

H.89

An act relating to limiting liability for agritourism

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

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 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.

(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(22).

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

(B) “Participant” does not mean an individual who is paid to participate 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 or damage to the property 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 intentionally damages a participant's property;

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

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

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

(d) 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, 2021.