

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, JONES, DUSH, DUNBAR, EVERETT, HICKERNELL, MUSTELLO, SCHLEGEL CULVER, GILLEN, ROWE, SCHEMEL, JAMES, MACKENZIE AND POLINCHOCK, MAY 1, 2019

AS AMENDED ON SECOND CONSIDERATION, HOUSE OF REPRESENTATIVES, DECEMBER 17, 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

1 activity that takes place on agricultural land and allows  
2 members of the general public, whether or not for a fee, to  
3 tour, explore, observe, learn about, participate in or be  
4 entertained by an aspect of agricultural production,  
5 harvesting, husbandry or rural lifestyle that occurs on the  
6 farm.

7 (2) The term shall not include overnight accommodations,  
8 weddings, concerts or provisions for food and beverage  
9 services.

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

13 "Dangerous condition." A condition that creates an imminent  
14 and substantial risk of injury or damages to a participant.

15 "Participant." An individual, other than an employee of an  
16 agritourism activity provider, who engages in an agritourism  
17 activity.

18 Section 3. Limited civil liability for agritourism activity  
19 providers.

20 (a) Liability.--Except as otherwise provided by subsection  
21 (b), an agritourism activity provider shall not be civilly  
22 liable for injury or damages to a 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; 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 injury or damages if any of  
2 the following apply:

3 (1) The agritourism activity provider ~~acts with a~~ <--  
4 ~~willful or wanton disregard for the safety of the~~  
5 ~~participant.~~ PERFORMS AN ACT IN A GROSSLY NEGLIGENT MANNER <--  
6 AND CAUSES INJURY OR DAMAGES TO A PARTICIPANT.

7 (2) The agritourism activity provider purposefully  
8 causes the injury or damages to a participant.

9 (3) The agritourism activity provider's action or  
10 inaction constitutes criminal conduct and causes the injury  
11 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 repair or make the dangerous condition known to the~~  
16 ~~participant and the dangerous condition causes injury or~~  
17 ~~damages to a participant.~~ THE AGRITOURISM ACTIVITY PROVIDER <--  
18 RECKLESSLY FAILS TO WARN OR GUARD AGAINST A DANGEROUS  
19 CONDITION THAT CAUSES INJURY OR DAMAGES TO A PARTICIPANT.

20 Section 4. Notice of limited civil liability.

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

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

1           "WARNING: Read your written agreement or the back of  
2           your ticket. Under Pennsylvania law, except for limited  
3           circumstances, an agritourism activity provider is not  
4           liable for any injury to or death of a participant  
5           resulting from an agritourism activity. Do not  
6           participate in the activity if you do not wish to waive  
7           liability."

8 Section 5. Acknowledgment of limited civil liability.

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

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

15           (2) The written agreement is signed by the participant  
16          or, if the participant is a minor or care dependent person,  
17          the participant's parent or guardian.

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

23           (4) The written agreement is printed in not less than  
24          10-point bold type.

25           (5) The written agreement contains the following  
26          language:

27           "AGREEMENT AND WARNING: I understand and acknowledge  
28          that, except for limited circumstances listed below,  
29          an agritourism activity provider is not liable for  
30          any injury to or death of a participant resulting

1 from an agritourism activity. I understand that I  
2 have accepted all risk of injury, death, property  
3 damage and other loss that may result from an  
4 agritourism activity. I understand that an  
5 agritourism activity provider is not protected from  
6 liability if the provider:

7 ~~(1) Acts with a willful or wanton disregard for~~ <--  
8 ~~a participant's safety.~~ PERFORMS AN ACT IN A GROSSLY <--  
9 NEGLIGENT MANNER AND CAUSES INJURY OR DAMAGES TO A  
10 PARTICIPANT.

11 (2) Purposefully causes a participant's injury.

12 (3) Acts or fails to act in a way that  
13 constitutes criminal conduct.

14 ~~(4) Has or should have had actual knowledge of a~~ <--  
15 ~~dangerous condition of the land, facilities or~~  
16 ~~equipment used in the agritourism activity and does~~  
17 ~~not repair or make the dangerous condition known to~~  
18 ~~the participant.~~ RECKLESSLY FAILS TO WARN OR GUARD <--  
19 AGAINST A DANGEROUS CONDITION THAT CAUSES INJURY OR  
20 DAMAGES TO A PARTICIPANT. A dangerous condition is a  
21 condition that creates an imminent and substantial  
22 risk of injury or damages to a participant."

23 (6) Notwithstanding paragraphs (1), (2), (3) and (4), a  
24 written agreement that contains substantially the same  
25 language under paragraph (5) may be printed on a ticket  
26 required for access to an agritourism activity.

27 Section 6. Applicability.

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

30 Section 7. Effective date.

1        This act shall take effect in 60 days.