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H.89

Introduced by Representatives Yantachka of Charlotte, Batchelor of Derby,  
Bluemle of Burlington, Brady of Williston, Brumsted of  
Shelburne, Campbell of St. Johnsbury, Christie of Hartford,  
Coffey of Guilford, Dolan of Waitsfield, Goslant of Northfield,  
Graham of Williamstown, Gregoire of Fairfield, Hango of  
Berkshire, Higley of Lowell, Hooper of Burlington, James of  
Manchester, Killacky of South Burlington, Lefebvre of Newark,  
Lefebvre of Orange, Leffler of Enosburgh, Martel of Waterford,  
McCullough of Williston, Morgan, L. of Milton, Morgan, M. of  
Milton, Mrowicki of Putney, Norris of Shoreham, Ode of  
Burlington, Palasik of Milton, Patt of Worcester, Pearl of  
Danville, Savage of Swanton, Scheuermann of Stowe, Shaw of  
Pittsford, Sims of Craftsbury, Smith of Derby, Smith of New  
Haven, Stebbins of Burlington, Strong of Albany, Surprenant of  
Barnard, Townsend of South Burlington, Troiano of Stannard,  
Walz of Barre City, White of Bethel, and Wood of Waterbury

Referred to Committee on

Date:

Subject: Agritourism; court procedure; immunity from liability

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

5 An act relating to limiting liability for agritourism

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

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

8 CHAPTER 212. LIMITATION ON LIABILITY FOR  
9 AGRITOURISM ACTIVITY

10 § 5871. DEFINITIONS

11 As used in this chapter:

12 ~~(1) "Agricultural fair" means an agricultural fair that is registered with~~  
13 ~~the Agency of Agriculture, Food and Markets.~~

14 ~~(2)(A) "Agritourism activity" means an interactive or passive activity~~  
15 ~~that is carried out for recreational, entertainment, or educational purposes on a~~  
16 ~~farm or at an animal exhibition at an agricultural fair, including farming, food~~  
17 ~~production, historical, cultural, pick-your-own, and nature-based activities.~~

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(1)(A) “Agritourism activity” means an interactive or passive activity that is carried out for recreational, entertainment, or educational purposes on a farm and includes farming, food production, historical, cultural, pick-your-own, and nature-based activities.

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

1 (2)(2) “Agritourism host” means a person who provides the facilities and  
2 equipment necessary to participate in an agritourism activity.

3 (4)(3) “Farm” means a parcel or parcels of land owned, leased, or  
4 managed by a person and devoted primarily to farming that meets the  
5 threshold criteria established by the Required Agricultural Practices.

6 (5)(4) “Farming” has the same meaning as in 10 V.S.A. § 6001(22).

7 (6)(5) “Inherent risk” means any danger or condition that is an integral  
8 part of, or arises from, an agritourism activity, including:

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

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

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

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

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

7           ~~(7)~~(6)(A) “Participant” means any individual who is invited to observe  
8     or participate in an agritourism activity, regardless of whether the individual  
9     paid to observe or participate in the agritourism activity.

10          (B) “Participant” does not mean an individual who is paid to  
11     participate in an agritourism activity.

12     § 5872. LIMITATION ON DUTY TO PROTECT

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

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

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

3           (2) has actual knowledge of:

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

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

9           (3) intentionally injures a participant or intentionally damages a  
10          participant's property;

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

14          (5) fails to post the warning required under section 5873 of this title.

15          (c) Nothing in subsection (a) of this section shall prevent or limit the  
16          liability of an agritourism host under product liability law.

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

20          § 5873. WARNING NOTICE; POSTING; CONTRACTS

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

1           (1) an agritourism host shall post and maintain a sign in a clearly visible  
2           location at or near the main entrance to each agritourism activity and in black  
3           letters at least one inch in height containing the warning notice specified in  
4           subsection (b) of this section; and

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

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

16          Sec. 2. EFFECTIVE DATE

17          This act shall take effect on July 1, 2021.