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H.794

Introduced by Representatives Yantachka of Charlotte, Anthony of Barre City,
Austin of Colchester, Bancroft of Westford, Bock of Chester,
Brumsted of Shelburne, Campbell of St. Johnsbury, Chesnut-
Tangerman of Middletown Springs, Christensen of
Weathersfield, Colston of Winooski, Cordes of Lincoln,
Demrow of Corinth, Dolan of Waitsfield, Fegard of Berkshire,
Gannon of Wilmington, Goslant of Northfield, Gregoire of
Fairfield, Hango of Berkshire, Harrison of Chittenden, Hooper
of Burlington, Jerome of Brandon, Kimbell of Woodstock,
Lefebvre of Newark, Leffler of Enosburgh, Morgan of Milton,
Nicoll of Ludlow, Redmond of Essex, Reed of Braintree,
Scheuermann of Stowe, Sibilias of Dover, Smith of New Haven,
Strong of Albany, Troiano of Stannard, and Wood of Waterbury

Referred to Committee on

Date:

Subject: Agritourism; court procedure; immunity from liability;

Statement of purpose of bill as introduced: This bill proposes to make
providers of agritourism activities immune from civil liability if a participant
is injured as a result of risks inherent in the activity and the provider has
posted a warning about those risks.

1 An act relating to limiting liability for agritourism

2 It is hereby enacted by the General Assembly of the State of Vermont:

3 ~~Sec. 1, 12 V.S.A. § 5785 is added to read:~~

4 § 5785. AGRITOURISM ACTIVITIES

5 (a) Except as provided in subsections (b) and (c) of this section, an
6 agritourism provider shall not be subject to civil liability for harm sustained by
7 a participant in the provider's agritourism activities if the participant is harmed
8 as a result of a risk inherent in the agricultural activity.

9 (b) This section shall not apply to gross negligence, recklessness, or
10 intentional misconduct on the part of the agritourism provider.

11 (c) This section shall not apply unless the agritourism provider posts the
12 following warning, written in black letters at least one inch in height, at a
13 prominent location at the place where the agritourism activity takes place:

14 WARNING

15 Under Vermont law, an agritourism operation is not liable for any
16 injury or harm to a participant in an agritourism activity conducted at this
17 agritourism location if the injury or harm results from the inherent risks of the
18 agritourism activity. Inherent risks of agritourism activities include, among
19 others, risks of injury inherent to land, equipment, and animals, as well as the
20 potential for injury if you act in a negligent manner. You are assuming the risk
21 by participating in this agritourism activity.

1 (d) As used in this section:

2 (1) "Agritourism activity" means any agriculturally related activity
3 conducted on a farm that allows or invites members of the public to observe or
4 participate in the activity, including farming, ranching, educational,
5 entertainment, historical, cultural, and recreational activities; pick-your-own
6 operations; and farm markets. An activity is an agritourism activity whether
7 or not the participant pays to observe or participate.

8 (2) "Agritourism provider" means a person who is engaged in the
9 business of providing agritourism activities, whether or not for compensation.

10 (3) "Risk inherent in an agritourism activity" means a danger or
11 condition that is an integral part of an agritourism activity, including:

12 (A) surface and subsurface conditions, and natural conditions of land,
13 vegetation, and waters;

14 (B) the behavior of wild and domestic animals;

15 (C) the ordinary dangers of structures or equipment ordinarily used
16 in farming or ranching; and

17 (D) the potential for injury to a participant or others if the participant
18 acts in a negligent manner, including failing to follow instructions given by an
19 agritourism provider or failing to exercise reasonable caution while engaging
20 in an agritourism activity.

1 ~~Sec. 2. EFFECTIVE DATE.~~

2 ~~This act shall take effect on passage.~~

Sec. 1. 12 V.S.A. chapter 212 is added to read:

CHAPTER 212. LIMITATION ON LIABILITY FOR AGRITOURISM
ACTIVITY

§ 5871. DEFINITIONS

As used in this chapter:

(1)(A) “Agritourism activity” means an interactive or passive activity that is:

(i) carried out with or without payment to an agritourism host on a farm regulated under 6 V.S.A. chapter 215, related to farming, food production, historic tradition, or nature watching; or

(ii) conducted by an agritourism host for the education, entertainment, or recreation of participants.

(B) “Agritourism activity” includes a farming activity; the viewing of a historic, cultural, or natural attraction; a pick-your-own activity; nature watching; and an activity involving an animal exhibition at an agricultural fair.

(C) “Agritourism activity” does not include a roadside farm stand or operation exclusively devoted to the sale of merchandise or food at retail.

(2) “Agritourism host” means a person who provides the facilities and equipment necessary to participate in an agritourism activity.

(3) “Farm” means a parcel or parcels of land owned, leased, or managed by a person and devoted primarily to farming that meets the threshold criteria established by the Required Agricultural Practices.

(4) “Farming” has the same meaning as in 10 V.S.A. § 6001.

(5) “Inherent risk” means any danger or condition that is an integral part of, or arises from, an agritourism activity, including:

(A) the propensity of a wild animal or domestic animal to behave in ways that may result in injury or death to persons on or near the wild animal or domestic animal;

(B) a hazard such as a surface or subsurface condition;

(C) a natural condition of land, vegetation, or waters;

(D) the ordinary dangers of structures or equipment used in farming;
and

(E) the potential of a participant to act in a negligent way that may contribute to injury or death to the participant or others, such as failing to follow safety procedures or failing to act with reasonable caution while engaging in an agritourism activity.

(6) "Participant" means any person who is invited onto the farm for the purpose of participating in an agritourism activity.

§ 5872. LIMITATION ON DUTY TO PROTECT

(a) Except as provided in subsection (b) of this section, an agritourism host shall not have a legal duty to protect a participant from the inherent risks of an agritourism activity and shall not be liable for injury to or death of a participant resulting from the inherent risks of an agritourism activity, provided that the agritourism host posts the warning required under section 5873 of this title.

(b) Nothing in subsection (a) of this section shall limit the liability of an agritourism host who:

(1) commits a negligent act or omission concerning the safety of a participant that proximately causes injury or death to the participant;

(2) has actual knowledge of:

(A) a dangerous condition on the land, facilities, or equipment used in the activity, or

(B) the dangerous propensity of an animal used in the activity, which proximately causes injury or death to the participant, and does not make that danger known to the participant;

(3) intentionally injures a participant; or

(4) commits any other act, error, or omission that constitutes willful or wanton misconduct, negligence, or criminal conduct that proximately causes injury or death to the participant.

(c) Any limitation on liability afforded by this section to an agritourism host is in addition to any other limitations on liability otherwise provided by law.

§ 5873. WARNING NOTICE; POSTING; CONTRACTS

(a) To qualify for the limitation on liability under section 5872 of this title:

(1) an agritourism host shall post and maintain a sign in a clearly visible location at or near the main entrance to each agritourism activity and

in black letters at least one inch in height containing the warning notice specified in subsection (b) of this section; and

(2) every written contract entered into between an agritourism host and a participant for goods or services related to an agritourism activity shall contain in clearly visible print the warning notice specified in subsection (b) of this section.

(b) The warning notice required under subsection (a) of this section shall read: "WARNING: Under Vermont law, an agritourism host is not liable for the injury or death of a participant in an agritourism activity resulting from the inherent risk of the agritourism activity. Inherent risks include the risk of animals, weather, land conditions, and the potential for you as a participant to act in a negligent way that may contribute to your own injury or death. You are assuming the risk of participating in this agritourism activity."

Sec. 2. EFFECTIVE DATE

This act shall take effect on July 1, 2020.