~(ii) allows members of the general public, whether~~  
5           ~~or not for a fee, to tour, explore, observe, learn about,~~  
6           ~~participate in or be entertained by an aspect of~~  
7           ~~agricultural production, harvesting, husbandry or rural~~  
8           ~~lifestyle that occurs on the farm.~~ ACTIVITY THAT TAKES <--

9           PLACE ON AGRICULTURAL LAND AND ALLOWS MEMBERS OF THE  
10          GENERAL PUBLIC, WHETHER OR NOT FOR A FEE, TO TOUR,  
11          EXPLORE, OBSERVE, LEARN ABOUT, PARTICIPATE IN OR BE  
12          ENTERTAINED BY AN ASPECT OF AGRICULTURAL PRODUCTION,  
13          HARVESTING, HUSBANDRY OR RURAL LIFESTYLE THAT OCCURS ON  
14          THE FARM.

15          (2) The term shall not include overnight accommodations,  
16          weddings, concerts or provisions for food and beverage  
17          services.

18          "Agritourism activity provider." A person who owns,  
19          operates, provides or sponsors an agritourism activity, whether  
20          or not for a fee, or an employee of such a person.

21          ~~"Anticipated annual gross income." Gross income normally~~ <--  
22          ~~expected to be generated in one year without the occurrence of a~~  
23          ~~natural disaster or other occurrence or condition beyond the~~  
24          ~~agritourism activity provider's reasonable control.~~

25          ~~"Farm." An operation commercially engaged in agriculture~~  
26          ~~that:~~

27                 ~~(1) is 10 or more acres in contiguous area; or~~

28                 ~~(2) has an anticipated annual gross income of at least~~  
29                 ~~\$2,000 from agricultural production.~~

30          ~~"Farm related tourism or farm related entertainment~~

1 ~~activity." An activity that utilizes any of the following:~~

2 ~~(1) Agricultural, horticultural or silvicultural crops~~  
3 ~~or farm animals or farmed fish.~~

4 ~~(2) Equipment used to grow, process or harvest~~  
5 ~~agricultural, horticultural or silvicultural crops or raise~~  
6 ~~farm animals or farmed fish.~~

7 "DANGEROUS CONDITION." A CONDITION THAT CREATES AN IMMINENT <--  
8 AND SUBSTANTIAL RISK OF INJURY OR DAMAGES TO A PARTICIPANT.

9 "Participant." An individual, other than an employee of an  
10 agritourism activity provider, who engages in an agritourism  
11 activity.

12 ~~"Participant injury." An injury sustained by a participant~~ <--  
13 ~~arising from an agritourism activity, including bodily injury,~~  
14 ~~emotional distress, death, property damage or any other loss~~  
15 ~~arising from the agritourism activity.~~

16 Section 3. Limited civil liability for agritourism activity  
17 providers.

18 (a) Liability.--Except as otherwise provided by subsection  
19 (b), an agritourism activity provider shall not be civilly  
20 liable to a person for a participant injury or damages caused as <--  
21 a result of the participant injury FOR INJURY OR DAMAGES TO A <--  
22 PARTICIPANT if:

23 (1) at the time of the agritourism activity from which  
24 the injury or damages occurred, a warning sign was posted in  
25 accordance with section 4; ~~or~~ AND <--

26 (2) the agritourism activity provider entered into a  
27 written agreement with the participant in accordance with  
28 section 5 with respect to the agritourism activity from which  
29 the injury or damages occurred.

30 (b) Exceptions.--An agritourism activity provider shall not

1 be immune from civil liability for a ~~participant~~ injury or <--  
2 damages ~~caused as a result of the participant injury~~ if any of <--  
3 the following apply:

4 (1) The agritourism activity provider acts with a  
5 willful or wanton disregard for the safety of the  
6 participant.

7 (2) The agritourism activity provider purposefully  
8 causes the ~~participant~~ injury OR DAMAGES TO A PARTICIPANT. <--

9 (3) The agritourism activity provider's action or  
10 inaction constitutes criminal conduct and causes the  
11 ~~participant~~ injury OR DAMAGES TO A PARTICIPANT. <--

12 (4) The agritourism activity provider has OR SHOULD HAVE <--  
13 HAD actual knowledge of a dangerous condition of the land,  
14 facilities or equipment used in the agritourism activity,  
15 does not ~~make~~ REPAIR OR MAKE the dangerous condition known to <--  
16 the participant and the dangerous condition causes ~~the~~ <--  
17 ~~participant~~ injury OR DAMAGES TO A PARTICIPANT. <--

18 Section 4. Notice of limited civil liability.

19 (a) Notice.--For the purpose of providing notice of the  
20 limited liability under section 3, an agritourism activity  
21 provider shall post and maintain a sign with a warning notice in  
22 accordance with subsection (b). The agritourism activity  
23 provider shall post the sign in a clearly visible location at or  
24 near each entrance to the farm ~~and~~ OR at the site of each <--  
25 agritourism activity.

26 (b) Contents.--The warning notice shall consist of a sign  
27 that is at least three feet by two feet in dimension and states  
28 the following:

29 "WARNING: ~~Under Pennsylvania law~~ READ YOUR WRITTEN <--  
30 AGREEMENT OR THE BACK OF YOUR TICKET. UNDER PENNSYLVANIA

1 LAW, EXCEPT FOR LIMITED CIRCUMSTANCES, an agritourism  
2 activity provider is not liable for any injury to or  
3 death of a participant resulting from an agritourism  
4 activity." ACTIVITY. DO NOT PARTICIPATE IN THE ACTIVITY <--  
5 IF YOU DO NOT WISH TO WAIVE LIABILITY."

6 Section 5. Acknowledgment of limited civil liability.

7 For the purpose of enforcing the limited liability under  
8 section 3, a written agreement between an agritourism activity  
9 provider and a participant shall be enforceable if the written  
10 agreement meets all the following criteria:

11 (1) The written agreement is signed before the  
12 participant engages in an agritourism activity.

13 (2) The written agreement is signed by the participant  
14 or, if the participant is a minor OR CARE DEPENDENT PERSON, <--  
15 the participant's parent or guardian.

16 (3) The written agreement is in a document separate from  
17 any other agreement between the participant and the  
18 agritourism activity provider, except for a document that  
19 includes a different warning, consent or assumption of risk  
20 statement.

21 (4) The written agreement is printed in not less than  
22 10-point bold type.

23 (5) The written agreement contains the following  
24 language:

25 "AGREEMENT AND WARNING: I understand and acknowledge  
26 that, EXCEPT FOR LIMITED CIRCUMSTANCES LISTED BELOW, <--  
27 an agritourism activity provider is not liable for  
28 any injury to or death of a participant resulting  
29 from an agritourism activity. I understand that I  
30 have accepted all risk of injury, death, property

1 damage and other loss that may result from an  
2 agritourism ~~activity.~~" ACTIVITY. I UNDERSTAND THAT AN <--  
3 AGRITOURISM ACTIVITY PROVIDER IS NOT PROTECTED FROM  
4 LIABILITY IF THE PROVIDER:

5 (1) ACTS WITH A WILLFUL OR WANTON DISREGARD FOR  
6 A PARTICIPANT'S SAFETY.

7 (2) PURPOSEFULLY CAUSES A PARTICIPANT'S INJURY.

8 (3) ACTS OR FAILS TO ACT IN A WAY THAT  
9 CONSTITUTES CRIMINAL CONDUCT.

10 (4) HAS OR SHOULD HAVE HAD ACTUAL KNOWLEDGE OF A  
11 DANGEROUS CONDITION OF THE LAND, FACILITIES OR  
12 EQUIPMENT USED IN THE AGRITOURISM ACTIVITY AND DOES  
13 NOT REPAIR OR MAKE THE DANGEROUS CONDITION KNOWN TO  
14 THE PARTICIPANT. A DANGEROUS CONDITION IS A CONDITION  
15 THAT CREATES AN IMMINENT AND SUBSTANTIAL RISK OF  
16 INJURY OR DAMAGES TO A PARTICIPANT."

17 (6) NOTWITHSTANDING PARAGRAPHS (1), (2), (3) AND (4), A  
18 WRITTEN AGREEMENT THAT CONTAINS SUBSTANTIALLY THE SAME  
19 LANGUAGE UNDER PARAGRAPH (5) MAY BE PRINTED ON A TICKET  
20 REQUIRED FOR ACCESS TO AN AGRITOURISM ACTIVITY.

21 Section 6. Applicability.

22 This act shall apply to any cause of action that arises on or  
23 after the effective date of this section.

24 Section 7. Effective date.

25 This act shall take effect in 60 days.